Still Reforming After All These Years
George W. Bush's "New Era" at the EPA
Walter A. Rosenbaum

I am just trying to keep people from going berserk when they get mad at me, because everybody will be mad. And keep the lawsuits to a minimum of two or three per decision.¹

EPA administrator Christine Todd Whitman on the challenges of her new position

In the cornucopia of the top presidential job appointments there are plums and prunes. One of Washington's most trusted guidebooks for political insiders awards the U.S. Environmental Protection Agency (EPA) administrator a prune. "One of the toughest jobs in Washington," it warns.² The Washington Post decided that "the job is a bureaucratic, scientific and ideological headache...certainly no locus of power."³ So what does Christine Todd Whitman, George W. Bush's newly appointed EPA administrator, think about her job? "I love it," she says emphatically. "The more time I spend in this job, the more I realize that the issues are so important that it is worth the hassles."⁴ She may have spoken much too soon.

A New Era and a Transformed Agenda

Christine Todd Whitman is a former governor of New Jersey, politically popular, graced with a formidable reputation for political and administrative competence. Nonetheless she was predestined for trouble. Few federal agencies have a mission more essential, more difficult, and more dependably controversial than the EPA. Moreover, Whitman seemed to be inviting trouble by casting herself in the role of an institutional reformer, promising nothing less than "transforming the way EPA meets its mission." She was setting a political course certain to embroil herself and the Bush administration in the political struggle over reform that has been going on at the EPA for more than a decade.

President Bush came to Washington in early 2001 promising to replace the EPA's old policymaking style, which he dismissed as "mandate, regulate and litigate" with an enlightened "new era of environmental protection" initiated by Whitman. In a similar vein, Whitman had celebrated past EPA success but warned

The ground has shifted—the basic assumptions that drove environmental policies have changed. Now we are ready for a new approach.... My staff
and I are undertaking our own review of the ways in which we can transform EPA to better serve my goals for transforming the way the Agency interacts with all the environmental stakeholders ... 5

Like most of Bush's environmental agenda, this rhetoric resonated well with congressional Republicans, state governments, and the substantial portion of the U.S. corporate community that applauded Bush's election. In reality there wasn't much that seemed new about this new era, since the Bush administration was trying to reinvigorate the struggle for institutional reform at the EPA already under way since 1992.

Dissatisfaction with the EPA's regulatory achievements has been chronic among both its friends and its antagonists since the early 1980s. In fact the EPA's regulatory achievements have been more substantial than its critics concede—and more effective than might have been expected in light of the unpredictable quality of its budget. But the EPA has been around since 1970, and both friends and critics have agreed that many institutional reforms proposed by the Bush administration are essential and overdue. Still, the quest for institutional reform at the EPA has been from its inception contentious and often irresolute, partly because the targets of such reform are not genuine and substantial problems for which the EPA itself is not primarily responsible and whose solution depends as much, or more, on the uncertain will of Congress. Moreover, reformers often underestimate the difficulty of the environmental problems the agency is expected to ameliorate. Additionally, some reform initiatives are bitterly controversial because supporters of the agency allege that they will subvert the EPA's mission and weaken its impact at a time when aggressive environmental regulation remains imperative. Perhaps most troublesome, the initial result of reform initiatives has often been inconclusive, inviting more political wrangling.

In this chapter I examine four of the most important reform initiatives promoted by the Bush administration as part of the president's new era of environmental regulation:

1. Greater concern for environmental results and less emphasis on agency bean-counting to measure regulatory achievement
2. A new partnership involving a larger role, and more generous resources, for the states in implementing federal environmental law
3. More flexibility and less command and control in regulating private business
4. Greater efficiency

I give considerable attention to the merits and liabilities of these proposals, with particular emphasis on the underlying institutional, political, and scientific circumstances complicating a solution to the problems they reveal. With this perspective, I suggest useful criteria for evaluating these, and subsequent, reform proposals for the EPA. I begin by examining briefly the EPA's basic mission, its resources, and its political setting—circum-
stances that go far in explaining why the agency's critically important work, and its leadership, have been a matter of continual contention.

The EPA's Difficult and Essential Mission

Measured by the size of its budget and workforce, the EPA is the federal government's largest regulatory agency. Created by presidential order in 1970, the EPA at the beginning of the Bush administration in 2001 employed 17,500 staff members and had an annual budget in fiscal 2002 of $7.9 billion. By any measure, the scope of the agency's responsibilities and the resulting workload are enormous.

A Very Mixed Performance

As chapter 1 demonstrates, the nation's environmental quality has undoubtedly improved, in some cases dramatically, because of the EPA's regulatory programs. The quality of this achievement is often obscured by impatience with the pace of environmental improvement, by dissatisfaction with the regulatory costs involved, or by lack of appreciation for the scientific and technical difficulties regulation may entail. Still, the luster dims when the agency's entire regulatory performance is considered. Few EPA programs dependably produce attractive headlines, and bad news is only an official report away. In 2001, for instance, the General Accounting Office (GAO) reported the following:

- Water quality information was not available about the condition of more than 90 percent of the nation's ocean shorelines, 80 percent of its river and stream miles, and 60 percent of its lake acreage. 6
- Essential data about human exposure to potentially harmful chemicals that the EPA was required to obtain were available for only 2 percent of 476 priority chemicals affected by the Toxic Substances Control Act of 1976 and for only 13 percent of the 243 pesticides of most concern to EPA agricultural chemical regulators.
- Only about 8 percent of the 3,700 solid waste treatment and storage facilities requiring cleanup by the EPA had completed the work by 1999. 7

Furthermore, the EPA's programs are increasingly expensive. Also, program costs seem to rise relentlessly, and, in politics, appearance often matters as much as reality.

The EPA's Mission: A Dozen Different Directions

Almost every environmental problem seems to end in some manner at the EPA's doorstep. The EPA is wholly or largely responsible for the implementation of thirteen major environmental statutes and portions of several dozen more (see Table 8-1). The major laws embrace an extraordinarily large and technically complex set of programs covering the whole domain of environmental management. This staggering range of responsibility is one major
Table 8-1  Major Toxic Chemical Laws Administered by the EPA

<table>
<thead>
<tr>
<th>Statute</th>
<th>Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Toxic Substances Control Act</td>
<td>Requires that EPA be notified of any new chemical prior to its manufacture and authorizes EPA to regulate production, use, or disposal of a chemical</td>
</tr>
<tr>
<td>Federal Insecticide, Fungicide, and Rodenticide Act</td>
<td>Authorizes EPA to register all pesticides and specify the terms and conditions of their use, and remove unreasonably hazardous pesticides from the marketplace</td>
</tr>
<tr>
<td>Federal Food, Drug, and Cosmetic Act</td>
<td>Authorizes EPA in cooperation with FDA to establish tolerance levels for pesticide residues on food and food products</td>
</tr>
<tr>
<td>Resource Conservation and Recovery Act</td>
<td>Authorizes EPA to identify hazardous wastes and regulate their generation, transportation, treatment, storage, and disposal</td>
</tr>
<tr>
<td>Superfund (Comprehensive Environmental Response, Compensation, and Liability Act)</td>
<td>Requires EPA to designate hazardous substances that can present substantial danger and authorizes the cleanup of sites contaminated with such substances</td>
</tr>
<tr>
<td>Clean Air Act</td>
<td>Authorizes EPA to set emission standards to limit the release of hazardous air pollutants</td>
</tr>
<tr>
<td>Clean Water Act</td>
<td>Requires EPA to establish a list of toxic water pollutants and set standards</td>
</tr>
<tr>
<td>Safe Drinking Water Act</td>
<td>Requires EPA to set drinking water standards to protect public health from hazardous substances</td>
</tr>
<tr>
<td>Marine Protection, Research, and Sanctories Act</td>
<td>Regulates ocean dumping of toxic contaminants</td>
</tr>
<tr>
<td>Asbestos School Hazard Act</td>
<td>Authorizes EPA to provide loans and grants to schools with financial need for abatement of severe asbestos hazards</td>
</tr>
<tr>
<td>Asbestos Hazard Emergency Response Act</td>
<td>Requires EPA to establish a comprehensive regulatory framework for controlling asbestos hazards in schools</td>
</tr>
<tr>
<td>Emergency Planning and Community Right-to-Know Act</td>
<td>Requires states to develop programs for responding to hazardous chemical releases and requires industries to report on the presence and release of certain hazardous substances</td>
</tr>
<tr>
<td>Food Quality Protection Act</td>
<td>Creates health-based safety standards for pesticide residues in food and adds special safety standard for children and infants. Requires EPA to create program for endocrine testing of new chemicals. Requires consumer right-to-know information about pesticide residues on food.</td>
</tr>
</tbody>
</table>


reason why the EPA has been chronically overworked and repeatedly targeted for sweeping organizational reform since 1980.

Since the EPA's creation, Congress has continued to load the agency with a growing agenda of ambitious regulatory programs without much guidance about how to establish priorities among major programs or within them when they compete for scarce resources or administrative attention. The result is an incoherent regulatory agenda, a massive pile of legislative mandates for different regulatory actions, many armed with unachievable deadlines, leaving the agency without any firm and consistent sense of direction. After a searching study of the EPA's organization and performance in the mid-1990s, the National Academy of Public Administration put the blame largely on Congress:

The EPA lacks focus, in part, because Congress has passed more than a dozen environmental statutes that drive the agency in a dozen directions, discouraging rational priority-setting or a coherent approach to environmental management. The EPA is sometimes ineffective because, in part, Congress has set impossible deadlines and unrealistic expectations, given the agency's budget. 5

In the absence of an orderly mission statement, the EPA must create priorities according to the programs with the largest budgets, the most demanding deadlines, the most politically potent constituencies, or the greatest amount of congressional attention. A case in point is the Food Quality Protection Act (FQPA) of 1996. One significant portion of the FQPA was a hasty legislative reaction to a surge of national publicity concerning the possible existence of chemicals called endocrine disruptors. Some scientists and environmental organizations asserted that these chemicals, widely distributed in pesticide residues and food products, could be potent human carcinogens or might damage human and animal reproductive systems. Little is known about these substances, but Congress felt compelled to act. The FQPA ordered the EPA—while continuing its other regulatory responsibilities—to review immediately the relevant scientific literature, identify the chemical compounds that should be examined, create the appropriate testing protocols, and report the results to Congress in two years. Because these tasks turned out to require a review of scientific literature involving more than 600,000 chemicals and chemical compounds even before the testing protocols could be developed, the EPA's two-year mandate was a predetermined failure. 10

Equally unachievable EPA mandates can be found in most other major environmental measures passed by Congress. The continual appearance of imperious deadlines and other kinds of disruptive micromanagement in legislation entrusted to the EPA exemplifies a chronic tension between Congress and the EPA that severely complicates the agency's mission.

An Edgy Congressional Partnership

Congress has treated the EPA with almost schizophrenic inconsistency. Congress firmly advocates aggressive environmental protection in all its guises
and expects the EPA to enforce vigorously the legislation it creates for that purpose. Legislators are quick to protect the agency’s basic structure and programs from emasculation but are unwilling to provide realistic and dependable budget support for the programs they protect. Congressional frustration with the frequent delays in enforcing environmental laws leads to the habitual reliance on extravagant, extraordinarily detailed, and inflexible language in environmental law; constant mandating of precise deadlines for completing various programs; and prescribing in exquisite detail how administrators are to carry out program activities. Impatience with the EPA’s often-laggard regulatory pace is further exacerbated when, as discussed in chapter 6, congressional factions—usually Democrats—suspect that the EPA is deliberately weakening the enforcement of environmental regulations when Republicans control the presidency.

In another perspective, the EPA often seems to Congress to be an unending source of unwelcome political controversy. With the possible exception of the Internal Revenue Service, few other federal agencies have a more legislatively troublesome regulatory mission. Thus, from its inception, the EPA’s work has been a matter of intense, unremitting legislative scrutiny, concern, and criticism. So regularly is the EPA a subject of congressional investigation that until recently Congress’s own watchdog agency, the GAO, maintained a large, permanent branch at EPA headquarters. In short, Congress may be admirably supportive of the EPA, but in many respects Congress is the most disruptive presence in the EPA’s work life. It has been difficult for the agency to function with predictable effectiveness in such a volatile political climate agitated by tensions inherent in a system of divided governmental institutions and by the highly divisive partisan differences over environmental policy within Congress since 1980.11

Evolving Science and Technology

The rapidly evolving environmental sciences have had a paradoxical impact on the EPA and its mission. The environmental movement has caused the United States to give a much higher scientific priority to basic and applied environmental research than existed before 1970. These sciences now provide an essential technical base on which competent environmental regulation must be grounded.

At the same time, this rising tide of ecological science can produce new data indicating that prior policy decisions may have been based on inadequate information and must be revised. Scientific research can also produce ambiguous, fragmentary, or contradictory data concerning the existence or extent of an environmental problem—especially at an early stage in the research—at the same time that policymakers feel compelled to do something about the issue. Sometimes finding the solution to a problem seems so urgent that policymakers believe they cannot wait for further research before acting, as in the case of endocrine disruptors. Science also can complicate environmental policymaking and in the process drive upward the cost and time involved in remedying environmental ills by producing not timely solutions but the unanticipated need for further research. In short, modern regulatory science has become both the essential foundation and the predictable destabilizer of environmental regulation.

Under such circumstances, the EPA’s statutory mission is inherently vulnerable to economically and politically unsettling scientific events. Consider the air quality regulations by issuing new standards for these smaller materials. However, existing emission controls for particulates were not designed specifically to control small particulates, and many sources of small particulates were not regulated at all. Regulated emission sources were required to make costly adjustments or to purchase new control technologies that would eliminate the smaller particulates. In 1997 the EPA was again compelled to revise its air quality rules to require new source controls for particulates smaller than 2.5 microns because scientific research demonstrated that these particulates posed an especially severe respiratory risk for humans.12 The revised regulation required new, very costly technology changes, especially among automobile manufacturers, fossil-fuel-burning facilities, and the trucking industry. This regulatory ratcheting angered virtually every public and private emission source affected by the particulate rules, and the resulting political backlash against the EPA was vicious.

Changes in regulatory standards in the wake of new scientific research—predictably expensive and politically controversial—can be discovered in every domain of the EPA’s environmental mission. These changes often extend by years or decades the time required to achieve the pollution control levels required by Congress. Indeed, large portions of the EPA’s contemporary regulatory agenda—including climate change, stratospheric ozone depletion, genetically altered foods, leaking underground storage tanks, ionizing radiation, and much more—involve issues created by the impact of environmental science since the EPA’s creation. As long as aggressive environmental research continues, the EPA’s regulatory planning will be disrupted by newly emergent discontinuities in the wake of improving regulatory science.

A Media-Based Organization

From its beginning, the EPA’s most important organizational units have been the agency’s program offices—usually called media offices. These offices are committed to controlling pollution in a specific medium such as air or water or to dealing with a specific form of pollution such as pesticides or toxics (Figure 8-1). Each office lives with its own statutory support
system: legislatively mandated programs, deadlines, criteria for decisions, and, usually, a steel grip on large portions of the office budget to which it is entitled by the laws it enforces. Thus the Office of Toxic Substances administers the massive Superfund program, follows the mandated statutory procedures and deadlines in the law, and, in fiscal 2002, claimed $1.3 billion of the EPA budget earmarked for toxic waste site cleanup.¹³

Each office is populated by a variety of professionals: engineers, scientists, statisticians, economists, professional planners, managers, lawyers, and mathematicians. "Along with this expertise," observes Thomas McGarity, "comes an entire professional [worldview] that incorporates attitudes and biases ranging far beyond specialized knowledge and particular facts"—viewpoints shaped by the specific mission of the program office and focused on that mission's tasks.¹⁴ This tenacious media-based design appeals to Congress, environmentalists, pollution control professionals, and many other influential interests, albeit for different reasons. Each media office, in effect, has its own political and professional constituency. Most important, any proposal to change the EPA's organizational design will incite apprehension about the possible damage to existing programs and raise the specter of a bitter political battle over the alternatives.

Regulatory Federalism

Chapter 2 illustrates that the essential partnership between the EPA and the state governments, while generally cooperative, is also contentious. The states are quick to complain that the EPA is often an intrusive "federal nanny," interfering excessively and inappropriately when states attempt to adjust federal regulations in response to uniquely local conditions. At the same time, states sometimes complain that the EPA is not aggressive enough in enforcing federal environmental regulations when pollution adversely affects the states. Most of these complaints are generic, inevitable in an environmental regulatory system grounded on federalism. Yet they continually require attention and remediation from the EPA and Congress. There has also been a fundamental transformation in the competence of the states as environmental regulators since 1980—a political sea change to which the EPA and Congress have been slow to adjust.¹⁵ As state regulatory experience and competence grow, state pressure has increased on Congress and the EPA to promote more collaboration and less command and control in working with the states, to demonstrate greater confidence in state regulatory skill, and, in general, to give the states a more assertive voice in the EPA's management.

Thus George W. Bush and his new EPA administrator began their new era of management at the EPA with a politically volatile inheritance: a tenacious organizational design inspired by a 30-year-old approach to regulation; an organizational culture shaped and often disrupted by such disparate forces of scientific innovation, congressional politics, federalism, and public opinion; an enormous workload of different regulatory programs driven by ambitious, and sometimes extravagant, congressionally mandated goals; and

---

¹³ EPA Web pages at www.epa.gov/epahome/organization and www.epa.gov/adminweb/office.htm
the absence of clear mission priorities. Moreover, the president and the EPA administrator were inheriting a history of political struggle over reform programs already initiated by the Clinton administration, controversies often involving reforms that the new administration hoped to reinvigorate and expand.

No More Bean Counts: The Quest for Results

When Bush presented his new cabinet with his major agenda for managing the federal bureaucracy, one priority item was to improve how agencies like the EPA measured their performance so that they could improve their agency mission. By the time Bush entered the White House, the quest for better results from the entire federal bureaucracy had become a Washington mantra, echoed by the White House, Congress, a succession of special study commissions, and high-level bureaucratic managers themselves. The EPA was already under enormous pressure to demonstrate more satisfactory results from environmental regulation even as Bush proposed to ratchet the pressure higher. This fixation about results originated with the Government Performance and Results Act (GPRA) of 1993.

The Government Performance and Results Act

One of the earliest administrative reforms promoted by newly elected president Bill Clinton and widely supported in Congress was the GPRA, which required the EPA, and all other federal agencies, to emphasize “managing for results.” By the time Bush entered the White House, the EPA had been struggling resolutely for almost a decade to conform to the requirements of the GPRA.16 In many respects, the improved standards of performance espoused for the EPA by Bush and administrator Whitman sounded much like the GPRA’s “managing for results.”

The GPRA requires federal agencies, including the EPA, to develop long-term plans for what they intended to accomplish, to measure how well they were doing, to make appropriate decisions based on the information they had gathered, and to communicate information about their performance to Congress and the public. The GPRA compels the EPA to invest major resources in comprehensive, agencywide program planning on an organizational scale seldom attempted previously and to make the whole process highly visible for congressional and public review.17

A powerful impulse behind the GPRA was to discourage federal agencies from evaluating their work primarily in terms of what critics called bean counting—that almost intractable habit among public agencies of reporting their accomplishments in terms of activity instead of results. Bean counting, for instance, might involve measuring the success of a pollution control program in terms of the amount of money spent, the amount of staff time invested, or the number of violators prosecuted, instead of determining how much environmental quality has improved as a result of these activities. The GPRA is an especially formidable challenge because the EPA has been handicapped from its inception by organizational resources, technical and scientific data, and legislative mandates that severely complicate the effort to characterize program results. And the EPA’s leadership has struggled to overcome an organizational culture unaccustomed to planning in the terms required by the GPRA.

The GPRA Meets the EPA

The EPA has struggled from the beginning to develop satisfactory performance measures that depict results rather than levels of bureaucratic activity associated with goals. In 1999, for instance, the EPA proposed to measure its strategic goal of attaining “greater compliance with the law” with a list of performance measures that would have delighted the most fastidious bean counter:

- 86 lab integrity inspections, 2300 import/export notifications, 28 federal facility inspections, 1060 RCRA [Resource Conservation and Recovery Act] inspections, 100 administrative orders, 505 NPDES [National Pollution Discharge Elimination System] compliance orders, and 310 criminal referrals.18

“The closest any of the measures comes to evaluating the real-world environmental impact of enforcement,” complained one critic, “is the EPA’s plan to identify five ‘high priority areas’ for enforcement…”19 Later, when the GAO reviewed the performance measures the EPA proposed in its Annual Performance Plan for 2000, it concluded that 81 percent of the measures for all ten of the EPA’s strategic goals were focused on outputs rather than results.

Critics have been quick—to blame the EPA’s difficulty with the GPRA on bureaucratic delinquency. The EPA’s propensity for bean counting has been attributed to stiff-necked bureaucratic conservatism, to a fear of betraying program deficiencies, to budget protection, to competition between the EPA’s program offices, to leadership failures, and more. The most fundamental obstacle to compliance has been the chronic and deeply pervasive deficiency of information resources throughout the agency from its inception. The information problem, which afflicts virtually every major EPA program office, remains one of the most politically neglected and pernicious impediments to the EPA’s regulatory effectiveness and program evaluation.

The Information Drought

To evaluate its program effectiveness, the EPA needs basic information about a multitude of environmental conditions. Among the most important of these data are information (usually called indicators) about environmental quality and change, data about human exposure to various pollutants, and the risk to humans from various chemicals; information about the sources and volume of pollutants emitted into the ecosystem; and data about the volume
and type of materials used in business and manufacturing. In the view of EPA program managers, the absence of these data, or their poor quality and limited availability, has been the major obstacle to reporting accurately the environmental impact of program activities—the results sought by the GPRA. "EPA program managers," reports a GAO study, "told us that the limited availability of data on environmental conditions and knowledge of the health effects of pollutants needed to measure EPA's performance was the major challenge to developing outcome goals and measures." This information, explained EPA officials, "is needed to establish a direct cause-and-effect relationship between a program's activities and the resulting changes in the environment."

The pervasiveness of this information deficiency is suggested by a few statistics from recent EPA reports:

- Of the 1,456 potentially harmful substances the EPA is expected to review under the Toxic Substances Control Act, human exposure data are available to the EPA for only 6 percent of the substances.
- Databases are inadequate, or nonexistent, at the EPA for about two thirds of the known hazardous air pollutants.
- Only three among the forty states required by the Clean Water Act to identify their major sources of nonpoint water pollution have provided the EPA with this information.

The compelling need to improve the EPA's information resources has been increasingly recognized by important independent study commissions, such as the Enterprise for the Environment, which included among its priority recommendations "that the federal government undertake a well-funded, multiagency, multiyear initiative to improve the quality, collection, management, and accessibility of environmental information." The scope of the EPA's information deficits is suggested by the inventory of data the Enterprise for the Environment considered the highest priority needs: (1) indicators of ambient environmental conditions and trends, (2) information about waste, emissions, and other alterations of the environment by point and nonpoint sources, (3) information on the nature and extent of human exposure to pollutants and related indicators of human health status and trends, and (4) knowledge from scientific research, economics, and social science on the nature and cause of environmental problems and their effects on human and ecosystem health.

The Politics of Information

Why is essential information so scarce? One reason is that the gathering of much important environmental data, such as human exposure to a multitude of potentially hazardous substances, has only recently begun in response to federal regulatory laws. Moreover, gathering of scientifically credible environmental data often requires protracted and costly monitoring, lengthy collection periods, and sophisticated analysis, all adding cost and time to the task. Also, as awareness of the scope and complexity of environmental problems grows, the need for additional data to support new regulatory programs increases as, for example, when Congress decided in 1996 that information about human exposure to alleged endocrine disruptors was imperative. However persuasive may be the need for such information, the mundane but costly business of monitoring, sampling, testing, and integrating data lacks political sex appeal and so is chronically underfunded and undervalued by Congress. Even when indicator data are available—for example, long-term information about ambient concentrations of sulfur oxide in urban air—they are often collected by cities and states through different and sometimes incompatible techniques. Most program offices have little budget authority, or budget appropriations, to initiate the costly technical process of reconciling these frequently incompatible databases.

Then there is the political infighting among federal agencies over control of environmental databases. Several dozen federal agencies, as diverse as the Natural Resources Conservation Service and the Central Intelligence Agency, assemble various kinds of environmental data as part of their mission. Often these data are considered confidential, exist in the wrong format, or otherwise are unavailable to the EPA because other agencies cannot, or will not, agree to integrate their databases with the EPA's. Congressional efforts during the 1990s to designate the EPA as the primary federal environmental data center were repeatedly frustrated by the resulting bureaucratic brawl among agencies unwilling to concede to the EPA their control over environmental data.

Coping with Information Scarcity

The EPA has handled its information problems in different ways. Sometimes there has been no good solution. The realities of data management often squeeze the EPA between pressures to demonstrate program results and to comply with other congressional and White House demands for regulatory reform. Thus Congress has urged the EPA to reduce the regulatory burden it places on the states, but Congress also wants the agency to document its program results. This compels the EPA to increase the states' responsibility and cost for data collection, often without any additional federal assistance. Frequently the agency must settle for output data—the beans—when creating its results measures for the GPRA because only that information is available. Sometimes the EPA can get more relevant results data by requesting voluntary information from regulated industries. In 1998, for instance, the agency asked chemical companies to voluntarily generate data on the effects of chemicals they manufactured or exported. More than 400 companies agreed to provide such data on approximately 2,800 high-production chemicals. Although such voluntary information is potentially useful, it can also be tainted by suspicion that it is falsified to the advantage of the reporting companies.

But the EPA has not been innocent of political calculation in its treatment of the GPRA. One reason the agency has been slow to switch from
reporting the number and location of its enforcement actions as a program result is that enforcement actions have high visibility to Congress and the public, while attracting media attention and approval from environmental organizations.

Perhaps the most constructive step taken by the EPA in response to the GPRA's pressure for results has been to create in 1999 its own Office of Environmental Information and to significantly increase the staff and budgetary resources it now invests in information management. The increased resources are intended to increase the quality of the information the agency uses and to improve the flow of environmental data originating from the states. In the latter years of Carol Browner's tenure as EPA administrator under the Clinton administration, the administrator's office also initiated a continuing program to reorient the agency's management culture toward a greater emphasis on activity-based measures of program results and away from the bean-counting mentality.

A Better Partnership with the States?

The Bush initiative to "improve partnership with the states" seemed a case of political déjà vu, reprising a theme from the early days of the Clinton administration's highly advertised Reinventing Government program. By whatever name, initiatives to improve the relationship between the EPA and the states have been endorsed enthusiastically by the states and welcomed as an overdue recognition of the states' changing role in implementing the EPA's regulatory programs. The Bush proposals, like much of the earlier Reinventing Government reform, targeted several flashpoints of chronic contention between the EPA and the states, particularly federal oversight of state activities and federal enforcement actions against violators of state pollution permits. By 1999, concluded the Enterprise for the Environment, "the oversight relationship between the federal and state governments has been very process- and activity oriented, and insufficiently focused on goals, milestones and outcomes. . . . This and other factors have created increasingly adversarial and strained relationships." 25

Changing Partnerships from Clinton to Bush

The Clinton administration's Reinventing Government program contained a variety of reforms packaged as Reinventing EPA, several of which were intended to improve federal-state relations (see chapter 2). A major initiative called the National Environmental Partnership Performance System (NEPPS) created an agreement between the EPA and the Environmental Council of the States, signed in 1996, that provided a framework through which the EPA and the states would jointly set priorities and ensure appropriate action. By 1998 the EPA described "a growing acceptance of NEPPS by the states as a substantive, carefully thought-out program that can improve environmental program efficiency and effectiveness." 26

A related Clinton initiative, the Performance Partnership Grants (PPG), permitted states to combine funding from two or more among a dozen existing federal categorical grants (those dealing with a specific program) into a new consolidated grant. The EPA hoped that the combined single grant would enable the states to integrate approaches to pollution control across different pollution control programs and separate media such as air and water. The states greeted the PPG idea with enthusiasm, because it enabled them to combine several different kinds of environmental grants into a single award and to spend it with greater flexibility than had previously been possible.

The Bush administration very early added a new proposal aimed at a matter of continual contention between the EPA and the states. One of the administration's first initiatives was to greatly reduce the role of the EPA in enforcing pollution regulations in favor of greater enforcement responsibility for the states. "We've believed for a long time that the states are in a far better position to determine and to enforce priorities and that they need the resources to do that," observed a spokesman for the National Governors Association. 27 Bush's first annual budget for fiscal 2002 proposed to reduce the EPA's enforcement staff by 270 positions (about 8 percent) while providing $25 million more to the states to enforce pollution regulations. This money would come from the EPA budget. 28

Environmentalists viewed the new enforcement proposal largely as an opening round in a new assault on environmental regulation, evoking memories of Ronald Reagan's years in the White House—especially given that Bush was also proposing an overall $500 million decrease in the EPA's fiscal 2002 budget. Critics of the Bush enforcement plan were quick to note that many states with the worst pollution problems also had poor regulatory records. In most states, moreover, pollution control officials largely depended on regulated interests to voluntarily report permit compliance or violations. 29 The proposed reduction in the EPA's enforcement staff, in the opinion of the critics, was sending a signal to regulated interests that they should not expect the EPA to bring pressure on the states for a better enforcement record.

By the end of 2001, Bush's EPA budget with its funding cuts and enforcement staff reductions was stalled in Congress as a result of more urgent priorities arising from the terrorist attacks of September 11. Nonetheless the proposed reductions in the EPA's enforcement staff and the enlarged state authority in regulatory enforcement seemed likely because much of the change could be accomplished through administrative action alone. But there remains a catch-22: determining if a new approach will achieve greater environmental improvement depends on better state monitoring, data collection, and analysis—precisely the problem that has complicated implementation of the GPRA.

Looking at Results

The EPA considers the NEPPS and PPG programs to be successful and convincing testimony that the quality of the federal-state partnership is
mand-and-control in each sector. The EPA believed that a crucial component of the CSI's success would be the committees created from key stakeholders—business, labor, government, and environmental groups—who would try to reach a consensus on the appropriate administrative and regulatory approach for each sector, thus avoiding costly delays and litigation.

Project XL in Action

By mid-2001 the EPA was undertaking fifty Project XL pilot programs. The first Project XL operational project, Intel Corporation's new facility near Phoenix, Arizona, had become an EPA showpiece. Other XL projects include the Anderson Window Company testing a new regulatory approach with which it could add new facilities or modify existing ones without new pollution permits as long as it did not exceed existing plantwide pollution limits, the city of Chicago attempting to attract new business to environmentally blighted inner-city brownfields by assisting businesses in getting pollution control permits, and much more. By the end of 2000, the EPA's leadership pronounced Project XL "a significant milestone in government innovation." As one demonstration of this success, the agency estimated that Project XL innovations between 1997 and 2000 had eliminated almost 32,000 tons more of major air pollutants than might have been expected under more traditional regulatory approaches. Indeed, Project XL had become a poster child for regulatory reinvention, and the new EPA administrator was expected to accelerate the development of new Project XL sites and to encourage even greater flexibility in the EPA's approach to new regulatory arrangements between business and the agency.

But Project XL has been controversial from the beginning. The EPA had expected hundreds of proposals when Project XL began in 1995, but fewer than 200 had appeared by 2002. Environmental groups have been especially critical of the XL process, which they believe encourages sweetheart agreements between the EPA and regulated facilities that permit too much pollution. Consequently, virtually all the negotiated agreements have been contested by environmentalist organizations in one way or another. Nonindustrial groups have often been disadvantaged in the process because they do not have the legal and technical resources available to regulated business and because the process demands so much time. Many states also believe the EPA retains too much authority in the negotiation process. However, Congress has usually viewed XL projects favorably, thereby producing some rare political capital for the EPA.

The Common Sense Initiative

"In contrast to the traditional system which controls pollution to air, water, and land separately," observed the EPA, "CSI works with selected industries using a consensus approach to engage multiple stakeholders in
water dischargers under the Clean Water Act, by reducing the emergency plans required for industrial facilities to combat chemical spills, and by numerous other administrative innovations.

Time and money have doubtless been saved, but paperwork burden hours or their reduction are inherently difficult to estimate. New paperwork is continually created in order for the EPA to implement ongoing congressionally mandated tasks. Although the EPA claimed to have eliminated 24 million burden hours of paperwork between 1995 and 1998, for instance, it was also required to add a half-million hours in 1999 for paperwork associated with the control of new water contaminants under its drinking water program, then an additional 1.8 million hours in 2000 owing to the 96,000 small construction sites and 4,000 small municipalities that had to be added to its water pollution permitting program. Moreover, the EPA's own scorekeeping is suspect. In one instance, the EPA claimed a reduction of 1.2 million hours by eliminating a long form previously required by companies reporting for the Toxics Release Inventory. But the EPA had not offset this reduction by the additional 800,000 hours required of the same companies to fill out a new form in lieu of the original one. EPA regularly reviews its arithmetic, but suspect figures still appear in current EPA reports about its paperwork initiatives. Honest reporting or creative bookkeeping? The EPA is probably innocent of deliberate deception, but statistics of this sort are elusive at best and are almost impossible to validate convincingly.

From Reinvention to New Era: Does Reform Produce Results?

More than a decade of unremitting initiatives mark the path of regulatory reform from Clinton's Reinventing Government initiative to Whitman's new era at the EPA. By 2002 the EPA listed more than eighty different activities created since 1992 and packaged as reform, reinvention, or innovation. Enough time has elapsed to begin asking what has been accomplished and what has been learned from so ambitious and protracted a reform effort. Equally important, Project XL, NEPPS, the GPRA, and the other initiatives discussed in this chapter have been in many respects among the EPA's reform showpieces, those innovations most publicized and praised by the agency itself and thus an important indicator of the EPA's ability to transmit reform ideas into reform achievements.

At Best, Modest Achievements

Despite the EPA's predictable assertions that its showpiece reforms have been, on balance, considerably successful, the evidence is ambiguous. Many informed observers would agree with the following conclusion by one of the EPA's most experienced and competent high-level managers:

Much has been made of the reinvention of environmental regulation in the 1990s. However, nearly all recent efforts to reinvent environmental regula-
Critics of such a verdict can point to at least some cases of successful innovation in almost any of the programs discussed. In any event, proponents of important EPA reform efforts frequently assert that judgments about the overall success of a reform should not depend simply on counting how many times a specific reform idea may work but also on what may be learned and applied productively to future policy. They often suggest, moreover, that it is too soon to measure the impact of many reform ideas or, in other instances, that the proper indicators of success have not been developed. However, it is still difficult to find, in many instances, after more than a decade’s experience with some initiatives, clear consensus among the major stakeholders regarding the success of any showpiece reform. Indeed, it may be difficult ever to achieve such a clear verdict.

The uncertainties about reform results put the EPA in a precarious position at the start of the twenty-first century. In one respect, the problematic outcome of so many EPA reforms may appear to justify the new Bush administration in launching an even more aggressive and sweeping effort to remedy the agency’s major institutional problems than was attempted during the 1990s—assuming that the administration can make a persuasive case from the evidence. Many environmentalists and other proponents of the EPA’s mission are extremely unsettled by this possibility. More aggressive implementation of the existing reform initiatives might produce better (or at least clearer) results. But they fear that more aggressive implementation of existing reforms, or new innovations instigated by the Bush administration, may be used as a pretext to undermine existing programs. For instance, the EPA’s new leadership might propose to further weaken the agency’s enforcement staff or to reduce EPA oversight of state pollution permitting, because such measures improve the states’ status in the federal regulatory system. Alternatively, the difficulty in proving that the major EPA reforms have so far worked may invite Congress to enact newer and possibly more severe styles of micromanagement at the EPA or otherwise to aggravate many of the existing tensions between the agency and its legislative overseers.

Needed: A Reform Agenda with Bite

Most of the EPA reform initiatives proposed by Bush and Whitman appear to be targeted at genuine, chronic agency problems. To the extent that such initiatives succeed without impairing the EPA’s essential regulatory responsibilities, they should be encouraged even if the results are only modest. However, these initiatives fail in a critical respect because they do not attack the fundamental, widely recognized flaws in the EPA’s organizational design and culture. What appears to be needed is a far more potent, and much more politically difficult, reform agenda proposed in some form by virtually every major independent EPA study commission since 1990.

First, the EPA needs a congressional charter, or an “organic act” defining its mission explicitly, setting the priorities between different pollution control activities, identifying the major regulatory approaches to be emphasized, and otherwise clarifying what the EPA is expected to do, in what order, and to what ends. Such an enactment would not eliminate the need for specific regulatory laws such as the Clean Air Act or Clean Water Act, but it would greatly facilitate the EPA’s work and the administrator’s responsibilities within the agency. Such a charter—which other important federal agencies often possess—would provide a legal foundation for the EPA’s regulatory priorities and create a strategic vision that the agency cannot derive from the hodgepodge of current statutes entrusted to its implementation. As things now stand, the multitude of existing EPA reform initiatives do not attack the condition of current environmental laws, which, in the words of one major study panel, are rigid and incoherent. “The laws are complex, unrelated to each other, and lacking any unified vision of environmental problems of EPA’s mission.” And so they will remain notwithstanding the promised new era at EPA.

Second, the EPA needs immediate relief from the excessive and unrealistic regulatory deadlines, the many detailed and inflexible administrative rules, and the virtually unattainable program objectives written by Congress into environmental legislation. The congressional addiction to micromanaging the EPA has produced mostly pernicious results. It undermines the credibility of regulatory programs by virtually assuring that they will not be implemented with desirable promptness, which encourages additional cost and protracted litigation. Unreasonable program deadlines mandated by law often compel the EPA to make complex scientific and technical decisions with insufficient information. These and many other difficulties with which micromanagement is freighted also exacerbate distrust between the EPA and Congress.

Third, the EPA needs a substantial increase in its resources for environmental monitoring, data collection, and data interpretation. A constructive move in this direction has been achieved by the creation of the Office of Environmental Information, but the new office needs additional personnel and money to undertake more ambitious federal- and state-level efforts to improve existing data sources and to create new ones. Because this program must necessarily be a collaborative effort between federal and state governments, funding is especially needed to provide the states with incentives and resources to create a much higher quality of environmental data management than most states presently achieve.

Fourth, the EPA needs to encourage aggressively the continued development of an organizational culture less committed to command-and-control regulation and more receptive to alternative, innovative approaches to environmental protection. Beginning in the early 1990s a number of promising alternatives to command-and-control regulation were encouraged within the EPA by its own leadership, Congress, and outside reformers. Among these innovations,
two seemed to have especially great potential for improving the agency’s effectiveness. The Pollution Prevention Act of 1990 created within the EPA an office whose mission was to promote among the various regulatory programs more interest in strategies to reduce or eliminate pollutants in commercial and industrial production rather than to control the pollutants after they were released into the environment. The EPA’s own leadership also encouraged its program offices to use, when possible, more cross-media strategies for pollution control. The cross-media approach focused on controlling pollution by one authority and one strategy through all the different media in which a pollutant might be found instead of regulating the pollutant through different offices and different methods depending on whether the pollutant appeared in water, air, or solid waste.

Although the environmental laws the EPA must implement often forbid the use of pollution prevention and cross-media strategies for pollution control, many opportunities undoubtedly exist to apply these strategies more often than the EPA presently attempts. Reluctance to experiment with these newer approaches is partially the product of an entrenched agency culture and professional staff wedded to command-and-control regulation. But resistance also arises from an understandable staff concern about not weakening the regulatory system. “Within regulatory agencies,” notes the EPA’s Dan Fiorino, “enforcement and program staff are often skeptical of changes they fear will allow too much flexibility for regulated entities. They fear that such flexibility may open the door to fundamental changes that would undermine the regulatory system.” 43

Finally, the EPA needs to rally support from its own regional offices and from the states. Since the Clinton administration’s reinvention initiatives in the early 1990s, many EPA managers, especially in the regional offices, and state officials have found the outpouring of reform measures confusing and disruptive to their existing tasks. The long-standing dissention between the states and the EPA over their relative roles in regulatory implementation has nourished a deeply ingrained mutual suspicion that frequently discourages collaborative efforts to improve regulatory federalism and to unite behind common program reforms. Overcoming the culture of confrontation in regulatory federalism is a formidable challenge to Whitman and Bush, an issue so strategic to the EPA’s future effectiveness that it deserves far greater emphasis than it has received in the new Bush environmental reform agenda.

Conclusion

In July 1997 the EPA moved into the dazzling new Ronald Reagan Building and International Trade Center. Liberated finally from its cramped, aging, and improvised headquarters in southwest Washington, D.C., the EPA had inherited new facilities not just luxurious but palatial. The $818 million Reagan Building covers eleven acres and climbs thirteen levels surrounding an acre of atrium crowned by a sparkling glass dome. It came equipped with a two-story exhibit hall, a 620-seat auditorium, a conference center, a reception hall, a day care center, and a 980-seat food court. The EPA’s new headquarters also boasted 13,000 doors, 21,000 light fixtures, and 94 stairways. But not a single crystal ball. The EPA has been gambling since 1990 on the success of reform initiatives in which its leadership has invested enormous political capital, reforms whose necessity is unquestioned and whose outcome remains problematic, its future clouded at best. At the same time, the ongoing reform movement has been hobbled by a Congress unwilling, or unable, to attack many of the EPA’s root problems it has created or abetted. It is a precarious platform, indeed, upon which Bush and Whitman proposed to mount their EPA reform campaign.

Issues vital to the nation’s environmental future are clearly involved. How effectively will the new Bush reform agenda attack the agency’s widely recognized problems? How well does reinventing environmental protection, and now a new era of reform, serve the EPA’s best interest? How well does all this reform activity advance the EPA’s vital regulatory mission? It seems apparent that the impact of the ongoing reform efforts will be based on several factors. It will depend on how well the EPA’s new leadership can rally the agency’s own stakeholders and constituents behind the reform and how well Whitman and her new staff can convince the majority of the EPA’s professional staff that reform is no charade and that leadership commitments are durable.

The most decisive institution in shaping the future of EPA reform may ultimately be Congress. It is also the most currently enigmatic element in the EPA’s future. Congress may, contrary to conventional political wisdom, accept the political risks and challenges involved in creating a needed legislative charter for the agency, thereby perhaps accelerating the changes envisioned by other reform initiatives. It may also resurrect the belligerent mood of several earlier Congresses of the 1990s and, in the name of reform, launch new assaults on the EPA’s existing authority. It may do nothing. Whatever it does, the impact on the EPA and its new leadership will be substantial.

Notes

6. Among this literature, see especially National Academy of Public Administration (NAPÁ), Resolving the Paradox of Environmental Protection (Washington, D.C.:


8. Ibid., 4.

9. NAPA, Setting Priorities, 8.


20. Ibid., 20.


22. NAPA, Resolving the Paradox of Environmental Protection, 19.

23. GAO, Major Performance and Accountability Challenges, 14.


27. Diane Shea, Director of the National Governors Association Natural Resources Committee, Newsday, April 15, 2001.


34. Steinzor, “Reinventing Environmental Regulation,” 146.


38. Ibid.

39. Ibid., 2.

40. Ibid.


42. GAO, Paperwork Burden Estimate Increasing, 3.

