



Environmental Performance Partnership Agreement
For July 1, 2002 - June 30, 2003

*Between The Washington State Department of Ecology and
The US Environmental Protection Agency - Region 10*

We, the undersigned, Tom Fitzsimmons, Director for the Washington State Department of Ecology and Charles E. Findley, Acting Regional Administrator for the United States Environmental Protection Agency, Region 10, enter into this Environmental Performance Partnership Agreement for the protection of Washington's air quality and water quality and sound management of hazardous waste.

This Agreement is a reflection of the relationship Ecology and EPA Region 10 has been moving toward over the last several years: a partnership with each other and with Washington's citizens in protecting, enhancing and restoring our natural environment. In this Agreement we have identified clear environmental priorities and desired results.

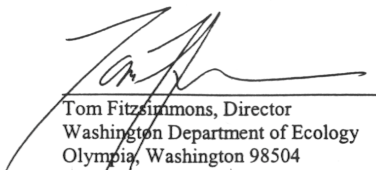
Both Ecology and EPA Region 10 will exert their best efforts in the performance of this Agreement. Disputes regarding the performance of either party to this Agreement will be resolved, consistent with applicable regulatory dispute resolution procedures, at the lowest level possible within our organizations. If this is not feasible or successful, the next level for dispute resolution will be the managers responsible for the program area in question. The final level of appeal will be the Director of Ecology and the Regional Administrator for EPA Region 10.

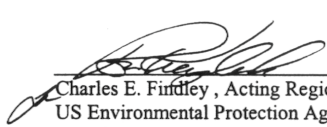
It is our belief that this Environmental Performance Partnership Agreement will improve environmental protection in Washington State. In addition, we hope this Agreement communicates to local communities, tribal governments and citizens our mutual goals and priorities for the 2002-2003 state biennium.

Signed,

DATE: 7-18-01

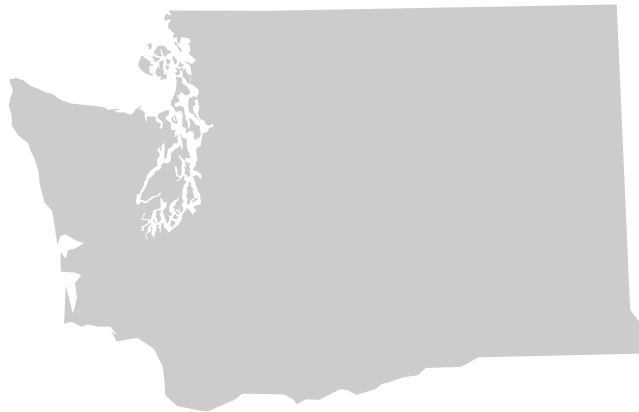
DATE: 7/18/01


Tom Fitzsimmons, Director
Washington Department of Ecology
Olympia, Washington 98504


Charles E. Findley, Acting Regional Administrator
US Environmental Protection Agency Region 10
Seattle, Washington 98101



Environmental Performance Partnership Agreement



**The Washington State Department of Ecology
and
The US Environmental Protection Agency**

State Fiscal Years 2002-2003
July 1, 2001 - June 30, 2003
July 2001

Publication number 01-01-002



This Environmental Performance Partnership Agreement is also available on both Ecology's and EPA's Internet Home Page at the Internet addresses below.

Ecology: <http://www.ecy.wa.gov/>

EPA: <http://www.epa.gov/r10earth>

Further information can be obtained by contacting:

For Ecology:

Elliott Zimmermann
WA Department of Ecology
300 Desmond Drive
PO Box 47600
Olympia, WA 98504-7600
Phone: 425-649-7072
FAX: 425-649-7098
Email: ezim461@ecy.wa.gov

For EPA Region 10:

Jack Boller
US EPA, Region 10
Washington Operations Office
300 Desmond Drive, Suite 102
Lacey, WA 98503
Phone: 360-753-9428
FAX: 360-753-8080
Email: oller.jack@epamail.epa.gov

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Central Regional Office	(509) 454-7673
Eastern Regional Office	(509) 458-2055
Northwest Regional Office	(425) 649-4259
Southwest Regional Office	(360) 407-6306



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TABLE OF CONTENTS

<u>SECTION ONE</u>	1
<u>PERFORMANCE PARTNERSHIP OVERVIEW</u>	1
<u>PURPOSE</u>	1
<u>GUIDING PRINCIPLES AND STRATEGIES</u>	2
<u>ECOLOGY AND EPA MISSIONS, PRIORITIES, AND GOALS</u>	2
<u>THE DEPARTMENT OF ECOLOGY</u>	2
<u>THE ENVIRONMENTAL PROTECTION AGENCY, REGION 10</u>	3
<u>ECOLOGY/EPA JOINT PRIORITIES</u>	3
<u>ECOLOGY/EPA ENVIRONMENTAL GOALS</u>	3
<u>MEASURING FOR ENVIRONMENTAL RESULTS</u>	4
<u>AGREEMENT COVERAGE</u>	5
<u>TRIBAL RELATIONS</u>	5
<u>EPA GRANTS TO ECOLOGY</u>	6
<u>PERFORMANCE PARTNERSHIP GRANT</u>	7
<u>QUALITY ASSURANCE AND EVALUATION PROCESS</u>	8
<u>PUBLIC INVOLVEMENT</u>	8
<u>SECTION TWO</u>	9
<u>ENVIRONMENTAL JUSTICE</u>	9
<u>SECTION THREE</u>	10
<u>COMPLIANCE ASSURANCE OVERVIEW</u>	10
<u>COMPLIANCE ASSURANCE PRINCIPLES</u>	10
<u>POLICY</u>	10
<u>ALTERNATIVE METHODS OF ACHIEVING COMPLIANCE</u>	11
<u>PROGRAM EVALUATIONS</u>	11
<u>SECTION FOUR</u>	12
<u>AIR QUALITY PROGRAM</u>	12
<u>SUMMARY</u>	12
<u>REVIEW PROCESS</u>	12
<u>Other Check-In Points</u>	13
<u>WASHINGTON STATE ENVIRONMENTAL OBJECTIVES</u>	13
<u>Objective 1</u>	13
<u>Objective 2</u>	15

<u>Objective 3</u>	18
<u>Objective 4</u>	21
<u>Objective 5</u>	22
<u>Objective 6</u>	25
<u>SECTION FIVE</u>	28
<u>HAZARDOUS WASTE AND TOXICS REDUCTION PROGRAM</u>	28
<u>DESCRIPTION</u>	28
<u>PROGRAM GOALS AND PRIORITIES</u>	29
<u>ENVIRONMENTAL AND PERFORMANCE INDICATORS</u>	29
<u>ACTIVITIES TO BE PERFORMED BY ECOLOGY AND EPA</u>	30
<u>INFORMATION MANAGEMENT</u>	31
<u>COMPLIANCE ASSURANCE</u>	33
<u>TECHNICAL ASSISTANCE</u>	33
<u>CLOSURE and CORRECTIVE ACTION</u>	34
<u>PERMITTING</u>	35
<u>AUTHORIZATION</u>	36
<u>EPA COORDINATION and CONTRACTS</u>	36
<u>Program Coordination</u>	36
<u>Contract Work</u>	36
<u>FTE Summary</u>	36
<u>SECTION SIX</u>	37
<u>NUCLEAR WASTE PROGRAM</u>	37
<u>INTRODUCTION</u>	37
<u>MAJOR FOCUS OF COMPLIANCE INSPECTIONS</u>	37
<u>MAJOR FOCUS OF PERMITTING WORK</u>	38
<u>INFORMATION MANAGEMENT</u>	39
<u>SECTION SEVEN</u>	40
<u>WATER QUALITY PROGRAM</u>	40
<u>INTRODUCTION</u>	40
<u>ENVIRONMENTAL GOAL FOR WATER QUALITY PROTECTION</u>	40
<u>PRIORITIES</u>	40
<u>Water Clean-Up Plans (TMDLs)</u>	40
<u>CWA – ESA Integration</u>	41
<u>Stormwater, Implementation of Phases 1 and 2</u>	41
<u>Nonpoint Pollution</u>	41
<u>ACTIVITIES</u>	42
<u>NONPOINT POLLUTION CONTROL</u>	42
<u>Watershed work</u>	43

<u>Columbia and Snake rivers</u>	44
<u>Wetlands Protection and Restoration</u>	45
<u>Point source permits and compliance</u>	47
<u>Biosolids</u>	51
<u>Sediments</u>	52
<u>Ground Water and Underground Injection Control (UIC) Programs</u>	53
<u>TMDLs (water cleanup plans)</u>	56
<u>ESA – CWA integration</u>	58
<u>Water quality standards</u>	59
<u>Reporting</u>	61

SECTION EIGHT: RESPONSIVENESS SUMMARY 63

<u>PUBLIC COMMENT LETTERS</u>	63
<u>Washington PEER</u>	63
<u>Public Comment Letter From Puget Soundkeeper Alliance</u>	80
<u>Public Comment Letter From Weyerhaeuser Corporation</u>	82
<u>Public Comment Letter From Kalispel Natural Resources Department</u>	83
<u>Ecology and EPA Responses to Public Comments on Draft FY2002-03 Performance Partnership Agreement (PPA)</u>	84
<u>Ecology and EPA Response to PEER Comments</u>	84
<u>Ecology and EPA Response to Puget Soundkeeper Alliance Comments</u>	92
<u>Ecology and EPA Response to Weyerhaeuser Comments</u>	93
<u>Ecology and EPA Response to Kalispel Tribe Natural Resources Department Comments</u>	94
<u>CHANGES TO THE FINAL FY2002-03 PPA IN RESPONSE TO PUBLIC COMMENT</u>	95
<u>TEXT CHANGES IN RESPONSE TO PEER COMMENTS</u>	95
<u>TEXT CHANGES IN RESPONSE TO WEYERHAEUSER COMMENTS</u>	96

SECTION ONE

PERFORMANCE PARTNERSHIP OVERVIEW

This Environmental Performance Partnership Agreement (PPA) documents proposed contractual commitments between the Washington Department of Ecology (Ecology) and the U.S. Environmental Protection Agency (EPA). The proposal includes activities of the water, waste and air programs of Ecology and EPA for the period from July 1, 2001 to June 30, 2003. This biennial agreement is scheduled to coincide with the state biennial budget process. This Performance Partnership Agreement (PPA) in no way restricts the legal oversight enforcement authority of the federal Environmental Protection Agency (EPA).

From the early 1980s through 1995, the State of Washington and EPA Region 10 participated in a State-EPA Agreement (SEA). This agreement encompassed the environmental priorities shared by several state agencies (Ecology, Health and Agriculture) and EPA Region 10. In 1995, state environmental agencies and EPA agreed to move to a National Environmental Performance Partnership System (NEPPS), with an Environmental Performance Partnership Agreement (PPA) taking the place of the SEA. The purpose of the change was to put greater focus on the environmental results of the activities that address our shared concerns, and to provide states with more flexibility in managing environmental programs.

As priorities for environmental investment evolve, the PPA will continue to reflect those changes. The basis for the commitments and plans contained in this PPA are the result of joint Ecology and EPA management and staff agreements. Comments on the Draft FY2002-03 PPA were also taken into consideration in preparing the final FY 2002-2003 Agreement.

In developing this Environmental Performance Partnership Agreement, particular attention has been paid to assessing reporting requirements and planning collaborative projects in all three environmental media. The nationally recommended Core Performance Measures have been assessed by both agencies, using common criteria, in order to limit reporting commitments to measures that are cost-effective and provide useful information to the agencies and to the general public.

PURPOSE

The Department of Ecology and EPA support a shared responsibility in meeting the environmental and public health priorities of Washington State. The purpose of this Environmental Performance Partnership

Agreement for the 2002-2003 biennium (July 1, 2001 through June 30, 2003) is to:

- Establish mutual environmental goals, strategies, activities and performance measurement for state fiscal years 2002 and 2003.
- Maintain a core level of environmental protection for all of Washington's citizens.
- Measure environmental progress using indicators that are reflective of environmental conditions, trends and results.
- Allocate Ecology and EPA Region 10 resources to the highest environmental priorities of the state.
- Establish a joint work plan for administering the federal grant dollars that EPA Region 10 provides to Ecology for air quality, water quality and hazardous waste management.

GUIDING PRINCIPLES AND STRATEGIES

Ecology and EPA Region 10 agree to the following principles in working together to protect Washington's environment:

We will:

- Manage our collective resources to meet the highest environmental needs in the state;
- Provide service to the public;
- Continue to work as partners to build trust, openness, and cooperation;
- Capitalize on each other's strengths and expertise;
- Communicate frequently and openly between ourselves and others;
- Cooperate and coordinate with tribal governments and other federal, state and local government agencies; and,
- Carry out the compliance assurance principles stated in this Agreement.

ECOLOGY AND EPA MISSIONS, PRIORITIES, AND GOALS

Ecology and EPA have similar missions, goals and objectives that guide agency operations and decisions. Our respective missions, goals and objectives are:

THE DEPARTMENT OF ECOLOGY

The mission of the Department of Ecology is to protect, preserve and enhance Washington's environment, and promote the intelligent management of our air, land and water for the benefit of current and future generations.

To achieve this mission, Ecology has adopted the following goals:

- Prevent Pollution
- Clean Up Pollution
- Support Sustainable Communities and Natural Resources

THE ENVIRONMENTAL PROTECTION AGENCY, REGION 10

On behalf of the people of the United States, our mission is to protect and restore the environment of the Pacific Northwest and Alaska for present and future generations.

To accomplish this mission, EPA Region 10's environmental objectives are:

- Protect diverse ecosystems and ensure healthy airsheds and watersheds.
- Clean up contaminated sites.
- Minimize the discharge of pollutants to land, air and water.
- Prevent pollution through source reduction.
- Reduce the generation of air, land and water pollutants.

ECOLOGY/EPA JOINT PRIORITIES

Ecology and EPA have agreed to the following priorities:

- Emphasize environmental results through the improved use of environmental indicators:
 - Incorporate, where practicable, national core performance measures.
 - Incorporate environmental indicators into program evaluations.
- Explore opportunities for coordinated work in watersheds and on issues related to Salmon Recovery and the Endangered Species Act.
- Explore opportunities to incorporate alternative methods to achieve compliance into national data reporting systems.
- Work to bring innovative initiatives and strategies into the mainstream.
- EPA will work to fulfill its responsibility on tribal lands, including program implementation and compliance assurance.
- Ecology will work to assure compliance with environmental laws.

ECOLOGY/EPA ENVIRONMENTAL GOALS

Ecology and EPA Region 10 have agreed to the following environmental goals:

Air

- Ensure that every community in Washington State has safe and healthy air to breathe.
- Continuously improve air quality throughout Washington State.

Water

- Meet water quality standards in water bodies that are currently polluted.
- Meet the biological needs of endangered and threatened species; enhance their chances for recovery.
- Restore and protect water quality through inclusive watershed planning.
- Achieve environmental protection through compliance assurance.

Hazardous Waste

- Minimize environmental threats caused by mismanagement of hazardous waste and unnecessary use of toxic chemicals.
- Reduce the production of hazardous waste in the state to 50% of the 1990 level.
- Minimize and remediate contamination of water and soil through permitting, closure, and corrective action activities.

Ecosystems

- Improve the water quality and ecosystem function in high priority watersheds.
- Protect wetlands functions and values.
- Protect endangered and threatened fish species using coastal zone management regulatory tools.

MEASURING FOR ENVIRONMENTAL RESULTS

A key purpose of the National Environmental Performance Partnership System is to focus attention on the environmental results of activities performed by state environmental agencies and EPA. State environmental agencies have worked with EPA over the past several years to develop a national set of Core Performance Measures to track progress in their environmental efforts. The August 20, 1997 agreement between the Environmental Council of the States (ECOS) and EPA on Core Performance Measures stated a commitment to work together to reduce the overall reporting burden as we move toward more outcome-related reporting measures.

The Air Quality, Hazardous Waste, Water Quality and Ecosystem Programs in each agency have reviewed the media-specific performance measures appropriate to their programs, as well as core performance measures proposed for tracking Compliance Assurance and Enforcement activities. Those media-specific performance measures and appropriate core performance measures are specified in the Air, Water, and Hazardous Waste Program Sections below.

Most of the activity reporting is accomplished through direct data submittal to federal databases, such as RCRA Info, TRI and AIRS. This is an efficient mechanism that provides data to both agencies simultaneously. In the Water Programs, Ecology provides data to EPA Region 10, which their staff input into national databases. Ecology and EPA are committed to continued review and improvement of reporting requirements to most efficiently and accurately reflect out-come based environmental indicators.

AGREEMENT COVERAGE

This Agreement is between the Department of Ecology and EPA Region 10. Indian Country and tribal resources are not included under this Agreement. EPA and the state each have, and will continue to develop, separate environmental agreements with individual tribes outside of this Agreement.

Both agencies recognize that numerous on-going relationships and commitments will continue, as negotiated. Unless superseded by this Agreement, all existing commitments and requirements remain in effect. These include, but are not limited to:

- Requirements pursuant to the Endangered Species Act (ESA) (see also any specific commitments below in the individual media sections)
- Delegation of the National Pollutant Discharge Elimination System (NPDES) Program
- Compliance Assurance Agreements for water, air and hazardous waste management
- State Revolving Loan Fund Operating Agreement
- State Revolving Loan Fund Intended Use Plan
- National Estuary Programs
- Nonpoint Source Assessment Report
- Nonpoint Source Statewide Management Plan
- Enforcement Response Policy for Resource Conservation and Recovery Act
- Resource Conservation and Recovery Act Memorandum of Understanding
- Operating Agreement for Clean Water Act Section 319 Nonpoint Source Grants Management

TRIBAL RELATIONS

Ecology and EPA have relationships with federally recognized Indian tribes of Washington state, who are sovereign nations with regulatory authorities within Indian Country and with rights and resources reserved by treaties or by other means. The United States government has a

unique trust responsibility to tribal governments arising from Indian treaties, statutes, executive orders and court decisions. The EPA Indian Policy commits EPA to operate within a government-to-government relationship with federally recognized Indian tribes and supports the principle of tribal self-government in the implementation and administration of federal environmental programs in Indian Country. EPA emphasizes to other agencies that implement environmental programs the importance of working with tribes and tribal interests. EPA also encourages cooperation between state, tribal and local governments to resolve environmental issues of mutual concern. The Endangered Species Act (ESA) and current and proposed listings of several species in Washington state as threatened or endangered make it extremely important that Ecology and EPA pay particular attention to working with and coordinating activities with tribes and tribal interests as plans are made to address ESA issues.

This Agreement is not intended to define or modify these relationships, and Indian Country and tribal trust resources are not included under this Agreement. Ecology and EPA each have, and will continue to develop, separate environmental agreements with individual tribes outside of this Environmental Performance Partnership Agreement. Since, however, work on all environmental issues within Washington state is important to EPA Region 10 and Ecology, both agencies will provide copies, upon request, of their separate environmental agreements with tribes to each other.

EPA GRANTS TO ECOLOGY

This Agreement includes joint Ecology and EPA Region 10 activities in air, hazardous waste management and water, which are not necessarily funded by federal dollars but have been identified as areas of partnership for the two agencies. This Agreement does not cover all Ecology programs receiving EPA grant assistance. However, the guiding principles and concepts stated above are reflected in all Ecology and EPA interactions.

This Agreement constitutes the Ecology and EPA work plan for the award or continuation of these grants. Many of the grants listed below were initiated prior to the 2002-2003 biennium covered by this PPA and/or extend beyond this biennium. The dollar amounts listed are for the entire length of the grant.

ECY #	EPA #	ECOLOGY TITLE	EPA CATALOG TITLE	ESTIMATED EPA GRANT AMOUNT	END DATE
<u>AIR QUALITY</u>					
BB99-02	66.605	Air Section 105 Base SFY02	Performance Partnership Grant	\$2,516,410	6/30/02
	66.605	Air Section 105 Base SFY03	Performance Partnership Grant	\$2,516,410	6/30/03
<u>HAZARDOUS WASTE</u>					
M203	66.801	Hazardous Waste RCRA FY02	Hazardous Waste Management Support	\$2,043,185	6/30/02
<u>WATER PROGRAMS</u>					
F925	66.438	State Management Assistance Grant 205(g) FY02	Construction Management Assistance 205(g)	400,000	6/30/02
F925	66.438	State Management Assistance Grant 205(g) FY03	Construction Management Assistance 205(g)	400,000	6/30/03
FA99	66.460	319(h) Nonpoint FY02	Clean Water Act 319(h)	4,000,000	6/30/02
FB00	66.605	Water Grants	Performance Partnership Grant	3,645,010	6/30/02
FB01	66.605	Water Grants	Performance Partnership Grant	3,645,010	6/30/03
G301-01	66.458	SRF Loan Program 01	State Revolving Fund	20,000,000	6/30/04
F---	66.454	Water Quality Planning: FY02	WQ Management Planning 205(j)(2)	233,659	6/30/02
F---	66.467	Wastewater Operator Training FY02	Wastewater Operator Training	34,750	6/30/02
F---	66.467	Wastewater Operator Training FY03	Wastewater Operator Training	34,750	6/30/03
<u>ECOSYSTEMS</u>					
NB93	66.463	Biosolids Management Program	Clean Water Act 104(b)(3)	00.00	
E---	66.461	Wetlands Functional Assessment Implementation	Wetlands Protection	100,000	6/30/02

PERFORMANCE PARTNERSHIP GRANT

Ecology and EPA are entering into a Performance Partnership Grant for state fiscal years 2002 -2003. The following water grants are included in the Performance Partnership Grant:

- Surface Water 106 Grant (Basic Water Grant)
- Groundwater 106 Basic Grant
- Groundwater Pesticides Grant
- Water Quality 104(b)(3) Grant
- Underground Injection Control Grant

The following air grant is included in the Performance Partnership Grant:
Air Program Grant- Clean Air Act Section 105 Base Grant.

The purpose of the Performance Partnership Grant is twofold:

- Reduce administrative burden by consolidating several grants into one.

- Increase the flexibility of moving resources among grants and programs to meet the highest environmental water quality needs in the state.

QUALITY ASSURANCE AND EVALUATION PROCESS

At the mid-year and year-end for this Performance Partnership Agreement, Ecology and EPA Region 10 will assess progress, as well as identify adjustments and additional actions that need to be taken, throughout the term of this Agreement. This assessment will include the following elements:

- Effectiveness: how readily the Agreement enabled Ecology and EPA to direct resources to improve environmental outcomes.
- Public credibility: how credible and reliable the public finds the measures used to report environmental outcomes.
- Fiscal soundness and program accountability: how well this Agreement enabled Ecology and EPA to manage public funds in an efficient, effective and economical manner.

The findings from these evaluations will be used to develop any further refinements that might be needed.

Program reviews from EPA and other federal agencies are to be expected. Reviews from the General Administration Office and Inspector General Office occur periodically, but will generally not be scheduled in advance. EPA Programs and the Office of Enforcement and Compliance Assurance (OECA) have the ability to schedule and establish program reviews or audits with the state agency. It is important that EPA considers the workload component of such reviews, and coordinates their scheduling of review with those of other federal agencies.

Ecology and EPA will establish a site on their respective webpages devoted to assessment and oversight of the PPA process. This site will include relevant public documents such as mid- and end-of-year reports for the different media Programs.

PUBLIC INVOLVEMENT

The Draft Environmental Performance Partnership Agreement for SFY 2002-2003 was published May 10, 2001. Notice of the draft PPA's availability on Ecology's Internet webpage and EPA's Internet webpage was announced by mailing letters to a mailing list of 500+ individuals and organizations; the mailing list was a combination of the general "stakeholders" mailing lists from Ecology's Water Quality Program, Air

Program, and Hazardous Waste Program. Printed copies of the complete Draft Environmental Performance Partnership Agreement were also mailed to each person or organization requesting a copy. Written comments on the draft PPA were accepted through June 21, 2001. The comments received were summarized, and responses are provided in Section Eight, "Responsiveness Summary". All comments that resulted in changes to the PPA are specifically noted in the Responsiveness Summary ("Changes to the Final FY2002-03 PPA in Response to Public Comment").

SECTION TWO

ENVIRONMENTAL JUSTICE

Environmental Equity/justice, entails the fair treatment and meaningful involvement of all people regardless of race, age, gender, national origin, education, or income level in the development, implementation, and enforcement of environmental laws, regulations, and policies. Whether it is to implement programs to issue air operating permits or water discharge permits, to facilitate cleanup of contaminated sites, or to pursue enforcement actions, both EPA and Ecology are committed to eliminating disproportionate impacts on low income and minority communities.

Both parties agree to monthly telephone calls to identify current Environmental Justice issues and events in Washington State. The goal is to increase both agencies' knowledge of Environmental Justice issues and identify areas for collaboration on these issues.

Both parties agree to participate in the Washington State Interagency Environmental Justice Work Group.

Both parties agree to collaboratively host an Environmental Justice networking meeting.

Both parties agree to participate in the National Environmental Justice Advisory Council (NEJAC) meeting to be held in Seattle, Washington in December 2001, and assist the NEJAC Air and Water Subcommittee to identify and secure experts from Washington State to testify on subsistence consumption Environmental Justice issues.

SECTION THREE

COMPLIANCE ASSURANCE OVERVIEW

COMPLIANCE ASSURANCE PRINCIPLES

The Department of Ecology and EPA share a desire for a strong compliance assurance program that achieves environmental protection by identifying non-compliance problems, punishing violators, deterring future violations, and ensuring a level playing field for law abiding companies. At the same time, both agencies advocate the use of a broader range of solutions to noncompliance, including compliance assistance and compliance incentive approaches.

The Department of Ecology, along with the other Region 10 states, have endorsed a set of principles with EPA Region 10 to guide the relationship and actions in compliance and enforcement matters, "EPA/State Agency Agreement on Compliance Assurance Principles June 1997." The principles cover collaborative planning, agency roles, performance measurement/oversight and information sharing/data responsibilities. The principles are intended to help EPA and Ecology achieve maximum results with available state and federal resources.

These principles provide a framework in which the media-specific workplans associated with this PPA Agreement are developed and implemented, and in which media-specific Compliance Assurance Agreements are developed. The Department of Ecology and EPA will use these principles to guide our interactions, and we will continue to work together to improve our use of the principles.

POLICY

EPA's policy on the issuance of environmental penalties includes a requirement to consider the economic benefit of non-compliance in penalty calculations. EPA further provides a computer program called the BEN model for optional use in calculating economic benefit. Questions have been raised in various audits regarding Ecology's consideration of economic benefit in penalty calculations.

To address these questions, Ecology developed a small action team that included representatives from Ecology's delegated programs and EPA. The team evaluated the consideration of economic benefit in penalty calculations in the Air, Water and Hazardous Waste programs. The decision was made to amend the Compliance Assurance Manual (CAM) to include a statement that Programs should consider economic benefit within their penalty calculations when appropriate to do so. The CAM states, in part:

“In addition to the factors the Board considers, Ecology also considers whether or not the violator received an economic benefit from the violations. If the inspector determines the violator likely received an economic benefit from violating the law, she/he is asked to quantify the benefit and add it to the penalty amount up to the maximum allowed by law. If economic benefit is suspected but cannot be quantified it is not included in the penalty amount.”

Thus, the use of EPA's BEN model is an option, but not mandatory. Ecology's Air and Water programs include economic benefit in their calculation formulas. The Hazardous Waste program has amended their Compliance Assurance Policy (see Appendix B of the CAM) to include economic benefit as a discretion factor in the penalty calculation process.

ALTERNATIVE METHODS OF ACHIEVING COMPLIANCE

The Department of Ecology is involved in a number of activities intended to assure compliance with applicable environmental laws and regulations. These efforts include traditional enforcement and compliance activities such as inspections, fines and other types of penalties. In addition, alternative inspection, compliance assistance initiatives, educational programs, public awareness and notification and pollution prevention are part of the enforcement program. Each program uses a number of different approaches to achieve compliance. These alternative methods to achieve compliance and their overall effect at reaching desired environmental outcomes will be discussed during mid-year and year-end reviews with EPA.

PROGRAM EVALUATIONS

A set of principles has been developed by the Department of Ecology, the other Region 10 states, and EPA Region 10 to further clarify expectations for program evaluations – “Compliance Assurance Program Evaluation Principles - 1998.” These principles address (1) Program Evaluation Goals and Objectives, (2) Frequency of Evaluations, (3) Evaluation Areas, (4) Information Sources, (5) Communications and (6) Process Management. In addition to adhering to these principals, any plans for focused program evaluations in accordance with these principles are identified in the respective media program workplans.

SECTION FOUR

AIR QUALITY PROGRAM

SUMMARY

The air in every Washington community should be safe and healthy to breathe. Given that air pollution crosses local, state, tribal and federal borders, there is a clear need for coordinated leadership on the part of the Environmental Protection Agency (EPA), the Washington State Department of Ecology (Ecology), and Washington's seven local air pollution agencies (LAA's). Effective partnering on the part of these agencies has produced significant improvement to Washington's air quality over the past decade. The number of days Washington violated federal health-based air quality standards for criteria pollutants has seen a dramatic decrease over the years, from 150 days in 1987 to seven days in 1999. In addition, the number of people exposed to unhealthy air in Washington has dropped from a high of more than two million people in 1990 to about 112,000 people in 1999.

This Environmental Performance Partnership Agreement (PPA) is dedicated to improved environmental quality by strengthening and extending the partnership among Ecology, EPA, and Washington's seven local air pollution agencies.

To achieve that end, partners to this agreement commit to the following mission statement:

“Protect, preserve, and enhance the air quality of Washington to safeguard public health and the environment and support high quality of life for current and future generations.”

REVIEW PROCESS

Ecology, EPA, and the local air agencies have agreed to the following performance evaluation process and reporting schedule.

At the end of each fiscal year (12 and 24 months) of this PPA, each agency will prepare a report which will consist of a qualitative discussion of significant points that have occurred or are expected to occur that will affect the agreement. The reports are due 90 days after the end of each state fiscal year. In addition, a joint meeting will be held at the end of State Fiscal Year (SFY) 2002. The report and review will include:

- assessment of indicators or environmental results

- assessment of outcome measures or results for key strategies (major accomplishments and challenges to date)
- major challenges for the next reporting period
- changes on the horizon (new legislation, new guidance, new approaches, etc.)
- what we need from each other to achieve objectives
- exceptions (to above accomplishments/challenges)
- funding issues

Other Check-In Points

At the end of six months, key program management and staff will meet to discuss any new relevant information that might affect either agency in carrying out their activities or achieving their goals. This check-in might include:

- draft guidance (i.e., from EPA Headquarters)
- legislative/congressional actions
- incomplete activities
- resource shifts

WASHINGTON STATE ENVIRONMENTAL OBJECTIVES

Meeting the following objectives will help Washington achieve its mission of protecting, preserving, and enhancing air quality.

Objective 1

Reduce emissions of, exposure to, and risk from airborne toxics.

(Ecology Full Time Equivalent (FTE)- 7.7; EPA FTE-1.0; Local FTE-2.5)

Environmental Indicators

- Trends in toxics emissions as reported in the National Air Toxics Assessment (NATA)

Outcome Measures

1. Toxics emissions as reported in the National Toxics Inventory (NTI) and state emissions inventory are in accordance with the rankings and priorities developed under the state strategic plan and accurately reflect toxics emissions.
2. The NATA (available every three years) changes from 1999 to 2002 more accurately reflect Washington's risk from air toxics.
3. The public is more aware of risk posed by air toxics from outreach information and surveys.

4. National Emission Standards for Hazardous Air Pollutants (NESHAPS) addressing priority toxics are delegated.

Outputs

1. Ecology will prepare a ranked listing of toxic pollutants to develop prioritized reduction strategies by December 2001.
2. Ecology will review NTI data within six months of receipt.
3. Agreement will be reached to resolve 112(r) issues by June 2002.
4. Ecology and EPA will develop asbestos roles and responsibilities by June 2002.
5. Ecology and the Puget Sound Clean Air Agency will prepare toxics Emissions Inventories (EI) annually.
 - a) Ecology will provide EPA comments on the 1999 (Toxic) NEI (Version 1.0) input by February 1, 2002.
 - b) Ecology will update and submit the 1999 Hazardous Air Pollutants (HAP) EI data for point sources to EPA (Headquarters) in NEI Input Format by June 1, 2002.
 - c) Ecology will provide EPA comments on the 1999 (Toxic) NEI (Version 2.0) input by February 1, 2003.

Ongoing Activities

Ecology, in partnership with local air agencies, will:

1. Operate monitoring stations, collect and evaluate data for the Seattle National Priority Pilot Project.
2. Collect emission inventory data annually.
3. Review NTI data, if available.
4. Continue to implement statewide monitoring strategies.
5. Adopt and request delegation of those NESHAPS Ecology chooses to implement.
6. Once the Consolidated Emissions Reporting Rule is published, the State will revise the workplan to meet the new reporting requirements.

EPA will:

1. Provide NTI data.
2. Provide guidance on national toxic policies and programs.
3. Provide background information and outreach from NATA and other states and national programs.
4. Complete NESHAPS delegation within three months of request and process updates within three months.

Jointly, EPA and Ecology will:

1. Collaborate on presenting NATA data.
2. Work to resolve issues concerning the Clean Air Act (CAA) Section 112(r).
3. Coordinate Part 63, Subpart A, requirements.
4. Resolve asbestos roles and responsibilities.

Reporting

5. Ecology will report Aerometric Information Retrieval System (AIRS) data, per the Compliance Assurance Agreement.
6. EPA will provide framework for Maximum Achievable Control Technology Tracking System (MACTRAX) data and Ecology will report data per the Compliance Assurance Agreement.
7. Ecology will submit emission inventory data to NEI annually.

Objective 2

By 2003, initiate and conduct technical work necessary for the development and implementation of control strategies and associated air quality information to begin reducing human caused visibility-impairing emissions.

(Ecology FTE- 9.0; EPA FTE-0.5; Local FTE-2.9)

Environmental Indicators

- Track trends in visibility impairing emissions using Interagency Monitoring of Protected Visual Environments (IMPROVE) data from sites with more than three years of data. (Sulfur Oxides [Sox],

Nitrogen Oxides [Nox], Organic Carbon, Elemental Carbon, Fine Soil dust, Coarse Mass (Particulate Matter [PM]₁₀ – [PM]_{2.5})).

- Track changes in the emission inventory since the 1999 Visibility Review using consistent methodology.
- Track changes in visibility impairment by comparing the best and worst days using regional haze rule methodology (deciviews).

Outcome Measures

1. Complete the next Phase I State Implementation Plan (SIP) review by 5/02 to determine if reasonable progress was made in improving visibility in Washington's federal Class I areas, and revise the visibility SIP if needed.
2. By 7/02 develop and begin testing a method for identifying source contributions to visibility impairment.
3. By 7/02 the inventory of visibility impairing emissions is ready to be used in modeling work that will be conducted by Western Regional Air Partnership (WRAP), Pacific Northwest Regional Technical Center (PNW-RTC) and Ecology.
4. By 7/02 Visibility Important Areas (VIAs) are identified.

Outputs

First Year of PPA-Ecology will:

1. Assess the implications of changes in the environmental indicators.
2. Identify regional planning body states for regional haze SIP development.
3. Develop criteria and process for identifying visibility important areas (VIAs).
4. Complete, with Oregon, Federal Land Managers (FLM), EPA, tribes and local stakeholders, a Columbia River Gorge National Scenic Area (NSA) Air Quality Strategy Development Work Plan.
5. Refine and expand the existing inventory, which quantifies natural and human caused emissions.
6. Define current and project future visibility impairing emissions.
7. Complete the Phase I visibility SIP review.

Second Year of PPA-Ecology will:

1. Begin developing a public education and outreach program.
2. Assess the need for, and if necessary, establish additional monitoring that represents all VIAs. Monitoring is contingent on funding.
3. If necessary (based on the results of the SIP review), revise the Phase I visibility SIP.
4. Contingent on funding, develop and/or refine Pacific Northwest emission source signatures.
5. Develop and begin testing a method for identifying source contribution to visibility impairment.
6. Work closely with public and private stakeholders to identify VIAs.

Ongoing Activities

1. Ecology will assist in the operation of Class I area IMPROVE sites.
2. Ecology will track progress in the installation of new IMPROVE monitoring equipment in Washington's Class I areas by U.S. Forest Service and National Park Service.
3. Ecology will participate in WRAP and Western States Air Resources Council (WESTAR) committees, forums, etc., and continue to monitor IMPROVE Steering Committee activities.
4. Ecology will continue to participate in the Columbia River Gorge NSA Air Quality and Visibility interagency coordination and technical teams.
5. Ecology will track EPA's Natural Conditions Workgroup, which is developing guidance on defining natural conditions.
6. Ecology will continue to support air monitoring in the Columbia River Gorge NSA contingent on funding.
7. Ecology will collect data and prepare emission inventory and air monitoring databases to support air quality modeling.
8. EPA will participate, on both a staff and management level, in the bi-state work to protect air quality in the Columbia Gorge.

Reporting

- By 5/02, Ecology will report to EPA Region X on the outcome of the Phase I Visibility SIP review, and include recommendations for revision of the Phase I Visibility SIP if needed.

Objective 3

Prevent exceedances of the National Ambient Air Quality Standards (NAAQS) from anthropogenic sources and reduce exposure to nonanthropogenic caused exceedances.

(Ecology FTE-25.0; EPA FTE-3.5; Local FTE-8.1)

Environmental Indicators

- Trends in exceedances of NAAQS by region and by pollutant.

Outcome Measures

1. Redesignation of Spokane and Yakima Carbon Monoxide (CO) nonattainment areas in Washington State.
2. An updated Natural Events Action Plan (NEAP) including establishing Best Available Control Measures (BACM), and public involvement plan for Columbia Basin.
3. Complete protocol to determine county-by-county assessment of likelihood to exceed standard.
4. Annual reports indicate no exceedances of ambient air quality standards.

Outputs

1. Ecology submits a serious Carbon Monoxide (CO) attainment plan for Spokane by July 2001.
2. Ecology submits a serious CO maintenance plan for Spokane by April 2002.
3. Ecology submits a CO redesignation request and maintenance plan for Yakima by July 2001.
4. EPA takes action on the serious CO attainment and maintenance plans for Spokane and maintenance plan for Yakima within 12-18 months, respectively, of submittal.

5. Ecology informs the public of seasonal risks when natural events could result in an exceedance and gives public health mitigation information.
6. Washington Air Quality Managers comment on draft protocol for determining county by county assessment of likelihood to exceed standards by Ecology.
7. With support from EPA, Ecology will develop and implement strategies to address PM₁₀ violations in Colville and Walla Walla by August 2002.
8. Ecology submits a serious PM₁₀ attainment plan for Wallula by October 2002.
9. Ecology submits a PM₁₀ maintenance and redesignation plan for Wallula by October 2002.
10. Ecology will address the NEAP for the Wallula PM₁₀ nonattainment area as part of the maintenance plan.
11. Ecology will complete and submit to EPA an annual monitoring network review.

Ongoing Activities

1. Ecology and locals will operate statewide National Air Monitoring Site (NAMS)/State and Local Air Monitoring Site (SLAMS) network, according to 40 C.F.R. Part 58.
2. Ecology submits NAMS/SLAMS data to AIRS within 90 days of the end of the quarter.
3. EPA will review and approve the annual monitoring network review within 90 days.
4. Ecology maintains quality assurance program for ambient data as required by 40 CFR Part 58, Appendix A.
5. EPA provides annual quality assurance audits as required by 40 CFR Part 58, Appendix A.
6. Ecology/locals document natural events and submit within 180 days after an exceedance to EPA.
7. Ecology /locals implement natural events policy and NEAP.
8. Ecology and EPA flag natural events in accordance with the Natural Events Policy and the Natural Events Action Plan.

9. Ecology and locals will update and submit to EPA (headquarters) the 1999 Criteria EI data for point sources in NEI Input Format by June 2002.
10. Once the Consolidated Emissions Reporting Rule is published, the State will revise the workplan to meet the new reporting requirements.
 - Ecology will submit the emission report according to CFR 51 Subpart Q by July 1 of each year, if confirmed by EPA.
 - Ecology will provide EPA comments on the 1999 (Criteria) NEI (Version 1.0) input by February 1, 2002. Ecology will also update area/mobile source data with the 1999 EI data from the 2002 Visibility SIP review by February 1, 2002
 - Ecology will provide EPA comments on the 1999 (Criteria) NEI (Version 2.0) input by February 1, 2003.
11. Ecology will submit Inventory Preparation and Quality Assurance Plans prior to beginning EI efforts for all attainment and maintenance plan inventories.
12. Ecology/locals, with assistance from EPA, will develop technical analysis protocols for SIPs.
13. Ecology, locals, and EPA will coordinate routinely on SIP issues.
14. EPA will provide guidance on SIPs.
15. Ecology/locals will prepare attainment and maintenance plans, as identified in "Outputs."
16. Ecology will develop a data acquisition system which geographically arrays known or modeled data by county to ascertain potential risk of exceedances.

Reporting

1. Ecology submits AIRS data within 90 days of the end of the quarter.
2. Ecology submits fast-track ozone daily during ozone season.
3. Ecology prepares quarterly Quality Assurance (QA) reports.
4. Ecology notifies EPA of exceedances of ambient air standards within 24 hours of receiving valid data.

Objective 4

Provide easily accessible and understandable information about the risks and costs of air pollution to citizens and elected officials.

(Ecology FTE-2.4; EPA FTE-0.2; Local FTE-0.8)

Outcome Measures

1. Citizens and elected officials in various geographic areas of our state receive ongoing timely and relevant education and outreach information from their jurisdictional air agency, (Ecology Regional Offices, Local Air Agencies, and EPA).
2. Communication strategy developed for strategic goals.

Outputs

1. Ecology will conduct a statewide survey by June 2001.
2. Ecology will identify barriers to change using survey research and interviews by December 2001.
3. Ecology will assess, define and catalogue the air program's data resources by March 2002.
4. Ecology will coordinate with Local Air Agencies to develop a community-based marketing campaign for communicating strategic plan components and responding to survey results by December 2002.
5. Ecology and Local Air Agencies will have fully implemented the community-based marketing campaign by December 2003.

Ongoing Activities

1. Ecology Regional Offices and Local Air Agencies will deliver a balanced program of public education and community outreach on locally relevant air pollution issues.
2. Ecology will measure success and evaluate the marketing campaign, using iterative surveys of awareness gained or behavior change, including measurement of vehicle miles traveled, improved air quality, improved views of Mount Rainier.
3. Ecology will coordinate with Local Air Agencies to implement education and outreach strategies on an ongoing basis dependent on resources and evaluation of survey conclusions and methods.

4. EPA will be responsible for air quality education and outreach programs in Indian Country.
5. Ecology, EPA, and Local Air Agencies will use data resources to support communication on, and understanding of, identified air pollution problems.
6. Ecology, EPA and Local Air Agencies will work collaboratively to identify priorities for EPA's assistance with education and outreach campaigns and/or materials when the subject matter relates to new or changing federal regulations or requirements.
7. Ecology, EPA, and local air agencies will use electronic communications, including web pages to inform and interact with the public.

Reporting

1. Ecology will submit the annual Air Quality Trends Report to EPA by January of the following calendar year.
2. Ecology will submit the annual Air Monitoring Data Summary Report to EPA by September of the following calendar year.

Objective 5

Implement continuing activities that place a priority on:

- ◆ **toxic air pollutants**
- ◆ **criteria pollutants**
- ◆ **visibility**
- ◆ **smoke from indoor & outdoor burning**
- ◆ **dust**

(Ecology FTE- 40.2; EPA FTE-4.0; Local FTE-13.0)

(Ecology Title V FTE-19.0; EPA Title V FTE-0.0; Local Title V FTE 30.7)

Environmental Indicators

- Reduce emissions from agricultural burning
- Reduce impact of emissions from agricultural burning

Outcome Measures

Federal, state, and local air agencies provide increasingly effective service to prevent and reduce air pollution in Washington.

Outputs

1. EPA and Ecology will complete their Prevention of Significant Deterioration (PSD) rulemaking, delegation, and approval during the term of this PPA.
2. All affected agencies will complete issuance of initial Title V permits according to an agreed upon schedule (info only).
3. In consultation with the state and local agencies, EPA will explore how to develop a process for approving routine SIP updates by December 2001.
4. Part 60 & 62 delegations will be completed by December 2001.
5. EPA will develop year 2 and year 3 agricultural workplans (under the five year strategy) by December of each year.
6. Ecology will, with EPA support, make advancements in the reduction, management, regulation and control of agricultural burning emissions on both a geographic and a sector (type of agriculture) basis.
7. Ecology will, with EPA support, make burn calls in more areas and enhance the integration of burn calls among areas.
8. Through research, education, partnerships, Ecology and EPA will foster and encourage non-burning alternatives and higher end-uses of agricultural residue/material.
9. Ecology, in collaboration with EPA and others (e.g., Tribes, PM center, Department of Agriculture, etc.), will design a process for Eastern Washington region smoke impact health assessment by July 1, 2002.

Ongoing Activities

1. State and local agencies will implement approved attainment and maintenance plan commitments, such as woodstove curtailment programs, Inspection and Maintenance (I & M) programs, etc; and other voluntary measures such as smog watch and burn curtailments.
2. State and local agencies will implement the administrator authorities for New Source Performance Standards (NSPS) as currently delegated and/or agreed on during collaborative planning with EPA.
3. EPA will implement the NSPS program in Indian Country and where not delegated to a state or local agency.

4. State and local agencies will update adoption and delegation requests for selected part 60 and 62 standards annually if possible.
5. State and local agencies will implement the Title V program (Title V activities are informational only; not an element of the grant workplan).
6. State and local agencies will implement the Prevention of Significant Deterioration (PSD) program as per the current delegation; Notice of Construction (NOC) program; orders limiting Potential to Emit, and other applicable permit programs such as burning, etc.
7. EPA will process delegation requests within 90 days of receipt.
8. All agencies will conduct and report the type of emissions specified in the Compliance Assurance Agreement.
9. EPA, Ecology, and the Local Air agencies will communicate at least once per quarter to discuss the status of pending SIP submittals.
10. State and local agencies will update/revise their rules and regulations as necessary or appropriate to maintain effective air quality programs and submit timely SIP revisions to EPA.
11. EPA will act on SIP submittals within statutory deadlines where doing so is consistent with Ecology's highest priority submittals.
12. Ecology will, with EPA support, limit emissions from agricultural burning through a rigorous permitting program accompanied by defensibly strict guidance on what reasons for burning are allowable/now allowed.
13. Ecology will, with EPA support, keep smoke levels low by monitoring conditions very closely, and establish management systems that provide real time tracking, near real-time air quality data used in burn ban decisions, and current forecast/smoke advisories.
14. EPA and Ecology will collaborate on collecting, analyzing, and sharing agricultural burning data and information.
15. EPA will work with other northwest states and Tribes to improve smoke management coordination and tools.

Reporting

1. State and local agencies will submit to EPA the following for Nonattainment New Source Review (NSR) (Part D) and PSD applications: the application, incompleteness letters, updated

- application information, technical analysis, draft permits, and final permits.
2. State and local agencies will enter Best Available Control Technology (BACT)/Lowest Achievable Emission Reduction (LAER) determinations for the above class of projects into the clearinghouse database within three months.
 3. EPA will inform state and local agencies of SIP submittal processing status monthly.

Objective 6

Maintain an effective compliance assurance program that places a priority on activities that:

- ◆ **Prevent and reduce priority toxic air pollutants**
- ◆ **Prevent and reduce criteria air pollutants**
- ◆ **Prevent and reduce visibility impairment**
- ◆ **Prevent and reduce smoke**
- ◆ **Prevent and reduce dust**

(Ecology FTE-17.7; EPA FTE-2.5; Local FTE-5.7)

Environmental Indicators

Emissions reduced or prevented through enforcement and/or other compliance activities as measured by EPA, Ecology, and Local Air Agencies through existing reporting systems and ones that may be developed during the term of this PPA.

Outcome Measures

1. High rates of compliance with regulations and permits.
2. Credible deterrence to non-compliance.
3. Partner agencies understand and respect each other's priorities.

Outputs

Compliance Assurance Agreement

1. EPA, in cooperation with Ecology and the Local Air Agencies, will re-negotiate the Compliance Assurance Agreement as impacted by the Compliance Monitoring Strategy (CMS) within 6 months of the CMS becoming final.

2. EPA will conduct some level of a program review of state/local compliance programs with focus on those activities covered in the Compliance Assurance Agreement in accordance with the March 24, 1998 "Compliance Assurance Program Evaluation Principles" developed by EPA region 10 in collaboration with the states in Region 10. This will occur during the first calendar quarter of 2002.
3. EPA, Ecology, and Local Air agencies will carry out their respective obligations under the Compliance Assurance Agreement (Title V, Synthetic Minors, etc).

Delegated Programs at Non-Title 5 Sources

4. Ecology and the Local Air Agencies will adequately implement as many delegated programs as they can. When adequate resources for full implementation are not available, relative priorities will be established in collaborative planning with EPA, and it is understood that those priorities will likely vary from agency to agency. State and local agencies may submit their prioritization plans to EPA by July 1. EPA feedback will be prompt. By October 1 agreement will be reached.
5. EPA, Ecology, and the Local Air Agencies will periodically review and discuss compliance and enforcement program trends in federally delegated programs. EPA will take the lead in identifying existing sources of data that will inform our periodic review.
6. EPA will share their enforcement strategy for non-delegable federal standards (such as architectural coatings, sulfur in diesel fuel, etc) and EPA will seek feedback from affected state and local agencies on the highest priorities for the state of Washington.
7. EPA will approve final Title V program by July 2001.

Minor Sources and Area Sources

8. State and local agencies are encouraged to share information about their minor source and area source programs and priorities by July 1 of each year. EPA agrees that minor and area sources programs are crucial to achieving and maintaining clean air, and acknowledges the need for state and local agencies to prioritize limited resources for maximum environmental benefit.

Ongoing Activities

1. For sources and activities that are subject to the Compliance Assurance Agreement, the state and local agencies will conduct their compliance programs in accordance with that Agreement as it exists during the term of this PPA.
2. Violations detected at major sources will be resolved in accordance with the EPA “Timely and Appropriate Enforcement response guidance for High Priority Violators,” and as outlined in the Compliance Assurance Agreement.
3. Ecology, the locals and EPA will continue periodic (approximately bi-monthly) conference calls to discuss high priority violations as well as policy and strategy issues.
4. EPA will be responsible for conducting compliance assistance and enforcement activities in Indian Country.
5. EPA will be responsible for non-delegable standards, activities, and programs (for example, chlorofluorocarbons) statewide, including complaint response, inspections, and priority enforcement actions.
6. EPA will continue to perform direct inspection and enforcement work with respect to national priorities or as requested by state or local agencies.

Reporting

1. Implementation of the new Compliance Monitoring Strategy is expected to result in some additional data elements for reporting. This will be discussed during collaborative planning and it is fully expected that tradeoffs will need to be made if additional reporting is required.
2. All agencies will fulfill reporting requirements contained in the Compliance Assurance Agreement.
3. To the extent possible, and as time allows, all agencies will attempt to quantify emission reductions achieved through enforcement actions against High Priority Violators (HPVs). One approach might be to use EPA’s case conclusion worksheet.
4. Delegated agencies will report asbestos activity to National Asbestos Reporting System (NARS) quarterly.

SECTION FIVE

HAZARDOUS WASTE AND TOXICS REDUCTION PROGRAM

DESCRIPTION

Washington's Hazardous Waste Program implements the federal Resource Conservation and Recovery Act (RCRA), as authorized by EPA, and the state Dangerous Waste Regulations. The purpose of the program is to assure that generators and processors of hazardous waste manage their waste in a manner that minimizes the risk of releases of hazardous materials to air, water, and land. This is accomplished by assuring compliance with the hazardous waste regulations and by encouraging waste minimization practices. The Program also integrates into administering the hazardous waste regulations all appropriate provisions of the federal Endangered Species Act and any other relevant federal laws and regulations. This Environmental Performance Partnership Agreement (PPA) will adhere to the state's authorized program. It does not restrict EPA's oversight authority for state program activities that are part of the federal program, does not establish privity between EPA and the state, does not restrict EPA's independent enforcement authority and does not expand EPA's oversight authority to state only requirements outside of the federal program. No waiver of sovereign immunity is implied or assumed by this agreement.

Work to be done by Ecology will be performed by the Hazardous Waste and Toxics Reduction Program (HWTR), the Industrial Section and the Nuclear Waste Program. Ecology will collect and track all information needed to report on all indicators and performance measures. The Region 10 RCRA program in the Office of Waste and Chemicals Management (OWCM) will perform EPA work. This agreement is a two-year agreement for the state FY 2002 and 2003. Activity commitments and levels of effort are presented for a one-year time frame. The commitments will be evaluated at the end of the first year and adjusted or amended as necessary to carry through the second year.

PROGRAM GOALS AND PRIORITIES

The EPA Region 10 RCRA Program and the Ecology HWTR Program will strive to achieve the following program goals and priorities in Washington State in FY 2002-2003.

1. Minimize environmental threats caused by mismanagement of hazardous waste by implementing effective compliance assurance activities including fair and firm enforcement;
2. Continue to improve the Dangerous Waste Regulations and maintain an authorized program;
3. Work to reduce the production of hazardous waste in the state to 50% of the 1990 level;
4. Accomplish safe, timely permitting, closure and corrective action;
5. Improve access, internally and externally, to meaningful, quality information for use in accomplishing our work including collecting information to measure our success;
6. Work together to reduce duplicative efforts and streamline EPA's review and approval of state actions when necessary.

ENVIRONMENTAL AND PERFORMANCE INDICATORS

During FY 2002-2003 Core Performance Measures will be used to assess the success of the RCRA program. Data for these measures is available through the Biennial Reporting System, the Toxics Release Inventory and the EPA national database for RCRA, called RCRA Info.

The Core Performance Measures that Ecology and EPA will use for assessing FY 2002-2003 RCRA Program performance are:

1. Pounds per year of hazardous waste generated per facility (sorted by SIC and ZIP code) from HWTRInfo. See goals 1 through 5.

2. Pounds per year of toxic chemicals released to air, land, and water as measured by the Toxics Release Inventory (TRI). See goals 1 through 5.
3. Number and percentage of sites subject to RCRA corrective action that have (a) human exposures under control and (b) ground water contamination under control, as measured in the RCRA Info database. See goals 1, 2, 4 and 5.
4. Percent of high and medium priority facilities subject to RCRA corrective action where a final remedy or interim measure is in place for any portion of the facility. The data elements for final remedy are CA400, CA500, CA550 and the data elements for interim measures are CA600 and CA650 in the RCRA Info database. See goals 1, 2, 4 and 5.
5. Percent of facilities that require either an operating or post closure permit where there are approved controls in place, as measured in the RCRAInfo database. See goals 1 through 5.
6. Percent incidence of "Environmental Threats" per inspection by calendar year. Analysis done on data in the RCRAInfo database. See goals 1 and 5.
7. Rates of significant non-compliance and percentage of significant non-compliers returned to compliance. Data is in RCRA Info database. See goals 1 and 5.
8. Number of enforcement actions taken. Data is in RCRA Info database. See goals 1 and 5.

Ecology's responsibility for core measures reporting will be to assure that the data in RCRA Info is accurate and up to date. EPA Region 10 will be responsible for extracting and using the data to report to EPA Headquarters.

ACTIVITIES TO BE PERFORMED BY ECOLOGY AND EPA

This agreement will serve as the grant workplan for both the FY 2002 and the FY 2003 EPA RCRA grant to Ecology. The grant period will be from July 1 through the following June 30 for each grant year. Ecology and EPA will conduct the activities enumerated in the sections below in FY 2002. At the end of the year, EPA and Ecology will make whatever adjustments or

additions are needed to carry the activities through FY 2003. Progress in completing these activities will be reported in a mid-year and end-of-year report each year. These reports will include a narrative explaining progress in completing the agreed upon activities and tracking data concerning these activities. The mid-year report will be due February 15 of each year and the end-of-year report will be due August 15 of each year. EPA will prepare similar reports regarding its commitments. Ecology agrees to continue reporting all appropriate data in the national databases (RCRA Info, BRS, TRI, etc.).

The level of effort for each Ecology activity specified in the sections below identifies the number of Ecology FTEs funded by federal grant dollars and the number of Ecology FTEs funded by state matching funds. The level of effort sections for EPA identify EPA resources devoted to RCRA work in Washington. The details of Ecology RCRA commitments are found in Ecology's work plan for the HWTR Program (which includes the Nuclear Waste Program's and Industrial Section's RCRA commitments) that is incorporated as part of this agreement.

Ecology has developed a strategy for addressing Persistent, Bioaccumulative, and Toxic (PBT) chemicals. EPA will coordinate with Ecology and provide information on EPA's PBT strategy. When possible, EPA will provide support for Ecology's strategy beyond the RCRA grant. (Funding for this project is separate from the FY 2002-2003 PPA RCRA grant.) The overall goal of this strategy is to eliminate or significantly reduce the amount of PBT chemicals in use in industry and thereby reduce their impact on the environment. Specific goals and measures will be established as part of a project workplan.

INFORMATION MANAGEMENT

In addition to the tasks mentioned in this document, EPA and Ecology have a RCRAInfo Letter of Agreement which further specifies the process for resolving any disagreements between Ecology and EPA relevant to maintenance of, and data entry into, the RCRA Info system.

As part of this agreement Ecology will:

1. Input all hazardous waste inspections, enforcement actions, return to compliance information, corrective action milestones,

closure/post-closure milestones, permit milestones and any other data necessary to track indicators 3, 4, 5, 6, 7 and 8 into the EPA national RCRA data system (RCRAInfo). Ecology will establish and maintain a system to assure that each inspector, permit writer, and corrective action/closure lead will review the data for each facility they are responsible for on a monthly basis and submit revisions for data input. At no time should the data for any facility be more than two months behind. See goal 5 and indicators 3, 4, 5 and 6. See work plan section 6B.

Level of effort in FTE: 1.2 (grant) 0.4 (match) Total 1.6

2. Collect and process annual reports. Information will be provided to EPA for the National Biennial Report System (BRS) as agreed in the Program Authorization Memorandum of Agreement (MOA). Ecology will also maintain the hazardous waste handler module, and will translate Handler module information from HWIMSy and Facility Site Information system for all required data elements necessary for good reporting (this includes most or all of RCRAInfo, HQ and US data elements) (This activity includes the maintenance of the HWIMSY database). See goal 1, 2, 3 and 5 and indicators 1 and 2. See work plan section 6A.

Level of effort in FTE: 1.7(grant) .6(match) Total 2.3

3. Working with Region 10 to phase in the use of Ecology's Event Tracker tool as a data entry portal for RCRAInfo. The Letter of Agreement, mentioned above, will provide additional details of this phased in approach.

EPA will:

1. Assist in maintaining EPA national RCRA Info database and keeping data current including participation in the RCRA Info workgroup. This involves a monthly review of data by site managers for their sites and submitting revisions for data input.

Level of effort in FTE: 0.5

2. Give Ecology prior notice of EPA Region 10's intent to analyze data from the EPA national database for RCRA and provide an opportunity for Ecology review of EPA's findings prior to presenting the findings outside of the Region 10 RCRA program. This does not include similar use of publicly available data by entities outside of the control of the EPA Region 10 RCRA program.

COMPLIANCE ASSURANCE

Ecology will:

1. Conduct statutorily mandated and state priority inspections including compliance inspections at 5%-7% of the large quantity generators. Data will be input into RCRIS and quality assured monthly. Should Ecology decide not to conduct a federally mandated inspection they will immediately notify EPA in writing of this decision along with justification for this decision. Ecology and EPA have agreed that because they are not actively treating, storing, or disposing of hazardous waste the following interim permitted facilities do not need to be inspected on a every-other-year basis: Boeing Plant 2; Boeing Development Center; Boeing Renton facility. These facilities will still be subject to inspection as hazardous waste generators on a schedule to be determined by Ecology. See goals 1, 2, 3 and 5 and indicators 1, 2 and 6. See work plan section 1A.

Level of effort in FTE: 4.5(grant) 1.4(match) Total 5.9

2. Address violations and compliance issues in a manner consistent with the Ecology Hazardous Waste and Toxics Reduction Program Compliance Assurance Policy and the Ecology/EPA Compliance Assurance Agreement including the addendum to address HB1010 (orders, Notices of Corrections (NOC's), compliance letters, and penalties). Data including Significant Non- Compliance (SNC's) will be input into RCRA Info and quality assured monthly. See goals 1, 2 and 4 and indicators 1, 2, 4 and 6. See work plan section 5.

Level of effort in FTE: 3.8(grant) 1.2 (match) Total 5.0

EPA will:

1. Coordinate with Ecology on compliance issues; perform the hazardous waste portion of multi-media inspections unless otherwise agreed to by Ecology and will implement compliance activities in Indian Country in cooperation with the various tribal governments. See goals 1, 3 and 4 and indicators 1, 2, 6 and 7.

Level of effort in FTE: 1.0

TECHNICAL ASSISTANCE

Ecology will conduct technical assistance for compliance, waste minimization and pollution prevention through site visits, answering phone calls, outreach publications and workshops. See goals 1, 3, 4 and 5 and indicators 1 through 6. See work plan sections IB-IV.

Level of effort in FTE: 2.2(grant) .7(match) Total 2.9

EPA will provide technical assistance to Ecology including work at Hanford and ATG. Hanford work will include TSCA risk based disposal approval, ETF delisting, high level waste delisting, vitrification plant technical and permitting work, as well as general technical and regulatory consultation. See goals 1, 3, 4 and 5 and indicators 1 through 5.

Level of effort in FTE: 1.0

CLOSURE and CORRECTIVE ACTION

EPA and Ecology are working toward meeting the goals set for 2005 by the Government Performance Results Act (GPRA). This act establishes goals for both permitting and corrective action under RCRA. The goal for corrective action is that by 2005, 95% of high-priority RCRA facilities will have human exposure to toxins controlled and 70% of these facilities will have toxic releases to groundwater controlled. EPA and Ecology will implement the site transition plans and schedules for each corrective action and closure site that requires a transfer of the lead role from EPA to Ecology. Among other issues, each transition plan addresses: termination of any existing 3008h order at transition; communication protocol between Ecology, EPA and the facility; and, what, if any, contract funding is available.

Ecology will invest the designated level of effort in making progress on completing closure of regulated units and to make progress towards achieving the GPRA 2005 goals for corrective action at Solid Waste Management Units (SWMUs). Corrective action will be conducted in accordance with the EPA RCRA cleanup reforms of July 1999 and January 2001. EPA will perform timely equivalency determinations for Interim Status closures. Ecology will have need of an equivalency determination expected for Pt. Hadlock. Site-specific priorities and expectations for this work are found in the Ecology HWTR program work plan that is part of this agreement. Should conditions change requiring changes to the work plan, they will be negotiated with EPA and agreed-to revisions will be made. These negotiations will be conducted through site meetings or facility-specific meetings. The meetings will be documented and agreed to changes will be signed off on by staff from both agencies.

Data including RCRAInfo measures CA725 (ground water releases controlled) and CA750 (human exposure controlled) will be input into RCRAInfo and quality assured monthly. Every six months Ecology will keep EPA informed on changes in expectations for reaching the 2005 goals for the CA725 and CA750 measures. See goals 2, 4, 5 and 6 and indicators 3, 4 and 5. See work plan section 4A and 4C.

Level of effort in FTE: 7.9(grant) 2.6(match) Total 10.5

EPA will conduct corrective action and closure work at Northwest Enviroservices, Rhone Poulenc, Tecnal (Northwest Petrochemical), Philip Georgetown, Boeing Plant II, Riechhold, and J.H. Baxter. EPA will terminate existing 3008(h) orders upon issuance of a final permit that addresses corrective action either directly in the permit conditions or through incorporation into the permit by reference of a state issued cleanup order. EPA will conduct equivalency determinations when necessary for closure of interim status units.

See goals 4 and 5 and indicators 3, 4 and 5.

Level of effort in FTE: 1.6

PERMITTING

EPA and Ecology will be striving to meet the 2005 goals for permitting established by the GPRA. The specific goal for permitting is that by 2005, at least 80% of hazardous waste management facilities will have controls in place to prevent dangerous releases to air, soil and groundwater. To this end Ecology will invest the designated level of effort in ensuring environmental protection at TSD facilities. Site-specific priorities, tools and expectations will be negotiated with EPA, documented in brief individual workplans, and revised throughout the year as situations change. These negotiations will be conducted through TSD Managers Group meetings and facility specific discussions. Ecology and EPA will continue to work on developing effective and efficient processes that can supplement or replace formal TSD permits. For example, Ecology will be developing a framework permit for post-closure facilities. Also, unless otherwise negotiated, dual permits will be Ecology's standard operating procedure for issuing formal permits. Changes agreed to in these negotiations will be documented and signed by staff from both agencies. Data for milestones achieved will be input into RCRAInfo and quality assured monthly. See indicators 1, 3, 4, 5, and 6.

See work plan section 4D, 4F, 4E, and 4G.

Level of effort in FTE: 2.3(grant) .9(match) Total 3.2

Both Ecology and EPA commit to ensuring a consistent, orderly, and predictable review process for permitting efforts and/or other mechanisms used to ensure environmental protection at TSDs. The EPA/Ecology RCRA MOA will provide clear specification of exactly what Ecology's responsibilities are and what EPA's responsibilities are under the different types of permits and other permit-like tools. EPA and Ecology will adhere to mutually acceptable, agreed to timelines and procedures. EPA will comment on the Ecology portion of the RCRA permits in accordance with the procedures outlined in the EPA/Ecology RCRA MOA, will focus on expediting progress towards issuance of a final permit. EPA will work in coordination with Ecology to issue a joint permit for the boiler unit at BF Goodrich Kalama. EPA will work in coordination with Ecology to issue a dual permit to Boeing Everett for hazardous waste storage and to process a permit renewal for Philip

Georgetown and for Riechhold. EPA will work with Ecology draft a “frame work “ permit for use at appropriate facilities. EPA will continue to work with Ecology to resolve permitting issues at Hanford. See goals 1 through 6 and indicators 1,3,4 and 5.
Level of effort in FTE: 0.8.

AUTHORIZATION

Ecology will maintain an authorized program in compliance with federal requirements found at 40 CFR Part 271.21. See goals 1 through 6 and indicators 1 through 5. See work plan section 2.
Level of effort in FTE: 1.8(grant) .6(match) Total 2.4

EPA will provide input to Ecology on the next rule making cycle. See goals 1 through 6 and indicators 1 through 5.
Level of effort in FTE: 0.4

EPA COORDINATION and CONTRACTS

Program Coordination

The EPA State coordinator in the EPA regional office and the RCRA coordinator position in the EPA operations office do general program coordination. This work includes joint inspections, oversight work, grant administration, planning, training and assuring open communication between Ecology and EPA. See goals 1, 2, 4, 5 and 6 and indicators 1 through 8.
Level of effort in FTE: 0.9

Contract Work

This includes contract work EPA funds to assist EPA in implementing the waste program. Included in this work are RCRA corrective action and enforcement. See goals 1 4 and indicators 3, 4 and 5.
Level of effort in FTE: 0.5

FTE Summary

NOTE: All figures in the FTE Summary below are for FY2002 only; figures are not yet available for FY2003.

The total HWTR FTEs covered by this agreement is 33.8(25.4 funded by the grant and 8.4 by state match). For the purpose of this agreement 1 FTE is equal to \$80,496. Based on this, the total direct costs are \$2,083,056 (\$1,562,292 \$ federal and \$520,764state match). The total indirect cost funded by this grant is \$641,191 (\$480,892 federal and \$160298 state match). The total grant funding is \$2,724,247 (\$2,043,185 federal and \$681,062 state match). The total federal resources involved in implementing the program in Washington are 25.4 FTE.

SECTION SIX

NUCLEAR WASTE PROGRAM

INTRODUCTION

In accord with recommendations of the EPA Inspection General, the Nuclear Waste Program is currently negotiating a formal agreement with EPA to address RCRA aspects of the Nuclear Waste Program's work. While negotiations on that agreement are proceeding well, they will not be completed in time for inclusion in the FY2002/03 Performance Partnership Agreement. When the Nuclear Waste Program's agreement with EPA concerning implementation of RCRA is completed, it is included here by reference into this FY2002/03 Performance Partnership Agreement. Also, when the Nuclear Waste Program's FY2002 detailed workplan is completed (sometime this Spring), it is included here by reference.

Following are the general guidelines being used by the Nuclear Waste Program in developing RCRA implementation under the FY2002/03 Performance Partnership Agreement.

MAJOR FOCUS OF COMPLIANCE INSPECTIONS

Details for specific inspections and inspection priorities are still being negotiated with EPA. A preliminary list of inspections has already been developed through meetings with all project managers and with the compliance group. Dates and priorities for most inspections are not yet been finally determined, but it is recognized that some inspections are time-critical (i.e. immediately after a TPA submittal or sampling event) and some are not.

Some inspections may be assigned to the vacant inspector position if they are not high priority inspections. So far, the only compliance teamwork reserved for high priority are: 2001 LDR Report and M-48 follow-up.

As soon as a complete list of proposed RCRA inspections is finalized, it will be submitted to EPA for approval.

PPA compliance inspection planning for Fiscal Year 2002 will focus on compliance with Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement) requirements and basic RCRA interim status and generator requirements. Typically, regulatory inspections against TPA requirements have been intermittent; however, a number of TPA inspections are planned for FY 2002 to determine completion of TPA milestone deliverables which reflects an increased focus by the Nuclear Waste Program's compliance group on compliance with the TPA. The TSD inspections listed in the PPA table reflects this emphasis.

Basic RCRA requirements for interim status facilities and hazardous waste generators remain a concern at Hanford. Therefore a number of generator and TSD inspections are planned focusing on basic RCRA requirements such as designation, solid waste determinations and container management. TSD and generator inspections listed in the PPA table reflect this emphasis.

MAJOR FOCUS OF PERMITTING WORK

The Nuclear Waste Program's overall RCRA permitting priorities have been established as follows: 1) Tank Waste Vitrification permit, 2) Double-Shell Tank permit, 3) Plutonium Finishing Plant storage, treatment, and disposal issues, 4) Low-level Burial Grounds permit, 5) T Plant permit, and 6) various closures. The Nuclear Waste Program is currently in the planning process for 2001-2002 and should be completed by mid-May. The Program has several vacancies that need to be filled in order to perform the needed workscope.

The primary focus for RCRA permitting is on the Tank Waste Vitrification permit, due to be finalized in early-mid 2002. This will require substantial permitting and technical support resources that are currently not fully available. EPA has and will continue provide technical and programmatic support for this effort. Permitting work for the Canister Storage Building and Immobilized Low Activity Waste Trench is currently under discussion and may be postponed to be more in line with the current schedule for construction and pending changes, currently under discussion, to the TPA milestones. The RCRA staff has prioritized their focus on beginning the initial reviews of the Double-Shell Tank permit; however, a final certification date for the Part B application has not yet been rescheduled.

Modification E of the Hanford Sitewide Permit was issued on February 28th. This modification included the addition of the Central Waste Complex and Waste Receiving and Packaging facility as final operating units. This permit may be appealed, which will entail additional workload.

Modification F of the Hanford Sitewide Permit is due to go out for public comment in April 2001. This modification includes the addition of the 222-S Laboratory as an operating unit, and will also include the settlement language for Corrective Action pending results of the public comment period which ends April 6th.

RCRA staff are also focusing on transition of the Plutonium Finishing Plant, which includes identification, storage, and treatment of various waste streams. EPA is providing technical support on this issue.

The NWP has also taken on permitting of the Puget Sound Naval Shipyard. Much of the permitting work has been completed, and a schedule is being developed for possible permitting within the next year.

Because of Ecology's current focus on vitrification plant permitting and operating facility permitting, pending closures are initially receiving a lower priority for planning. These decisions have not been finalized of yet, however, we are in the priority planning process.

The ATG facility has an existing operating permit, however, additional activities will require a trial burn before starting full-scale operations. Ecology staff, as well as EPA technical support, will be needed to support the additional needs.

INFORMATION MANAGEMENT

The Nuclear Waste Program will input into the EPA national RCRA data system (RCRAInfo) all hazardous waste inspections, enforcement actions, return to compliance information, corrective action milestones, closure/post-closure milestones, permit milestones and any other data necessary to track Nuclear Waste Program work. Ecology will establish and maintain a system to assure that each inspector, permit writer, and corrective action/closure lead will review the data for each facility they are responsible for on a monthly basis and submit revisions for data input. At no time should the data for any facility be more than two months behind.

SECTION SEVEN

WATER QUALITY PROGRAM

INTRODUCTION

The Washington State Department of Ecology administers the majority of federal Clean Water Act based programs throughout the State. EPA's role is to oversee the implementation of State-authorized programs, provide technical and analytical support for State-authorized programs, and to directly implement non-authorized programs, in most cases with State assistance. This PPA reflects the mutual understandings reached between Ecology and EPA for program implementation and extent of oversight.

The text is intended to describe agreements between Washington Ecology and US EPA Region 10 for cooperative work under federal grants and state funds during the coming biennium. The descriptions attempt to clearly state the issues and why EPA and Ecology are addressing the problems to be worked on. An overriding goal and more specific sub-goals and activities for the two-year period are stated. The goals and sub-goals will guide specific activities, which may change over time as we learn more of the issues and adapt to changing circumstances. If there are any questions, please contact the staff associated with each of the specific activities.

ENVIRONMENTAL GOAL FOR WATER QUALITY PROTECTION

Protect, preserve, and enhance Washington's surface and ground water quality, and promote the wise management of our water for the benefit of current and future generations and the natural environment.

PRIORITIES

Water Clean-Up Plans (TMDLs)

The overall goal is to identify waters not meeting water quality standards and to develop and implement effective clean-up programs (called Total Maximum Daily Loads or TMDLs) that will result in the attainment of standards. EPA and Ecology will work collaboratively to implement the TMDL Settlement Agreement.

EPA and Ecology will develop a strategy to fund the settlement agreement at an appropriate level. EPA and Ecology will jointly work on

new approaches, such as landscape TMDLs, to more efficiently complete TMDLs. EPA and Ecology will develop effective working relationships with other state and federal agencies as well as local governments and special purpose districts. EPA and Ecology agree to complete activities within regulatory timeframes whenever possible, and to keep each other informed of expected completion dates.

CWA – ESA Integration

Ecology and EPA believe that the federal Clean Water Act (CWA) and the federal Endangered Species Act (ESA) should work in a complementary fashion to improve water quality and conserve listed species. We need to work together to ensure that the water quality programs are strengthened to meet the biological needs of listed and proposed (for listing) species and to enhance the chances for recovery.

Our primary strategic goal to accomplish is to jointly develop policies that enable more efficient and effective compliance with the ESA, especially in the area of Section 7 consultation. Early involvement by the Services (National Marine Fisheries Service (NMFS) and US Fish and Wildlife Service (FWS)) is critical to ensuring that State and Federal decisions and actions address listed species needs, while meeting the statutory requirements of the Clean Water Act.

Stormwater, Implementation of Phases 1 and 2

Ecology will continue to implement Phase I of the stormwater regulations. This program has been under-funded but will continue at current levels. Ecology has requested additional resources from the legislature. Ecology's ability to develop a Phase II program during this biennium is dependent upon additional resources. If the program is not fully funded, Ecology and EPA will meet to determine how the available resources should be used to have the best strategic impact.

Nonpoint Pollution

Ecology and EPA will work together to improve water quality through implementation of Washington's Nonpoint Source Management Plan and 319 Grant Programs.

ACTIVITIES

NONPOINT POLLUTION CONTROL

Environmental Goal (Where do we want to end up environmentally)?

Improve water quality through implementation of Washington's Nonpoint Source Management Plan and 319 Grant Programs.

What Needs to be Done to achieve this Environmental Goal (Sub-Goals)?

1. Complete annual report describing the activities undertaken to implement the state Nonpoint Source Management Plan.
2. Develop and submit Section 319 grant proposal to EPA.
3. Allocate 319 funds in a manner that is consistent with the directives of the state Nonpoint Source Management Plan.

What Measures will be used to show progress (success) in reaching the environmental goal (e.g., outcomes/targets/indicators/outputs)?

- A) Washington's annual 319 report will be submitted to EPA in March of each year.
- B) Washington's annual 319 grant will be submitted to EPA no later than April of each year.
- C) EPA will review Washington's 319 grant submittal within two weeks of submittal.
- D) EPA will process Washington's 319 grant within three months of submittal.
- E) Washington will provide evidence in its annual report that 319 funds were spent in a manner consistent with its Nonpoint Source Management Plan.

Steps and Activities

Who will do them, by When, and How progress to be communicated

Ecology commits to activities and time frames needed to achieve the goals & sub-goals stated above which will be measured as shown above.

Ecology commits to submit semiannual progress reports to EPA on activities funded in its 319 grant.

EPA commits to activities and time frames needed to achieve the goals & sub-goals stated above which will be measured as shown above.

EPA commits to meet face-to face at least three times a year to discuss progress of plan implementation and to participate as appropriate in meetings of the State Nonpoint Workgroup.

FTEs: 1.6

Watershed work

Environmental Goal

Watershed planning processes are implemented that successfully integrate cross-program elements to effectively restore and protect watershed health and aquatic ecosystems.

Sub-goals: (1) State Watershed Planning Act is successfully integrated with CWA programs.

(2) Protection and restoration of the Puget Sound / Georgia Basin Ecosystem shared by Washington and British Columbia.

What needs to be done to achieve this goal?

1. Implement the Puget Sound Water Quality Management Plan.
2. Address the major risks identified by the WA / BC Marine Science Panel.

What measures will be used to show progress?

- A. The Workplan for the Puget Sound WQ Plan will be implemented.
- B. Action Plans of the Puget Sound / Georgia Basin International Task Force will be implemented.
- C. Reversal of the long term gradual degradation of Puget Sound and the Georgia Basin as measured by: cessation of invasions of exotic species; restoration of the near-shore habitat; recovery in numbers of marine invertebrates, fish and wildlife; and elimination of tumors and reductions of toxic chemicals in bottom fish.

Steps and Activities

Ecology will coordinate and staff the implementation of Watershed Planning Units in 40 watersheds (WRIAs, water resource inventory areas).

Ecology and EPA will implement assigned and funded activities in the Puget Sound Workplan.

Ecology and EPA will participate in the Puget Sound / Georgia Basin International Task Force and its workgroups, and will continue to assist the implementation of the actions called for by the Task Force and workgroups.

Ecology and EPA will co-chair the Toxics Workgroup and finalize a toxics action plan.

Ecology and EPA will provide technical assistance and policy support to the Puget Sound Action Team and the Puget Sound / Georgia Basin International Task Force on water quality issues.

Ecology and EPA will work toward completion of phase 1 of INVEST related to the Puget Sound shipyard.

FTEs: portion of 15 Watershed Leads working with the Watershed Planning Act

Columbia and Snake rivers

Environmental goal

Restore and protect the water quality and aquatic habitat of the mainstem Columbia and Snake River systems in order to support human health and aquatic life, including threatened and endangered species.

What needs to be done to achieve the goal?

1. Develop and implement TMDLs for the mainstem Columbia and Snake Rivers for temperature and total dissolved gases.
2. Develop a water quality monitoring plan for the Columbia and Snake Rivers.
3. Incorporate TMDL findings into NPDES permits, FERC licenses, and other activities along the river.
4. Develop and implement TMDLs for other 303(d) listings in the mainstems.

What measures will be used to show progress?

- A. TMDLs for temperature and total dissolved gas (TDG) will be completed.
- B. TMDL outcomes will be used in Federal Energy Regulatory Commission (FERC) relicensing decisions.
- C. TMDL outcomes will be used as appropriate in NPDES permits issued by the state.
- D. TMDLs will be completed for other listings in the mainstem rivers.
- E. Water quality of the mainstems will be monitored and assessed for each reach.
- F. Water quality will meet applicable water quality standards.

Steps and Activities

Ecology and EPA commit to develop and implement a workplan for the development of TMDLs for the Columbia and Snake River mainstems for temperature and TDG by December 2002; this will be done in conjunction with other related work plans on the rivers.

Ecology and EPA commit to participate in FERC relicense proceedings, including technical assistance to applicants and 401 certifications.

Ecology and EPA commit to incorporate any TMDL wasteload allocations into NPDES permits.

Ecology commits to schedule the development and completion of other mainstem TMDLs.

FTEs: 4.0

Wetlands Protection and Restoration

Environmental Goal

Protect and restore wetlands in Washington State.

Actions that need to be done to achieve the Environmental Goal

1. Develop an approach to ensure protection of isolated wetlands through federal, state and local regulation.
2. Develop and implement a state mitigation banking program.

3. Improve local government protection of wetlands.
4. Improve compensatory wetland mitigation.
5. Integrate our growing understanding of large-scale ecological processes into the protection of wetlands.
6. Explore opportunities for developing a monitoring and assessment program.

Measures/actions to be used to show progress (success) in reaching the Environmental Goal

- A. Development of isolated wetland guidance that documents the value of isolated wetlands and proposes steps to ensure adequate protection by December 31, 2001.
- B. Adoption of state mitigation banking regulations by December 31, 2001, and production of a guidance document on banking by June 30, 2002.
- C. Development and production of Best Available Science documents on wetlands for use by local governments by June 30, 2002.
- D. Completion of training workshops for local governments on wetland protection approaches by June 30, 2003.
- E. Completion of Phase 3 of the Wetland Mitigation Evaluation Study by June 30, 2002.
- F. Development of wetlands guidance to assist with implementation of new Shoreline Management Act Guidelines by June 30, 2002.
- G. Development of a conceptual plan for implementing a wetlands monitoring program.

Step/Activities/Actions

Ecology and EPA will work together to develop guidance for protecting isolated wetlands.

Ecology will adopt state mitigation banking regulations and publish a guidance document. EPA will review and comment on draft documents.

Ecology and EPA will work together to develop Best Available Science documents on wetlands and to provide training for local governments on wetland protection approaches.

Ecology will complete Phase 3 of the Wetland Mitigation Evaluation Study. **EPA** will provide funding for and oversight of the project

Ecology will participate in EPA's workgroup to develop a wetland monitoring and assessment program

Ecology and EPA will work together in identifying ways to integrate our understanding of large-scale ecological processes into wetland protection approaches.

Ecology FTEs: 5.0

EPA FTEs: 2.0

Point source permits and compliance

Compliance and Enforcement Introduction

The NPDES water compliance program in Washington State continues to be one of the leading delegated programs in the nation. The program continues to place emphasis on program excellence in four major areas:

- sustain high compliance rates by major and significant minor point source discharges
- maintain high quality, reliable and timely compliance information through inspections, self monitoring and data management
- conduct effective, timely and appropriate compliance assurance and enforcement actions
- maintain a cooperative, open and effective NPDES compliance relationship with EPA Region 10

The Department of Ecology has produced extremely high NPDES compliance rates and has reduced the incidence of point sources being primary sources of water quality concerns in the state's water bodies.

Resource implications have prevented full achievement of inspection and sampling goals over the past few years, but program priority adjustments have allowed for effective annual inspection coverage of EPA majors and significant minors.

NPDES Inspection Activity

- a) Ecology's Industrial Section is responsible for multi-media regulation of the pulp and paper mills, oil refineries and primary aluminum smelters in Washington State. The Industrial Section intends to continue to conduct NPDES compliance inspections of these facilities at least annually.

- b) Ecology will inspect major and targeted minor permitted facilities during SFY 2002 and 2003. The inspection year, on a state fiscal year basis, covers the period July 1 through June 30. Since an inspection at a major facility requires more resources than an inspection at a minor facility, inspection tradeoffs will be 2:1 ratio (minors to majors).
- c) NPDES majors: Ecology will forward copies of compliance inspection reports (EPA Form 3560-3) for major facilities to Region 10.
- d) NPDES minors: Ecology will report the necessary inspection information for minor facilities to Region 10.

Pretreatment

Pretreatment Compliance Inspection Activity

Ecology will report the number of pretreatment compliance inspections (PCIs) and audits conducted at publicly owned treatment works (POTWs) with approved pretreatment programs to Region 10.

Ecology will forward copies of compliance inspection and audit reports (EPA Form 3560-3) for Pretreatment POTWs to the Region 10 Pretreatment Coordinator.

Pretreatment Program Information

Ecology will continue to provide the following information to EPA:

Pretreatment POTWs in significant non-compliance (SNC). Ecology will evaluate compliance status of all approved programs for SNC and report the facility names and NPDES permit ID numbers of POTWs with approved pretreatment programs in SNC (in accordance with the violation criteria established for Pretreatment Program SNC) to the Region 10 Pretreatment Coordinator quarterly.

Categorical Industrial Users (IUs). Ecology will report the facility names and state permit ID numbers of Categorical IUs discharging to POTWs without approved pretreatment programs; and the Categorical IUs of that universe that have been

determined to be in SNC to the Region 10 Pretreatment coordinator quarterly.

Point Source Management through Pretreatment Oversight

Ecology welcomes EPA's support in coordinating pretreatment activities. EPA's pretreatment coordinator will participate in Ecology's work group meetings and conference calls as necessary to help facilitate program implementation and promote communication. EPA and Ecology will continue to work together to improve the pretreatment program.

Ecology will conduct an audit of each delegated pretreatment program at least every 5 years and a visit (inspection or audit) of each pretreatment POTW at least every 2 years.

Enforcement Activity and Reporting

- a. NPDES majors. Ecology will provide copies of enforcement actions to major facilities to EPA.
- b. NPDES minors. Ecology will report the necessary enforcement action information for minor facilities to EPA. The data will be submitted in a timely manner to allow inclusion in national PCS data pulls.

National wet weather priorities

Reason for priority: Runoff from wet weather events (e.g., overflows from combined sewers, sanitary sewers, stormwater runoff) remain a leading cause of water quality impairment as documented in CWA Section 305(b) reports. Control of runoff from wet weather events directly supports the Clean Water Action Plan and the Pacific Northwest salmon recovery efforts.

a. CSOs

Ecology will include requirements to implement Ecology's CSO rule in all NPDES permits to combined sewer overflow (CSO) facilities. Ecology's rule is equivalent to the nine minimum controls, as outlined in EPA's 1997 CSO Control Policy. The NPDES permit for each CSO facility shall also require compliance with an approved CSO reduction plan that includes public notification requirements and post construction compliance monitoring.

b. SSOs

Ecology shall assure that all new NPDES permits written after July 2001 include language prohibiting sanitary sewer overflows (SSOs) and requiring reporting if such SSOs occur. Ecology will develop a report listing facilities with SSO problems and provide EPA with such report by October 2002.

Streamline Data Management

Information flow between Ecology and EPA is an important function so that both agencies can coordinate and meet their clean water responsibilities. It is important that information flow be effective and efficient.

EPA will provide the final data exchange format for electronic input of PCS data. This will include permit, facility, inspection and enforcement data.

Ecology will complete the interface to PCS using the data exchange format provided. If the data exchange format is finalized by the end of April 2001 as planned, Ecology will complete the interface and begin uploads by September 2001. If the format is delayed, Ecology's interface will also be delayed.

Point Source Management through NPDES (national pollutant discharge elimination system)

- a. Ecology and EPA will implement an effective NPDES program under the delegation agreement (Memorandum of Understanding) and the NPDES Compliance Assurance Agreement (CAA) as agreed to by both agencies. Core NPDES program elements include permitting, compliance assurance, enforcement, technical assistance, inspections, monitoring, pretreatment, biosolids, stormwater, public involvement, pollution prevention, and developing and maintaining systems and procedures for efficient and consistent implementation.
- b. EPA will continue to participate in Water Quality Program management meetings when topics are relevant to NPDES program implementation. EPA will share with Ecology relevant information on NPDES implementation and water quality protection programs of other states in Region 10 and nationally to assist Washington State.
- c. Ecology will continue to manage and issue permits on a watershed basis. The basins scheduled for permitting in state fiscal year 2002 are Cedar/Green, Eastern Olympic, Lower Yakima, and Spokane. The basins scheduled for permitting in state fiscal year 2003 are Skagit / Stillaguamish, Columbia

Gorge, Horseheaven/Klickitat, Pend Oriel, and Upper Columbia.

- d. Ecology is attempting to reduce the backlog of permits that are extended or expired. However, due to other priority work and resource constraints, Ecology cannot add additional resources to permitting. The goal is to bring the backlog of permits below 10% by the year 2004.
- e. As part of EPA's oversight authority, Region 10 will review a limited number of permits on an annual basis. Not later than September of each year, EPA and Ecology will develop the list of permits to be reviewed.
- f. Ecology will continue to manage the Phase I stormwater permit program. This includes construction, industrial and stormwater permits. Ecology and EPA will meet to discuss strategically how any available resources can be used to begin to develop a Phase II stormwater program.

Confined Animal Feeding Operations (CAFOs)

Ecology will develop and implement a non-dairy CAFO strategy and will continue to implement its existing dairy program.

FTEs: 120.0

Biosolids

- A final draft application for delegation of federal biosolids program authority will be prepared and submitted to Ecology management for consideration. (by 12/02 or earlier if possible)

Note: This goal is established with the understanding that no approval can be granted until Ecology formally submits the application package and all issues are resolved, some of which may not be evident until public notice and detailed review have occurred. It is also understood that the draft application may in fact contain issues subject to debate. EPA will review the application and provide support in an effort to resolve as many issues as possible before formal submittal.

- EPA is currently revising performance measures for the national biosolids program and will work to reach agreement with Ecology. Ecology will use the Biosolids Data Management System or other readily available data management systems and other information available to report annually on the agreed upon performance measures. (annually on request)

Note: At this time EPA has not established new performance measures. We do not anticipate problems working this out. We are awaiting EPA recommendations before taking a final position.

FTEs: 1.0

Sediments

Environmental goal

Cleanup and restore existing contaminated sediments and prevent future sediment contamination.

What needs to be done to achieve the goal?

1. Issue a Sediment Update Cleanup Status Report for 2001.
2. Establish the extent of contamination on state owned Aquatic Land.
3. Provide recommendation as to future direction for CSMP and MUDS project/process.
4. Conduct sediment analysis and evaluation of marine and freshwater cleanup sites.
5. Develop and implement guidance for use in freshwater sediments.
6. Support the Cooperative Sediment Management Program (CSMP) partnered by U.S. Army Corp., U.S. EPA, WA DNR, Puget Sound Action Team, and Ecology.

What measures will be used to show progress?

- Publication of 2001 Sediment Cleanup Status Report.
- Publication of Maps depicting State owned aquatic land, identifying contaminated sediments.
- Identification of three possible MUDS disposal sites.
 - Evaluation and ranking of three treatment alternatives for contaminated sediments.
 - Cleanup of two woodwaste sites located in freshwater.
 - Publication and implementation of freshwater sediments guidance document.

- Participation in ongoing CSMP meetings and decisions for Puget Sound.

Steps and Activities

- 1.a. Review and quality assure all data contained the sediment site tracking system.
- 1.b. Develop and publish a ranked listing of contaminated sediment sites.

- 2.a. Acquire DNR GIS data and overlay SEDQUAL.
- 2.b. Provide narrative and graphic display of information.

- 3.a. Conduct monthly meeting of multi-agency taskforce.
- 3.b. Conduct quarterly meeting of MUDS agency directors.

- 4.a. Provide continuing support for Spokane River, Lake Roosevelt, US Navy sites, Tacoma Asarco, Commencement Bay, Elliot Bay, Bellingham Bay, Duwamish River sites, and Columbia River investigations.
- 4.b. Provide general continuing support to regional offices on sediment cleanup issues.

- 5.a. Review all known existing freshwater data available to Ecology.
- 5.b. Select contractor for development and coordination of guidance document.

FTEs: 2.5

Ground Water and Underground Injection Control (UIC) Programs

Environmental Goal (Where do we want to end up environmentally?)

Protect beneficial uses of ground water in the State of Washington and meet state ground water quality standards.

What needs to be done to achieve this Environmental Goal (Sub-Goals)?

1. Work with the State Department of Agriculture to implement the Aquifer Vulnerability Assessment protocols statewide.

2. Continue ongoing support of the activities of the Interagency Ground Water Committee (IGWC) and when applicable, participate in interagency workgroups and special projects

3. Develop draft policies and/or methodologies to integrate ground water issues and concerns into watershed assessments.
4. Work jointly with Washington Department of Health to incorporate the results of source water assessments of drinking water systems into enforcement, education and technical assistance efforts.
5. Continue to implement the Underground Injection Control (UIC) Program as authorized under the Safe Drinking Water Act.

What Measures will be used to show progress (success) in reaching the Environmental Goals?

- 1a Aquifer Vulnerability Project:
The success of the aquifer vulnerability project will be measured by the degree to which it is implemented by the Washington State Department of Agriculture (WSDA) in the State Pesticide Management Plan. Training for WSDA personnel on the use and interpretation of the various elements of the project will be completed by 12/31/2001.
- 2a IGWC and Interagency Workgroups and Special Projects:
The measurement of success of our participation in the IGWC will be the continued meeting of the group and process toward key issues of statewide significance. Issues include statewide ambient ground water monitoring system and implementation of Washington's CSGWPP and implementation of Columbia Basin Ground Water Management Area Memorandum of Understanding.
- 3a Integration of groundwater issues in watershed assessments:
By 6/30/2002 Ecology and EPA will have policy developed on how to consider ground water influences when developing a TMDL.
- 4a Source Water Assessment Integration:
Development of a compliance assistance/enforcement strategy to integrate the use of Washington Department of Health Source Water Assessments will be completed by 12/31/2001.
- 5a Underground Injection Control:
Through 6/30/2003 Ecology will continue to submit the required quarterly Underground Injection Control (UIC) 7520 reports to EPA by the required dates;
Conduct ten (10) UIC inspections with EPA's assistance (if requested) conducted at various facilities throughout the state per year for two years;

Develop a compliance/enforcement strategy to implement the provisions in the new Class V injection well rule which should include:

- (1) Identify and locate 100% of all identified high-risk injection wells and input the information into UIC data management system by 6/03/2002
- (2) Closing 100% of all identified motor vehicle waste disposal wells used in the State by 1/01/2004 with no extensions be given to owner/operators for extended use;
- (3) Closing 100% of all identified large capacity cesspools in the state by 4/05/2005 with no extensions be given to owner/operators for extended use;
- (4) Determination of the compliance rate for inventorying all shallow injection wells throughout the state.

Revise the State's Underground Injection Control Program regulations in accordance with the following schedule:

- (1) Submit by 5/31/2001 for EPA review and approval the State's regulatory revision plan for formal concurrence;
- (2) Submit a regulatory revision application by 12/31/2002 to EPA which includes, the required elements for State UIC primacy approval in 40 CFR 145.32, and all relevant Memorandums of Understanding (MOUs) between other State UIC program co-regulators, such as the WADOH to determine the regulatory responsibilities for permitting and authorizing the use of large capacity onsite sewage systems in the State of Washington.

Steps/Activities - Who will do them, by When, and How will progress to be communicated?

Ecology commits to activities and time frames needed to achieve goal and sub-goals stated above which will be measured as shown above. Ecology commits to submit quarterly progress reports to EPA.

Ecology & EPA commit to quarterly Ecology / EPA meetings and to developing a process and protocol for conducting quarterly meetings (which includes stating what information will be provided at the meeting by Ecology).

EPA commits to:

- Meet face to face at least two times per year with Ecology to discuss programmatic issues;
- Provide technical assistance to Ecology when developing draft policies for ground water related documents;
- Provide technical assistance for interpreting UIC rules and regulations;
- Provide training sessions for inspectors, technical staff, or periodic update training for rules and regulations;
- Conduct joint inspections with Ecology staff to determine compliance with the State's UIC regulations;
- Communicate EPA strategies and goals for the UIC program;
- Work with Ecology on issues relating to implementation of the new Class V injection well rules;
- Work with Ecology when conducting enforcement actions such as issuing UIC Notices of Violation; and
- Assist Ecology in the collection of injection well data.

FTEs: 3.6

TMDLs (water cleanup plans)

Environmental Goal

The overall goal is to identify waters not meeting state surface water quality standards and to develop and implement effective clean-up programs (total maximum daily loads, TMDLs) that will result in attainment of water quality standards.

What needs to be done to achieve this Environmental Goal?

1. Implement the 1998 Settlement Agreement and MOA regarding section 303(d) of the CWA.
2. Implement the TMDL Workload Assessment developed in April 2001.
3. Implement the jointly developed TMDL redesign for workload planning.

4. Implement the MOU with the US Bureau of Reclamation and the Columbia Basin Irrigation Districts to determine appropriate uses, standards and current quality of waters within the Columbia Basin Irrigation Project.

What measures will be used to show progress in reaching the environmental goal?

- A. Complete and submit for approval 14 TMDLs by June 30, 2002; and 119 TMDLs by June 30, 2003.
- B. Completion of annual progress reports to Plaintiffs regarding implementation of the TMDL Settlement Agreement.
- C. Implement the TMDL efficiency, funding and policy measures identified in the April 2001 TMDL Workload Assessment.
- D. Testing and evaluation of new TMDL approaches.
- E. Semi-annual meetings for workload planning and evaluation.
- F. Completion of commitments in Columbia Basin Project MOU.

Steps and Activities

Ecology commits to develop and submit TMDLs for approval as required by the MOA and applicable federal rules and guidance. Ecology will complete 14 TMDLs in SFY02 and 119 TMDLs in SFY03. Ecology will identify and list at the beginning of each year the TMDL projects that are expected to be completed in that year and will provide to EPA an estimate of the number of TMDLs to be submitted each quarter.

Ecology commits to issue quarterly TMDL tracking and progress reports.

EPA commits to complete, with assistance from Ecology, the annual TMDL progress report.

Ecology commits to implement the actions identified in the April 2001 TMDL Workload Assessment.

Ecology and EPA commit to semi-annual workload planning meetings.

EPA commits to implementing the TMDL redesign outcomes, including meeting required timeframes for review and approval of TMDLs.

FTEs: 65.0

ESA – CWA integration

Environmental Goal

The goal of integrating ESA (Endangered Species Act) and CWA (Clean Water Act) requirements is to efficiently and effectively meet the objectives and requirements of both federal acts using a collaborative, predictable process.

What needs to be done to achieve this environmental goal?

1. Building on the Skamania Workshop and the national MOA, EPA and the Services will develop a regional MOA for ESA/CWA integration. Together with the state, they will develop a strategy, process, and priorities for evaluation, revision, review, and consultation on the major CWA programs delegated to or administered by Ecology.
2. Review and approval of Ecology's currently proposed revisions to the state surface water quality standards by EPA and the Services.
3. Completion of the Regional Temperature Criteria Guidance Project.
4. Completion of the Agriculture, Fish and Water (AFW) effort to upgrade agricultural programs to meet CWA and ESA requirements.
5. Monitoring and evaluation of the implementation and effectiveness of the Forests and Fish agreement to ensure CWA and ESA goals are being met.

What measures will be used to show progress in reaching the goal?

1. Ecology, EPA and the Services will implement a common strategy to strengthen the CWA programs that contribute to recovery of threatened and endangered aquatic species.
2. Major CWA programs and key projects will successfully undergo ESA consultation.
3. AFW products for irrigation districts guidelines, field office technical guides (FOTGs), and others are issued and approved by the state, EPA, and the Services.
4. Forests and Fish monitoring and evaluation projects are designed, implemented, and used to evaluate the effectiveness of the forest practices rules to meet CWA and ESA goals and requirements.

Steps and Activities

EPA and Ecology commit to participate on a state team to develop, in coordination with the Services, a strategy to implement the national and regional ESA/CWA MOAs, to determine priorities for Section 7 consultation of major CWA programs and key projects, and to conduct public involvement activities as appropriate.

Ecology commits to completion of its current rule-making proposals for the state surface water quality standards.

EPA and Ecology commit to develop a biological assessment of Ecology's proposed revisions to the surface water quality standards.

EPA commits to work with the Services to complete the ESA consultation process on the standards. (Services refer to NMFS, National Marine Fisheries Service, and FWS, U.S. Fish and Wildlife Service.)

EPA and Ecology commit to completion of the Regional Temperature Criteria Guidance Project;

Ecology commits to consider and incorporate the results, as appropriate, into its standards. (see Water Quality Standards below).

EPA and Ecology commit to participate in the AFW process.

EPA and Ecology commit to continuing participation in the Forests and Fish process, and to participate on the Cooperative Monitoring and Evaluation committee to identify and implement projects to evaluate the effectiveness of the forest practices rules.

FTEs: 1.0

Water quality standards

Environmental goal

1. The development and adoption of water quality criteria and standards that will serve to protect and restore the biological, chemical, and physical integrity of the state's surface waters.
2. The standards shall serve to achieve the "fishable and swimmable" goals established by the CWA, including protection of human health, fish, wildlife, and other aquatic species, especially threatened and endangered species.

What needs to be done to achieve the goal?

1. Completion of the state's current triennial review process, which is examining proposed revisions to the water quality standards, including an anti-degradation plan, use-based standards, revised criteria for temperature and dissolved oxygen to protect aquatic species (including endangered or threatened salmonids and bull trout), revised bacteria criteria, and other miscellaneous changes.
2. Approval of and consultation on the final proposals to revise the standards.
3. Implementation of the final approved revisions.
4. Development of a long term water quality standards strategy for the state, including priorities and timeframes for revisions and additions to the standards, such as nutrient criteria, beach water standards, and other suggested revisions.
5. Development of a strategy for ESA consultation on the standards (see ESA/CWA integration above).
6. Completion of the Regional Temperature Criteria Guidance project.

What measures will be used to show progress?

- A. Adoption by Ecology of final revisions, including protection of endangered or threatened aquatic species.
- B. Consultation on and approval of the final proposed revisions.
- C. Evaluation and action on the Sauk River anti-degradation petition.
- D. Development of a long term water quality standards strategy.
- E. Completion of the Regional Temperature Criteria Guidance project.

Steps and Activities

Ecology commits to complete its currently proposed rule making by May 2002.

EPA and Ecology commit to develop the biological assessment for the current proposals by July 2002.

EPA commits to working with the Services to complete ESA consultation for the current proposals by September 2002.

EPA commits to final action on the revised standards by October 2002.

EPA and Ecology commit to participate in and help to complete the Regional Temperature Criteria Guidance project by November 2001. **Ecology** commits to evaluate the Guidance and either incorporate the guidance, or equivalent criteria, into the water quality standards.

Ecology commits to evaluate and take action on the Sauk River petition by June 2003.

EPA and Ecology commit to development of a long-term strategy for the water quality standards by June 2003. Among other topics, the strategy will address the national Water Quality Criteria and Standards Plan.

EPA and Ecology commit to coordinate with tribes on development of state and tribal water quality standards.

FTEs: 2.7

Reporting

Environmental Goal

To assess the trends and direction of restoration and protection activities and environmental measures that can indicate the success or failure of water quality programs.

What needs to be done to achieve this goal?

1. Institute a series of core performance measures and associated reporting requirements for water quality.
2. Institute a series of core performance measures and associated reporting requirements for NPDES compliance assurance and enforcement.

What measures will be used to show progress in reaching the goal?

These measures will be reported annually unless specified otherwise.

1. Number and percent of impaired, assessed river miles, lake acres, and estuary square miles that a) are covered under Watershed Restoration Action Strategies, and b) were restored to their designated uses during the reporting period. (The reporting period is two years.)
2. Number of TMDLs scheduled to be completed by (date per schedules submitted with the 1998 303(d) lists). Of those TMDLs, number of TMDLs under establishment by the State and EPA; number of TMDLs submitted by the state; number of state-established TMDLs approved; and number of TMDLs established by EPA.

3. Nonpoint source program information required to maintain the Government Information Resource Tracking System (GIRTS).
4. 303(d) list of impaired waters, to be submitted as scheduled under applicable federal rules.
5. 305(b) water quality assessment reports; to be filed annually as required by EPA guidance.
6. NPDES permits, facility and enforcement information as described in NPDES Point Source Permitting and Compliance section of the PPA.

Steps and Activities

Ecology will develop a draft 303(d) list in December 2001, and submit the final list by April 1, 2002.

Ecology will develop a coordinated statewide monitoring strategy by 30 June 2002.

Ecology will annually update the 305(b) water quality assessment reports, with full reports in even numbered years (April 1, 2002), and electronic updates in odd numbered years (April 1, 2003).

Ecology will track permit issuance, inspection, enforcement and compliance activity, and issue reports as required.

Ecology will track TMDL project and completion status, and issue quarterly updates.

FTEs: Ecology: 2.0 FTEs

SECTION EIGHT: RESPONSIVENESS SUMMARY

This Responsiveness Summary addresses comments on the Draft Environmental Performance Partnership Agreement received during the public comment period, May 15 – June 15, 2001. Written comments were received in the mail and by electronic mail. The first section below reproduces the comment letters, the next section presents Ecology and/or EPA responses to the public comment letters, and the last section summarizes textual changes made in the PPA in response to the public comments.

PUBLIC COMMENT LETTERS

Washington PEER

Washington PEER
PO Box 2618
Olympia, Washington 98507
(360) 528-2110 e-mail wa peer@peer.org web: <http://www.peer.org>

Elliott Zimmermann
PPA Coordinator
Washington State Department of Ecology
Northwest Regional Office
Operations Office
3190 – 160th Avenue SE
Drive, Suite 102
Bellevue, Washington 98008-5452
98503

Jack Boller
PPA Coordinator
US EPA Region 10
Washington
300 Desmond
Lacey, Washington

June 14, 2001

Dear PPA Coordinators Elliot Zimmerman and Jack Boller,

Thank you for the opportunity to comment on the May 2001 public comment draft of the Performance Partnership Agreement (PPA) between the Environmental Protection Agency (EPA) and the Washington State Department of Ecology (Ecology).

As you know, there are three factors that national policy defines as guidelines to use in evaluating the PPA. 1 They are:

1. Effectiveness: how readily the Agreement enabled Ecology and EPA to direct resources to improve environmental outcomes.
2. Public credibility: how credible and reliable the public finds the measures used to report environmental outcomes; and
3. Fiscal Soundness and Program Accountability: how well the agreement enabled Ecology and EPA to manage public funds in an efficient, effective, and economical manner.

Washington PEER considered these factors in our review of the draft. We find that although the PPA contains many worthy goals, its effectiveness will be difficult to assess and it does not foster public credibility or government accountability. This is largely due to the lack of public involvement efforts, the difficulty accessing data regarding government actions and environmental outcomes, a vague assessment process, and several arenas where too much discretion is given – particularly in the policies associated with penalty calculations and the need to consider, and charge polluters for, the economic benefits received from violating environmental laws.

Along with modifications to address accountability and credibility, the agreement needs to be modified to ensure that all whistleblower protections available under federal laws delegated to Ecology and other parties of the agreement, are made available to state employees responsible for implementing the federal law.

Thank you in advance for your full consideration of the attached comments.

Sincerely,

Lea Mitchell, Director, Washington PEER

I. Comments on the Current Performance Partnership Process

C1: The National Performance Partnership System (NEPPS) heralds the Performance Partnership Agreement (PPA) process as something that

¹State/ EPA Capacity Steering Committee, *Joint Commitment to Reform Oversight and Create a National Environmental Performance Partnership System*. May 17, 1995.

has created an “unprecedented opportunity for constructive public involvement in the management of environmental programs and improved understanding of national environmental performance.”² This unprecedented opportunity has not been realized in Washington State. EPA and state agencies with federally delegated programs must remedy this by creating an effective public involvement process that informs people of the status of Washington’s environmental indicators and the effectiveness of the PPA and encourages public comment.

When PEER inquired about the public comment process for the PPA, we were told that the PPA is a “bureaucratically negotiated process” between Ecology and EPA and that there were “better things to spend our time on instead of commenting on the PPA.”³ We were also informed that due to a historic lack of public comment on the PPA, notice of the comment period for the new PPA would be mailed to 20-50 people and published in Shoptalk – an industry newsletter. Although Ecology ultimately mailed notice to several hundred groups, they did not consider why there has been so little comment on the PPA or what actions they could take to better engage citizens, public interest groups, and the regulated community.

The PPA contains policies, reporting requirements, and priorities that direct how the public’s tax dollars are going to be spent. It also discusses what laws will not be fully implemented or enforced due to budget cuts and other constraints. This is of great interest to the public. So too are the policies that EPA and Ecology negotiate. For the current draft PPA, policies regarding penalty calculations were not decided in a public forum. Instead, they were negotiated by a “small action team” of EPA staff and Ecology managers. ⁴

C2: EPA and Ecology are failing to create or provide the self-assessment report required by NEPPS and existing federal policies regarding performance partnership agreements. EPA must correct this by ensuring that Ecology completes an objective and complete self-assessment report and makes it readily available to the public.

As required by NEPPS, the Department of Ecology, and other state agencies with delegated authorities must write, and make available to the public, a self-assessment report regarding the effectiveness of the actions carried out under the Performance Partnership Agreement. The state agencies are supposed to evaluate how well they carried out the plan they agreed to in their Environmental Performance Agreement and to

² *Joint Commitment to Reform Oversight and Create a National Environmental Performance Partnership System*. May 17, 1995. State/ EPA Capacity Steering Committee. Section VI. Section VI – Public Outreach and Involvement, Page 12

³ Personal Communication from Ecology staff responsible for public involvement on the PPA. May 2, 2001.

⁴ *Environmental Performance Partnership Agreement, Public Comment Draft*. (Washington State Department of Ecology and the US Environmental Protection Agency, May 2001. Publication Number 01-04-030. page 10.

ensure that the report is signed by the Environmental Commissioners, Health Commissioners, or other state official responsible for running the delegated program within the state.”⁵

Washington PEER found no such report existed⁶ nor were the assessment results readily available upon request. Results of public records requests found that some assessments never occurred, others consisted of handwritten notes from a conference call, and none of the assessments examined to what extent the actions of EPA and Ecology influenced, for better or worse, Washington’s environmental health indicators.

This could be remedied by modifying the content of Ecology’s annual report called Washington’s Environmental Health Report. 7 Currently, this report examines the status and trends associated with thirteen environmental indicators and includes suggestions for what can be done to improve the indicator.

Under the heading “What Can Be Done” the report should discuss what Ecology and other agencies must do to improve the indicator – not what the public should do. Failure to include this element is a failure to provide an objective and thorough self-assessment.

For example, under “What Can be Done” in the Air Quality chapter, we are told to maintain our cars, drive less, reduce wood burning, and compost. Instead of providing an educational lecture, the report must assess the effectiveness of what Ecology, the Department of Health, the Puget Sound Clean Air Agency, and the local air control agencies are doing to improve Washington’s air quality. What is working well? What isn’t? What are some of the key barriers to improving air quality? The report state that over half of the Clean Air Act permits that were supposed to have been issued several years ago remain outstanding, define how many of Washington’s facilities regulated under the Clean Air Act were, or were not, inspected last year, and cite federal and state policies and laws that have advanced, or delayed, efforts to improve air quality and create stable funding sources for programs to protect air quality. Without this type of information, Ecology and EPA are providing neither the transparency nor the accountability that is supposed to be a cornerstone of the partnership process.

⁵ *Joint Commitment to Reform Oversight and Create a National Environmental Performance Partnership System*. May 17, 1995. State/ EPA Capacity Steering Committee. Page 7. Washington PEER was referred to this document by EPA staff in response to our request for current EPA guidance policy regarding the Performance Partnership Agreements.

⁶ Personal communications with EPA and Ecology staff responsible for coordinating the PPA, May 2001 and results of public records and Freedom of Information Act Requests.

⁷ *Washington’s Environmental Health Report 2000*, Washington State Department of Ecology. Publication number 00-01-003.

C3: Many sections of the agreement assume that adequate resources are not available to complete tasks that agencies are required by law to do and that priorities will have to be adjusted accordingly. 8In order for the public to understand the resource constraints and how they impact Washington's environment, specific information regarding financial resource constraints should be provided in Washington's Environmental Health annual report and the PPA.

Under current conditions, the public is being lied to. We are assured by agency websites that the environment is improving and many exciting initiatives are underway. On the other hand, we read the fine print and access mid-year evaluations and other agency reports to find that 30% of facilities in Region 10 with significant air emissions have not been inspected in the last three years 9, that some of required NPDES and RCRA inspections were never completed, and Ecology assumes that the lack of resources will continue and so work programs and environmental oversight will need to be cut accordingly. The public has a right to know about this and the self-assessment is the place to report it.

C4: The Appendix of the PPA should list all Compliance Assurance agreements that exist and define how the public can obtain copies of the agreements.

The PPA refers to numerous agreements but does not reference them or discuss how the agreements are negotiated and updated. Because they form the backbone of the PPA, they should be referenced and made more accessible to the public.

II. Comments on the content of the May 2001 draft Performance Partnership Agreement

Note: Washington PEER's comments are primarily on overall policies and practices discussed in the draft agreement. In some cases, comments on specific program areas are provided. Page numbers and headings from the draft agreement are provided for reference.

Public Involvement (there is not a section on this in the current draft)

C5: In order to meet the intent of NEPPS and its commitment to public involvement, Ecology and EPA should publish all comments received on the draft PPA and their response to them. This should be made a part of the appendix of the final PPA that is issued. Currently, only the comments that result in

8 PPA, pages 41,47 sections discussing stormwater and point sources.

9 *FY 1999 Recap Measures of Success Management Report*. US EPA, Office of Enforcement and Compliance Assurance. April 12, 2000. Inspection data is provided by EPA region, not state level.

changes to the PPA are published in the Appendix of the final PPA.¹⁰ This practice makes invisible the comments that EPA and Ecology receive but choose not to incorporate into the PPA. As a result, the public has no way of knowing what types of comments were received and how they were responded to. This violates the intent of NEPS and the stated commitment to public involvement.

Providing Federal Whistleblower Protections for State Employees Responsible for implementing federal laws delegated to them from EPA (there is no section on this in current draft)

C6: The Washington State Department of Ecology and US Environmental Protection Agency's Public Comment Draft Environmental Performance Agreement (Pub. No. 01-04- 030)(May 2001) is critically deficient in its delegation of the federal statutory standards established to ensure acceptable management of the environment and whistleblower protections for public employees who are responsible for implementing federally delegated programs.

On page 28, the draft PPA states, "No waiver is implied or assumed by this agreement." This statement must be deleted. It weakens the ability to monitor State compliance with, and execution of, federal environmental standards. Due to changes in Eleventh Amendment law, the Draft PPA needs to be altered.

The draft PPA is fatally flawed because Washington State has failed to provide legal protections to state or local government (i.e. air control agencies) employees from retaliation they may suffer from as a result of disclosures these employees make in enforcing or implementing federally delegated programs. It means that, in the absence of equivalent whistleblower protections or a waiver of sovereign immunity so that the witness protection provisions of federal laws apply, ¹¹ the Department of Ecology, Department of Health, Department of Agriculture, Pollution Control agencies, and other government agencies carrying out federally delegated programs cannot offer an equivalent environmental program, as required under the Government Performance and Results Act (GPRA).

The final agreement, in the section on guiding principles and strategies, and all associated compliance agreements that are negotiated between EPA, Ecology and other government agencies with delegated programs and authorities, must have an element stating the following:

¹⁰ page 9, of current PPA.

¹¹ The federally delegated environmental laws which provide whistleblower protections to federal employees and can do the same for state employees if Washington State expressly waives its immunity from suit under the 11th amendment of the constitution include the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300j-9(i); the Clean Air Act ("CAA"), 42 U.S.C. § 7622; the Energy Reorganization Act ("ERA"), 42 U.S.C. § 5851; the Comprehensive Environmental Response, Compensation, and Liability Act ("Superfund"), 42 U.S.C. § 9610; the Toxic Substance Control Act ("TSCA"), 15 U.S.C. § 31101, 31105; the Solid Waste Disposal Act ("SWDA"), 42 U.S.C. § 6971; and the Water Pollution Control Act, ("WPCA"), 33 U.S.C. § 167

"All parties to this agreement agree that the State of Washington expressly waives its immunity from suit under the Eleventh Amendment of the U.S. Constitution."

Eleventh Amendment jurisprudence has undergone significant change since PPAs were first used to guide relations between State and federal agencies. As such, the Agreements must be redrafted with those changes in mind.

The Eleventh Amendment is a vital element of federal jurisdiction that "go[es] to the very heart of [the] federal system and affect[s] the allocation of power between the United States and the several states." C. Wright, *The Law of Federal Courts* § 48 at 286 (4th ed. 1983). Because of the centrality of the Eleventh Amendment at the intersection of federal judicial power and the accountability of the States to federal constitutional and statutory standards, PPAs predicated upon diligent federal oversight must be drafted according to U.S. Supreme Court standards limiting its application.

A great deal of the difficulty in interpreting and applying the Eleventh Amendment stems from the fact that the U.S. Supreme Court has not been consistent with respect to what the Eleventh Amendment really does and how it relates to the other parts of the Constitution. Moreover, if under Article III there is no jurisdiction of suits against States, the settled principle that States may consent to suit becomes conceptually difficult, inasmuch as it is not possible to confer jurisdiction where it is lacking through the consent of the parties. *Clark v. Barnard*, 108 U.S. 436 (1883). E.g., *People's Band v. Calhoun*, 102 U.S. 256, 260 -61 (1880). See Justice Powell's explanation in *Patsy v. Florida Board of Regents*, 457, U.S. 496, 528 n.13 (1982) (dissenting) (no jurisdiction under Article III of suits against unconsenting States). As such, federal Agencies must write more narrow PPAs in order to avoid the inconsistency that leads to a marginal enforcement of federal statutory standards.

The Court has recently declared that "the principle of sovereign immunity [reflected in the Eleventh Amendment] is a constitutional limitation on the federal judicial power established in Art. III," but almost in the same breath has acknowledged that "[a] sovereign's immunity may be waived." See, e.g., the Court's express rejection of the Eleventh Amendment defense in these cases. *United States v. Texas*, 143 U.S. 621 (1892); *South Dakota v. North Carolina*, 192 U.S. 286 (1904). E.g., *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976). The principal citation is, of course, *Marbury v. Madison*, 5 U.S. (1 Cr.) 137 (1803). *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 98, 99 (1984). **The place to waive the Eleventh Amendment is in the PPA itself and all associated compliance agreements between delegated programs and EPA.**

A State cannot be subject to suit without its consent, and yet suit against the State may be exactly what is required to enforce federal law. The Court in dealing with questions of governmental immunity from suit has

traditionally treated interchangeably precedents dealing with state immunity and those dealing with federal governmental immunity. As Justice Holmes explained, the doctrine is based "on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends." *Kawananakoa v. Polyblank*, 205 U.S. 349, 353 (1907). Of course, when a state is sued in federal court pursuant to federal law, the Federal Government, not the defendant state, is "the authority that makes the law" creating the right of action. See *Seminole Tribe of Florida v. Florida*, 116 S. Ct. 1114, 1170-71 (1996) (Justice Souter dissenting). Viewing the Amendment and its impact on the enforcement of federal law through the courts provides a consistent explanation of the consent to suit as a waiver. The limited effect of the doctrine in this context in federal court arises from the fact that traditional sovereign immunity arose in a unitary state, barring unconsented suit against a sovereign in its own courts or the courts of another sovereign. But upon entering the Union the States surrendered their sovereignty to some undetermined and changing degree to the national government, a sovereign that does not have plenary power over them but which is more than their coequal. See, e.g., *United States v. Lee*, 106 U.S. 196, 210 -14 (1882); *Belknap v. Schild*, 161 U.S. 10, 18 (1896); *Hopkins v. Clemson Agricultural College*, 221 U.S. 636, 642 -43, 645 (1911).

A sovereign State-such as the State of Washington-may consent to suit. E.g., *United States v. Sherwood*, 312 U.S. 584, 586 (1941); *United States v. United States Fidelity & Guaranty Co.*, 309 U.S. 506, 514 (1940). The immunity of a State from suit is a privilege which it may waive at its pleasure. It may do so by a law specifically consenting to suit in the federal courts. *Gunter v. Atlantic Coast Line R.R.*, 200 U.S. 273, 284 (1906). It may also do so by express language in a federal/State compact such as a PPA.

But the conclusion that there has been consent or a waiver is not lightly inferred; the Court strictly construes statutes and agreements alleged to consent to suit. Thus, a State may waive its immunity in its own courts without consenting to suit in federal court, and a general authorization "to sue and be sued" is ordinarily insufficient to constitute consent. *Smith v. Reeves*, 178 U.S. 436 (1900); *Murray v. Wilson Distilling Co.*, 213 U.S. 151, 172 (1909); *Graves v. Texas Co.*, 298 U.S. 393, 403 -04 (1936); *Great Northern Life Ins. Co. v. Read*, 322 U.S. 47 (1944). *Great Northern Life Ins. Co. v. Read*, 322 U.S. 47, 54 (1944); *Ford Motor Co. v. Department of Treasury*, 323 U.S. 459 (1945); *Kennecott Copper Corp. v. State Tax Comm'n*, 327 U.S. 573 (1947); *Petty v. Tennessee-Missouri Bridge Comm'n*, 359 U.S. 275 (1959); *Florida Dep't of Health v. Florida Nursing Home Ass'n*, 450 U.S. 147 (1981). Compare *Patsy v. Florida Bd. of Regents*, 457 U.S. 496, 519 n.* (1982) (Justice White concurring), with *id.* at 522 and n.5 (Justice Powell dissenting).

'The Court will give effect to a State's waiver of Eleventh Amendment immunity 'only where stated by the most express language or by such

overwhelming implication from the text as [will] leave no room for any other reasonable construction.' . . . A State does not waive its Eleventh Amendment immunity by consenting to suit only in its own courts . . . and '[t]hus, in order for a state statute or constitutional provision to constitute a waiver of Eleventh Amendment immunity, it must specify the State's intention to subject itself to suit in federal court.'" Port Authority Trans-Hudson Corp. v. Feeney, 495 U.S. 299, 305 -06 (1990) (internal citations omitted; emphasis in original). As such, the PPA language must be exceedingly tight in order to be upheld by a federal judge.

In Port Authority, an expansive consent "to suits, actions, or proceedings of any form or nature at law, in equity or otherwise . . ." was deemed too "ambiguous and general" to waive immunity in federal court, since it might be interpreted to "reflect only a State's consent to suit in its own courts. But when combined with language specifying that consent was conditioned on venue being laid "within a county or judicial district, established by one of said States or by the United States, and situated wholly or partially within the Port of New York District," waiver was effective. *Id.* at 306-07. See, on the other hand, *Atascadero State Hosp. v. Scanlon*, 473 U.S.234, 241 (1985).

While the Court in a few cases has found a waiver by implication, the current vitality of these cases is questionable. Thus, in *Parden v. Terminal Railway*, 377 U.S. 184 (1964), the Court ruled that employees of a State-owned railroad could sue the State for damages under the Federal Employers' Liability Act (FELA). One of the two primary grounds for finding lack of immunity was that by taking control of a railroad which was subject to the FELA, that had been enacted some twenty (20) years previously, the State had effectively accepted the imposition of the Act and consented to suit. See also *Petty v. Tennessee-Missouri Bridge Comm'n*, 359 U.S. 275 (1959). *Edelman v. Jordan*, 415 U.S. 651, 671 -72 (1974). For the same distinction in the Tenth Amendment context, see *National League of Cities v. Usery*, 426 U.S. 833, 854 n.18 (1976). But for those cases where a cognizant federal Agency is delegating enforcement of federal law to a State agency, more concrete evidence of waiver must be present.

Distinguishing *Parden* as involving a proprietary activity, the Court subsequently refused to find any implied consent to suit by States participating in federal spending programs; participation was insufficient, and only when waiver has been "stated by the most express language or by such overwhelming implications from the text as [will] leave no room for any other reasonable construction," will it be found. This aspect of *Parden* has now been overruled, a plurality of the Court emphasizing that congressional abrogation of immunity must be express and unmistakable. *Edelman v. Jordan*, 415 U.S. 651 (1974) (quoting *id.* at 673, *Murray v. Wilson Distilling Co.*, 213 U.S. 151, 171 (1909)); *Florida Dep't of Health v. Florida Nursing Home Ass'n*, 450 U.S. 147 (1981). Of the four *Edelman* dissenters, Justices Marshall and Blackmun found

waiver through knowing participation, *id.* at 415 U.S., 688. In *Florida Dep't, Justice Stevens* noted he would have agreed with them had he been on the Court at the time but that he would now adhere to *Edelman*. (*Id.* at 151). *Welch v. Texas Dep't of Highways and Pub. Transp.*, 483 U.S. 468 (1987). Justice Powell's plurality opinion was joined by Chief Justice Rehnquist and by Justices White and O'Connor. Justice Scalia, concurring, thought *Parden* should be overruled because it must be assumed that Congress enacted the FELA and other statutes with the understanding that *Hans v. Louisiana* shielded states from immunity. *Id.* at 495.

With respect to governmental entities that derive their authority from the State, but are not the State, the Court closely examines State law to determine what the nature of the entity is, whether it is an arm of the State or whether it is to be treated like a municipal corporation or other political subdivision. An arm of the State has immunity: "agencies exercising state power have been permitted to invoke the Amendment in order to protect the state treasury from liability that would have had essentially the same practical consequences as a judgment against the State itself." Municipal corporations, though they partake under state law of the State's immunity, do not have immunity in federal court and the States may not confer it.

Entities created through interstate compacts (subject to congressional approval) generally also are subject to suit. *Lake County Estates v. Tahoe Regional Planning Agency*, 440 U.S. 391, 400 -01(1979), citing *Edelman v. Jordan*, 415 U.S. 651 (1974); and *Ford Motor Co. v. Department of Treasury*, 323 U.S. 459 (1945); *Lincoln County v. Luning*, 133 U.S. 529 (1890); *Chicot County v. Sherwood*, 148 U.S. 529 (1893); *Workman v. City of New York*, 179 U.S. 552 (1900); *Moor v. County of Alameda*, 411 U.S. 693 (1973); *Mt. Healthy City Bd. of Educ. v. Doyle*, 429 U.S. 274 (1977). Notice that in *National League of Cities v. Usery*, 426 U.S. 833 (1976), the Court extended the state immunity from regulation in that case to political subdivisions as well. *Lake County Estates v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979); *Petty v. Tennessee-Missouri Bridge Comm'n*, 359 U.S. 275 (1959).

Measuring For Environmental Results (page 4)

C7: The PPA should require meeting notes to be kept for all mid-year and year-end evaluation meetings. Under current conditions, meetings notes are not always kept and it is difficult to assess the results of the evaluation process.

C8: EPA and Ecology need to provide an index of the public records that are available in the form of reports and data submittals that are required to be submitted by Ecology to EPA. All such reports should be posted on Ecology's website. In the draft agreement, the section called Measuring For Environmental Results describes the importance of reporting on environmental results and provides that most of the

required reporting, “is accomplished through direct data submittal to federal databases.”¹² This practice leaves citizens in the dark. Without an index or access to the reports, it is nearly impossible to readily access the “media-specific performance measures” that are touted by the PPA.

Agreement Coverage (page 5)

C9: The agreement should include all federally delegated environmental programs that have been delegated to Washington State agencies to regulate radionuclides in air (Department of Health), safe drinking water (Department of Health), and pesticides (Department of Agriculture).

Quality Assurance and Evaluation Process (page 8)

C10: EPA must provide more oversight and do more thorough evaluations of the federal programs that have been delegated to Ecology and other Washington state agencies. Under current conditions, midyear reviews are not done for all programs, not all review criteria are examined, and limited and sketchy public records are kept.¹³

Washington Peer’s findings and associated recommendations for increased oversight of state programs are consistent with recommendations provided by the General Accounting Office (GAO) and the Office of Enforcement and Compliance (OECA). The OECA audit found that “generally, the various regional programs do not conduct audits of the state enforcement and compliance programs, and, in many instances, have not done them for years.”¹⁴ Regarding the NPDES program, the audit found that EPA has “conducted few to no oversight inspections in Washington or Oregon the past few years.”¹⁵

In their June 2000 report the Senate’s Committee on Small Business, the GAO cites Inspector General audits and OECA reports that found EPA was not providing adequate oversight of the federal programs that have been delegated to the states. ¹⁶ Among other findings, EPA was criticized for not doing enough oversight inspections, not sufficiently encouraging that economic benefit be considered in calculating penalties, and not taking federal actions when states are slow to act. Staff from EPA Region 10, which oversees the Washington State Department of Ecology,

¹² May 2001 PPA, page 5.

¹³ Washington PEER, results of two public information requests.

¹⁴ *Enforcement and Compliance Evaluation of EPA Region 10, Final Evaluation Report*, Office of Enforcement and Compliance Assurance, US EPA, Evaluation Team B, December 1998.

¹⁵ Id, page 15.

¹⁶ *More Consistency Needed Among EPA Regions in Approach to Enforcement*, U.S. General Accounting Office Report to the Chairman, Committee on Small Business, U.S. Senate, June 2000. GAO/RCED-00-108, page 30.

acknowledged that oversight had been reduced, in part, due to the current partnership agreements that called for less intense and detailed review.¹⁷ Given that the current agreements are largely the result of a negotiation between Ecology and EPA, it is no surprise that over the years the state has rooted out some of the oversight requirements.

*C11: The statements throughout the PPA where EPA is defined as the party “responsible for extracting and using data to report to EPA headquarters” should be amended to state that EPA is the responsible for extracting and using data to report to EPA headquarters and to index the data extracts and make them available to the public upon request. **Under current conditions, it is very difficult for the public to access this information because Ecology does not always submit it in the form of reports and EPA does not index the reports, or data pulls, generated from the Ecology data.***

Policy (page 10) – the following comments address policies regarding penalty calculations, enforcement, and adequate financial assurance.

C12: Penalties - The draft PPA, and all associated Compliance Assurance Policies for Ecology programs, need to be amended to be consistent with federal policies regarding penalty calculations and consideration of economic benefit. Specifically, the PPA should be modified to require Ecology to

- 1) consider the economic benefit of non-compliance in all penalty calculations for significant violations;*
- 2) show how such considerations are made, and*
- 3) with assistance from EPA, provide staff training and management support needed to implement this policy.*

Although some Ecology programs are currently required to consider economic benefit, EPA has no way to assess whether or not they are and has never thoroughly checked.¹⁸ The proposed policy will perpetuate this situation.

As drafted, the new PPA will required Ecology staff to consider to consider economic benefit in penalty calculations only if the inspector determines the violator likely received an economic benefit from violating the law. No guidance is given on how such considerations will be made. If economic benefit is suspected but cannot be quantified, Ecology will not be required to include economic benefit in the penalty amount. This is an unacceptable policy for Washington State.

Reliance on broad discretion breeds inconsistency, inequities, and public distrust of Ecology’s penalty system. It also strays from federal policy that requires consideration of economic benefit.

¹⁷ Id, page 30.

¹⁸ Results of FOIA requests to EPA and personal communications with EPA staff.

Since 1984, it has been national policy that penalties for significant violations be at least as great as the amount by which a person benefited from operating their facility out of compliance. 19

In their 1991 report, the Government Accounting Office recognized the importance of requiring states to incorporate the consideration of economic benefit into their penalty calculations. Among other things, the GAO report recommended that states report final calculations of economic benefit and gravity, subsequent revisions to the calculations, reasons for penalty reductions, and final penalty amounts. Finally, in a nationwide assessment of RCRA civil penalties, the Inspector General's office recommended that EPA work with the states to ensure that the economic benefit of noncompliance is calculated and recovered in penalty assessments. 20

EPA found that once they initiated a clear policy and a requirement to document how economic benefit was considered, the use of economic benefit considerations increased substantially. For example, before EPA had a system to track consideration of economic benefit, only 55% of RCRA penalties documented economic benefit. After new penalty policies and associated requirement to document consideration of economic benefit, 98% of the cases examined in the following fiscal year documented economic benefit.²¹

Under the policy proposed by the draft PPA, this will never happen. It must be replaced with a policy that eliminates the broad discretion provided to Ecology and instead requires them to consider economic benefit in all significant violations and to show how such benefit was considered and either incorporated or dismissed from the final penalty.

C 13: Enforcement - The PPA should include a policy to require all agency managers, or their designees, that are parties to the PPA to respond in writing to enforcement recommendations made by staff who are responsible for enforcing environmental laws whether through inspections, policy implementation, compliance monitoring reviews, or other actions taken as part of their required duties to implement and enforce federally delegated laws and programs.

Although many government agencies, schools, and other public institutions require management to provide a written response to a

19 *Environmental Enforcement: Penalties May Not Recover Economic Benefits Gained By Violators*. Government Accounting Office. Publication number GAO/RCED-91-166. page 1.

20 *Further Improvements Needed in the Administration of RCRA Civil Penalties*, Office of the Inspector General, RCRA Civil Penalties, March 31, 1997, page iii

21 Morgenstern, Richard. Acting Assistant Administrator, Office of Policy, Planning, and Evaluation, U.S. Environmental Protection Agency. October 1, 1991 letter to John Glenn, Chairman of Committee on Governmental Affairs, United States Senate, Washington, D.C.

formal recommendation for enforcement of policy, the Department of Ecology does not.

The lack of a written response to the file creates inconsistency and potential liability problems for Ecology. It also creates uncertainty and distrust of management. Through two agency wide surveys conducted by the Department of Ecology, lack of rationale in decision-making has been identified as a problem. In their plan for responding to the employee survey, Ecology managers stated that there was a clear need to “Improve management communication, specifically between employees and the Executive Management Team, especially in the areas of rationale and process to reach decisions, agency strategies and expectations, and agency performance measures.” 22. This conclusion was reached by Ecology as a result of numerous staff comments regarding the quality of communication with management. Some of the comments, as summarized by Ecology in their 1998 and 1999 employee survey result, are as follows:

“... If a staff person makes a recommendation or draws a conclusion that management doesn’t want to hear, it is usually ignored and the employee is labeled a problem”;

“Section level management is inconsistent with decisions they are responsible for making. On occasion staff input either is not taken into accounts and no action is taken on a situation, or decisions are significantly delayed by management;

“...The laws and regulations developed through extensive effort and through our nations democratic process are set aside daily to avoid seeming unreasonable. We have become masters at making excuses and in creating processes (both managerial and public reviews) that have no goals, no serious completion schedules, and unfortunately typically no meaningful outcomes...”

“I often have to wait month for a response to suggestions and have several on record as professional recommendations that have not been responded to more than a year later.”

“Program managers often make decisions without gathering all the facts or keeping track with Ecology’s values, missions, etc.”

Adopting a policy to require management to provide a written response, to the files, on staff’s formal enforcement recommendations is a positive step that Ecology could take to help remedy this situation. It would foster consistency in enforcement, accountability, and reduce liability in situations where Ecology managers ignore staff’s call for enforcement and

22 Plan For Responding to the Employee Survey, Washington State Department of Ecology. June 18, 1999, page 2.

contribute to a situation where the problems get worse and the citizens of Washington have to bear the consequences of inaction.

C14: Financial Assurance - The PPA needs to include a section to hold Ecology accountable to full and effective implementation of RCRA's financial assurance requirements. Although this responsibility has been delegated to Ecology, the PPA is silent on this topic.

The PPA should define Ecology's responsibilities in this arena and list the actions Ecology will take to ensure that they secure adequate financial assurance for facilities treatment, storage, and disposal facilities regulated under RCRA so that the taxpayers don't end up footing the bill if and when the facilities shut down and leave town.

EPA should provide training, guidance, and oversight needed to assist Ecology in this effort and ensure that adequate financial assurance is secured not only for closure, but also for post closure care such as monitoring and site maintenance. Washington's failure to do this and EPA's lack of oversight and guidance in this arena has resulted in several cases where taxpayers are paying for something that is legally the responsibility of the polluters. As part of this effort, EPA should help Washington state develop a policy and approach to enable Washington State to assess, and extend as needed, the federal timeline of 30 years of post-closure efforts.

"Rather than passing the problem of post-closure care on to future generations, the problem should be address now, and solutions implemented...long before the end of the 30-year period." – page 43
These recommendations are consistent with the recommendations provided by the Office of the Inspector General in their March 30, 2001 audit. (RCRCA Financial Assurance for Closure and Post-Closures, 2001-P-007).

Through delegation of the RCRA program from EPA to Ecology, Washington State is responsible for ensuring that owners and operators of waste treatment, storage, and disposal facilities (TSDs) can demonstrate that they have adequate funds to finance closure, or post closure and clean-up actions that may be needed. These requirements also apply to owners and operators of municipal solid waste landfills. During a recent federal audit of state's ability to secure adequate financial assurance, as required by RCRA, Washington State did was not able to provide much of the information requested and was "in the process of gathering it."²³

Comments on Specific Program Elements of the PPA

Air Quality Program- Section Four

²³ RCRA Financial Assurance for Closure and Post-Closure, Office of the Inspector General. March 30, 2001. 2001-P-007.

C14: This portion of the PPA is incomplete because it does not include, or reference, the Department of Health and their responsibility for issuing air operating permits or reviewing air operating permits for facilities that emit radio nuclides or for keeping the public informed of the status of the air operating permits. DOH's is responsible for issuing and administering. The PPA must be amended to add the Department of Health and the responsibilities that have been delegated to them by EPA and the Department of Ecology.

*C15: On page 23, the draft PPA states that " all affected agencies will complete issuance of Title V permits according to an agreed upon schedule (info only) " This is unacceptable. **A defined schedule, including associated public involvement opportunities, must be required by EPA.***

Hazardous Waste and Toxics Reduction Program – Section Five

*C16: In order to address OECA's finding that some elements of the current PPA between Ecology and EPA violate federal guidelines and limit EPA's authority, the new PPA should include provisions similar to those stated on page 28 of the draft. The provisions state that the PPA "does not restrict EPA's oversight authority for state program activities that are part of the federal program, does not establish privity between EPA and the state, does not restrict EPA's independent enforcement authority, and does not expand EPA's authority to state only requirements outside of the federal program."²⁴ **These provisions should be part of ALL programs covered by the PPA and not limited to the hazardous waste and toxics reduction program. Additional provisions should be added, as needed, to ensure that the new PPA addresses the recommendations of OECA's 1998 audit regarding the need to ensure that the PPA and compliance assurance principles negotiated with the state's adequately preserve EPA's oversight and enforcement role.²⁵***

Nuclear Waste Program – Section Six

C17: Page 38 of the draft recommends assigning some low priority inspections to a vacant inspector position. This implies that the inspections will never be done. Why not fill the position and get the inspections done?

*C18: Ecology, with EPA's full support, has never fully assessed whether or not the Tri Party agreement and associated RCRA requirements are being met. Washington PEER fully supports the draft agreement's recommendation to complete such an assessment. **The final PPA should include an element to assess to what extent Ecology completed these inspections, what the finding were, and what remedies were pursued.***

²⁴ Draft PPA, page 28.

²⁵ *Enforcement and Compliance Evaluation of EPA Region 10, Final Evaluation Report*, Office of Enforcement and Compliance Assurance, US EPA, Evaluation Team B, December 1998 page 21.

*C19: Reporting requirements need to be added to section six, regarding the Nuclear Waste program. **As drafted, there are none.***

Water Quality Program – Section Seven

*C20: The Wetlands Protection and Restoration Section of the PPA defines six actions and associated steps that will be taken to protect wetlands. None of them mention enforcement. At a minimum, the PPA should include the recommendations from Ecology’s wetlands mitigation study that defines what Ecology needs to do to improve wetlands protection. These include actions to increase field visits, plan review, mitigation tracking, file maintenance, and enforcement. **26 EPA should provide funding to improve enforcement of wetlands regulations and mitigation requirements. Until Ecology implements the recommendations of past studies, the value of more studies is unclear.***

*C21: The point source permits and compliance section of the PPA should be rewritten. **On the one hand it claims that Washington State has one of the leading delegated programs in the country. On the other hand, it states that a lack of resources has meant that Ecology has not fulfilled all their obligations under the past PPA.***

The public has a right to know what work and inspections are not being done due to a lack of resources. While this PPA is not the appropriate place to discuss this, Ecology’s annual report on Washington’s Environmental Health is.

*C22: Reporting Requirements on page 62, should require Ecology to report on the acres of natural wetlands destroyed through permitted practices and the acres, and status of, mitigation projects that are supposed to “replace” the wetlands that were destroyed. **Without this information, it is not possible to assess the effectiveness of Ecology’s actions or the validity of the assumption that natural wetlands can be destroyed and replaced with created, or “functionally equivalent” wetlands.***

26 Washington State Wetland Mitigation Evaluation Study Phase 1: Compliance. Washington State Department of Ecology, June 2000. Publication number 00-06-016. page 33

Public Comment Letter From Puget Soundkeeper Alliance

PUGET SOUNDKEEPERS ALLIANCE

June 14, 2001

Elliott Zimmerman PPA Coordinator Washington State Department of Ecology Northwest Reional Office Office 3190 160 th Avenue SE Bellevue WA 98008-5452	Jack Boller PPA Coordinator US EPA Region 10 Washington Operations 3300 Desmond Drive, Suite 102 Lacey, WA 98503
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Dear PPA Coordinators Elliot Zimmerman and Jack Boller,

First of all we would like to thank you for giving us the opportunity to comment on the draft of the Performance Partnership Agreement (PPA) between the EPA and Washington State Department of Ecology (DOE).

The following are our observations concerning general procedures related to the DOE's Water Quality Program portion of the PPA.

Our primary concern is the answer to the following question: Is the DOE responsibly implementing and enforcing the goals of the Clean Water Act (CWA) and penalizing those who fail to comply.

To ensure that the EPA and the public have full knowledge of how the DOE is implementing the CWA, there needs to be some sort of assessment carried out and published. General comments are already made in the annual Washington's Environmental Health Report put out by the DOE, but they usually focus on what the public can do to improve the quality of the environment around them and does not focus on what the DOE has done and how these projects have come along. The DOE should be responsible for stating what programs have been successes and what programs need work and the specific logistics including limited staffing and decreasing funding within these programs.

The median penalty assessed from 1994-98 was \$3000*, this is not going to persuade a permittee to alter their discharge when that could take many hours and much more money than the fine they will be issued. The DOE needs to impose more of a threat to companies that are violating their NPDES permits and this needs to be overseen by the EPA. Also, their needs to be documentation concerning how much effort is being put into contacting and working with permittees that are violating their permit. In a recent report put out by the DOE, it was reported that 30% of Municipalities and 43% of Industries with violations had no documented action taken against them .

- Washington's Environmental Health Report 2000, Washington State Department of Ecology, *Publication Water Quality Enforcement Review, Washington State Department of Ecology, Publication # 99-18

This information does not indicate that the DOE is fulfilling their part of the agreement with the EPA to protect the environment and does not reflect the effort being put forth by the DOE to rectify the problem. Also, the DOE **needs** to discuss what areas are **lacking** in their enforcement program, as a result of lack of funding or/and a lack of resources, so that the public as well as the EPA know what areas are a known problem that are not being addressed.

In Conclusion. The EPA must insure for the public, a clear analysis assessing the DOE's implementation of the CWA.

Thank for reading over our comments.

Sincerely,

Derek Wentorf
Program Assistant

Limit Violations and Compliance report, Washington State
Department of Ecology, Publication

Public Comment Letter From Weyerhaeuser Corporation

Weyerhaeuser

The Future is growing"

Corporate Headquarters

PO Box 9777

Federal Way WA 98063-9777

Tel (253) 924 2345

June 21, 2001

Elliot Zimmermann
Washington State Department of Ecology
Northwest Regional Office
3190- 160th Ave SE
Bellevue, WA 98008-7072

Jack Boller
US EPA Region_10
Washington Operations Office
600 Desmond Drive, Suite 102
Lacey, WA 98503

Dear Mr. Zimmerman and Mr. Boller:

Subject: Environmental Performance Partnership Agreement

Weyerhaeuser Company offers the following comment on this draft PPA.
Pages 60

Line 61 describe specific outcomes of an ongoing water quality standards revision activity: mainly, a revision to Washington's WAC 173-201 A *Water Quality Standard for Surface Waters*. The language selected to describe this rule-making over commits the Department of Ecology to achieve a predetermined outcome. The language presented as a commitment is quite prescriptive; that is, to "complet{e}the Currently proposed revisions to the water quality standards, including an anti-degradation plan, use-based standards, revised criteria for temperature, dissolved oxygen, and bacteria, and other miscellaneous changes." The "Adoption by Ecology of currently proposed revisions" is offered as a Progress Measure.

In fact, until the rule development and adoption process is complete it is not possible to know what will be included in the regulation revision. The language in this section of the PPA should be amended to refer to the regulation amendment process, without seeming to prescribe the outcome.

Sincerely,

Ken Johnson
Washington Regulatory Affairs Manager

Public Comment Letter From Kalispel Natural Resources Department

From: John Gross <jgross@knrd.org
To: Jack Boller/R10/USEPA/US@EPA
cc:
Subject: opportunity to comment on WA PPA
06/20/2001 09:48 AM

Jack Boller:
Some comments from the Kalispel Tribe:

The Water Quality, Columbia and Snake Rivers section states that TMDLs will be developed for the mainstems of these two rivers and incorporated into FERC licenses. In Washington there are several dams under FERC jurisdiction on these two rivers. And there are federal dams not subject to FERC jurisdiction. There are numerous other dams within the State of Washington that are under FERC jurisdiction and contribute to elevated temperatures and total dissolved gas. The PPA agrees to address these dams and other rivers but does not provide a timeline. It is our hope that the Columbia/Snake TMDL can be used as a model for other rivers and further TMDLs be implemented soon thereafter.

The agreement to meet applicable water quality standards and to participate in FERC relicensing and 401 certifications is a critical component.

The Water Quality, Water Quality Standards section describes passage of revised water quality standards but does not address 303(d) listing. The following section, "Reporting", does address 303(d) listing. An important shortcoming of the 303(d) list is that only known impaired waters are listed. Waters that are unassessed are not listed and the default assumption is that they are not impaired. It would be useful to include a list of all waters, a list of documented impaired waters, and a list of unassessed waters. Additionally, certain waters were left off the 1998 303(d) list due to lack of sufficient data although there is reason to suspect impairment.

Thank you for your attention to these matters.

John Gross
Kalispel Natural Resources Department

Ecology and EPA Responses to Public Comments on Draft FY2002-03 Performance Partnership Agreement (PPA)

Ecology and EPA Response to PEER Comments

The PEER comment letter offered several specific comments, which seem to fall into the following categories outlined in PEER's comments cover letter:

- Lack of public involvement.
- Lacking of accountability.
- Lack of whistleblower protections for employees.
- Broad discretion given to Ecology regarding penalties.
- Difficult access to data reports.

In the following comments, Ecology and EPA have provided our responses to the comments you offered in these general areas. We also have provided responses to comments by PEER regarding specific program elements.

Lack of Public Involvement *(comments C1, C5)*

The public involvement aspect of the PPA process (and its predecessor, the State/EPA Agreement (SEA)) has evolved over time. In the early years of the process, Ecology undertook a major public involvement effort including mass mailings (close to 1,000) of the entire public comment draft, advertisements in newspapers, and public hearings in Seattle, Olympia, Spokane, and Yakima. Public response to these efforts was slight; we received few written comments and very few people attended the public hearings. Over the years, Ecology has cut back on the amount of money and resources devoted to the public input aspect of the PPA process due to the lack of comments and attendance at hearings. Ecology has continued to announce the availability of the public comment draft of the PPA and, in one respect, has improved public availability by making the PPA available on both Ecology's and EPA's website. We have targeted announcements concerning the PPA to those public groups and individuals who tend to be interested in these matters. This year's mailing list of 500+ letters announcing the availability of the FY2002-03 PPA for public comment was a combination of the general "stakeholders" mailing lists from the Water Quality Program, the Air Program, and the Hazardous Waste Program. PEER also indicated it had a mailing list of potentially interested groups and individuals. Since PEER did not want to provide this list to Ecology, we sent an electronic version of the

announcement letter to PEER and asked them to electronically distribute it to whomever they wished. Including the PEER comments, Ecology only received four comment letters on the current FY2002-03 draft.

We have found, over the years, that public comments on the PPA tend to emphasize current high profile issues. Most of last year's comments, for example, concerned wheat burning in Eastern Washington. Public hearings on the PPA have not been a very constructive context in which to raise such issues, both for the people with concerns and for EPA and Ecology. The PPA is, in many respects, a general statement of a grant workplan that describes how Ecology will properly spend the money given by EPA to carry out its delegated responsibilities. EPA priorities and interpretations concerning what work Ecology must accomplish to fulfill its delegated responsibilities are decided long before the PPA public comment draft is available in a given year.

Both EPA and Ecology have broad stakeholder input activities for various policy development processes prior to setting policy nationally, geographically and programmatically. This happens outside of the PPA process and incorporates policy direction set by Congress and the Washington State Legislature. This process includes seeking input from stakeholders, including the public, by the Programs (including air, water and waste). These policies then are incorporated into the PPA and the work commitments in the PPA evolve from these policies. Our experience is that it is more effective to gather input issue by issue because the input is of more value when provided by someone who has a specific interest in the issue. By involving the public in policy and rule development upfront, before it gets into the PPA, we believe we are consistent with the vision of NEPPS.

We will continue to find ways to make the PPA draft document more available, especially to any specific citizen group, organization or individual who desires it.

As with past PPAs, we plan to publish all comments and responses to them. We also have our widely available agency websites, which contain a tremendous amount of environmental information including the draft PPA.

Lack of Accountability *(comments C2, C3, C4, C7, C8, C9, C10)*

The self-assessment of the PPA takes many forms. The two agencies complete mid-year reviews, program by program, that summarize progress made in accordance with agreed commitments and areas that need improvement. EPA also conducts regular program evaluations of state authorized programs, which are more comprehensive, in depth assessments. These reviews and evaluations are available to the public, but we agree they are not easily accessible. We propose in this PPA to make them available on our websites. The General Accounting Office

and Inspector Generals Office has also performed audits of the state and federal programs. We will also provide links to these public documents.

Much of the information you described as being useful to assess public accountability is found either on Ecology's homepage (www.ecy.wa.gov) or EPA's homepage (www.epa.gov/r10earth/). These sites include such items as the programs' strategic plans, program goals/objectives, specific performance measures, etc.; we don't propose to reformat all of these for the PPA. The amount of information available and the wide variety of topics covered makes creation of any all-encompassing index problematic. We believe the public is sufficiently well versed in the use of Internet search engines, meta-search programs, etc. to be able to find the information we have made available. Washington is a recognized national leader in providing easy electronic access to environmental data. Within the (still substantial) limits of current technology and our resource constraints, we will continue to provide more data in a format easily available to the public.

PEER Comment #4 requests that all Compliance Assurance agreements should be referenced in the PPA. All Compliance Assurance agreements that have been officially adopted by Ecology and/or EPA are public documents that can be obtained through a request to the respective Agency. Ecology will plan to post any such public documents on our webpage if they are not already there.

PEER specifically mentions (comment #7) that mid-year and end-of-year meeting notes are not always kept and are not easily available. In the past, meeting notes were not always kept, but have been consistently kept for the last several PPA cycles. In response to your comment, we intend to make these meeting notes available on our webpage (minus any enforcement confidential information). The following language has been added to the PPA: "Ecology and EPA will establish a site on their respective webpages devoted to assessment and oversight of the PPA process. This site will include relevant public documents such as mid- and end-of-year reports for the different media Programs."

EPA's Performance Partnership Agreement is negotiated with Ecology because Ecology has the majority of delegated federal environmental programs. We will discuss the prospect of a multi-agency PPA with Departments of Health and Agriculture for the next PPA cycle, but these agencies have preferred a separate agreement in past years. Finally, regarding inadequate resources, we agree that both EPA and Ecology could use more staff to adequately perform our environmental responsibilities, but this is an issue all public agencies face. It is difficult to assess the consequences of resource constraints, but one of the purposes of the PPA (and associated program plans) is to biennially prioritize workload given the resources appropriated to us by the state legislature and congress. The priorities should be clear (see Ecology's and EPA's home page) and we invite your comments regarding whether

on not we have directed our scarce resources toward the highest priorities.

Lack of Whistleblower Protection (comment C6)

Your comment letter suggests that the State of Washington should waive its sovereign immunity (eleventh amendment) to allow for citizen suits and/or have whistleblower protection laws equivalent to federal laws.

Ecology believes that state law (RCW Chapter 42.40) provides adequate whistleblower protection for its employees from retaliatory personnel actions by Ecology in response to employee allegations of improper governmental conduct. This law has been in effect for several years. Ecology supports employee access to whistleblower protections and has posted information on its intranet site for employees which helps them understand the process by which they can file complaints under the state whistleblower statute.

In addition, Ecology is subject to the whistleblower provisions of federal environmental laws. While the 11th amendment to the U.S. Constitution may restrict actions by individuals against the state, it does not shield the state from enforcement by the federal government. The United States Department of Labor may investigate complaints and enforce the whistleblower provisions in federal environmental laws. For these reasons the Department of Ecology believes that requiring a waiver of sovereign immunity against private claims under the federal environmental law whistleblower provisions will not provide any significant increase in the level of employee protection already guaranteed to Ecology employees.

Region 10 will continue to analyze this issue. If, in the future, we determine that some action is needed by Washington, we will approach the state directly, most likely through the Governor's office. This is because any decision related to waiving the State's sovereign immunity is beyond the scope of any single state agency. In the meantime we plan to finalize the Performance Partnership Agreement with no changes to the current whistleblower protections.

Broad Discretion Given Ecology Regarding Enforcement (comments C12, C13, C15)

Ecology and EPA have compliance assurance agreements in place between their media programs to ensure consistency and adequacy of federal compliance requirements. To ensure we are working together, not duplicating efforts, and leveraging resources toward the most efficient and effective methods of enforcement, we have adopted the "enforcement principles" in our PPA – a further specification of how to manage mutual enforcement authorities and resources.

The consideration of economic benefit in penalty calculations is a federal policy, not a regulatory requirement imposed on states with authorized programs. Never the less, the Department of Ecology has recently adopted procedures to comply with this federal policy.. Ecology has revised its enforcement response policies for the three major delegated programs to require consideration of economic benefit. This consideration relies heavily on the inspector's professional judgment and does not always result in a quantification of the estimated economic benefit of non-compliance. Ecology has found that it is not always possible to estimate economic benefit (using the BEN model or other techniques) and therefore believe this discretion is an integral part of our policy. EPA has reviewed Ecology's revised Enforcement Response Policies and believes they comply with the federal policy.

Regarding the suggestion that managers respond in writing to all enforcement recommendations and policy recommendations assumes that this doesn't happen, and that there is not open communication between managers and staff. It is our experience that staff and managers work as a team and trying to instill a process as suggested would be ineffective and unnecessarily divisive.

You are correct that the PPA does not restrict EPA's oversight authority for state program activities or restrict EPA's enforcement authority. While this is explicitly stated in a few program-specific parts of the PPA, it applies to all programs covered by the PPA. It is stated upfront rather than repeating it several times in the document.

EPA believes that adequate federal oversight mechanisms exist and have been used appropriately to evaluate Ecology's performance. It is true that there are less oversight resources in Region 10 than several years ago. This is due both to the fact that Ecology programs are mature (requiring less over site) and our need to address other priorities. The coordination and cooperation that currently exists between the federal and state agencies is the result of hard work over the last several years and is considered a major achievement by Ecology and EPA. This increased cooperation allows efficiency in resource use and effectiveness in environmental results, somewhat offsetting shrinking budgets of both agencies.

Difficult Access to Data Reports (comments C4, C7, C10, C11)

We acknowledge that there are several data reports (and data bases) that are used to track and assess outputs identified in the PPA and environmental results. We also agree these may not be easily accessible because much of the reporting from Ecology to EPA Region 10 and then to EPA headquarters follow internal processes and systems.

Both Ecology and EPA are committed to making our information as accessible to the public as possible. We believe this improves public understanding of environmental issues and generally leads to greater public support for environmental programs. Both agencies are open to ideas on how to improve in this area, and to understand the information needs of our stakeholders. Our current efforts are focusing on making environmental results data available on the web, as this allows individuals much more freedom to access the information that is important to him or her. We will continue to work on improving our data indices of public reports and databases. Washington is a recognized national leader in providing easy electronic access to environmental data. Within the (still substantial) limits of current technology and our resource constraints, we will continue to provide more data in a format easily available to the public. As stated above, we believe such devices as search engines, meta-search software, etc. are better tools for finding data available on the Internet than any index of data extracts we would be able to devise; the quantity of data, variability in quality, etc. make the idea of one index of all available data an impractical and imprudent idea.

Specific Program Area Comments (comments C14, C15, C16, C17, C18, C19, C20, 21, 22)

Hazardous Waste – (comments C14, C16):

The financial assurance requirements for closure and post closure for hazardous waste management facilities are managed by Ecology, in accordance with RCRA requirements. Ecology agrees that while these requirements may not be adequate given the current situation with facilities going bankrupt, or “belly up”, Ecology can only require what is authorized by existing law. Due to exemptions that exist in financial assurance and closure regulations, the coverage for entire facilities, not just the regulated units has been insufficient. These mechanisms were adopted directly from the national RCRA regulations. Some of these mechanisms don't even completely fund the closure of regulated units either due to inadequacies of the mechanisms used to fund them or the timing of the closure. Recognizing this problem, Ecology requested and recently received a legislative appropriation to assess what improved requirements could be adopted that would be most protective (including financial assurance requirements), and will end up proposing more stringent requirements under state law. This will go beyond current federal requirements and hopefully resolve the potential problem of taxpayer liability for cleanups.

Regarding the issue of municipal solid waste landfills, the states financial assurance requirements are spelled out in the recent “Report to the Legislature on Financial Assurance for Solid Waste facilities in Washington- February 2001” (Publication # 00-07-039).

PEER states in comment C16 that the entire PPA should be subject to the provision stated under the Hazardous Waste Program portion of the PPA

that the PPA "does not restrict EPA's oversight authority for state program activities that are part of the federal program, does not establish privity between EPA and the state, [etc.]....". This specific language is necessary in the Hazardous Waste Program portion of the PPA because of an RCRA-specific court case. We do not believe this specific language should be used for the entire PPA. We have, however, added the following language to the general (non-Program specific) part of the PPA: "This Performance Partnership Agreement (PPA) in no way restricts the legal oversight enforcement authority of the federal Environmental Protection Agency (EPA)".

As one of Ecology's responses to PEER's general comments on accountability, the following language concerning GPRA goals has been added to the Hazardous Waste Program portion of the PPA: under Closure and Corrective Action between the second and third sentences of the first paragraph (on page 34): "The goal for corrective action is that by 2005, 95% of high-priority RCRA facilities will have human exposure to toxins controlled and 70% of these facilities will have toxic releases to groundwater controlled." and, under Permitting on page 35 between the first and second sentence: "The specific goal for permitting is that by 2005, at least 80% of hazardous waste management facilities will have controls in place to prevent dangerous releases to air, soil and groundwater."

Nuclear Waste – (comments C17, C18, C19)

C17: As noted, low priority inspections were assigned to a vacant position. However, rather than implying these inspections will never be done, this assignment provides a workload basis from which to fund an inspector to do these inspections. As noted by PEER, there are resource constraints on the work Ecology can accomplish. If there is no workload for an additional inspector, then there will be no funding for that inspector, and the inspections would certainly never get done. We hope that by "assigning" work to a vacant position we are establishing the need for the inspections and a resource deficiency that we hope will be addressed.

C18: Our 2002-03 PPA actually reflects a major increase of compliance with TPA Milestones. We have two M-24 CME inspections planned, a tank farm upgrades (M-43) inspection planned, a watch list tank (M-40) inspection planned, and a follow-up inspection to the LDR report per the Director's Determination planned. In fact, the majority of our inspection workload this coming year is in TPA compliance.

C19. PEER is correct that there are no data reporting requirements in the Nuclear Waste Program portion of the PPA. This was an oversight. The following language has been added:

"The Nuclear Waste Program will input into the EPA national RCRA data system (RCRAInfo) all hazardous waste inspections, enforcement actions,

return to compliance information, corrective action milestones, closure/post-closure milestones, permit milestones and any other data necessary to track Nuclear Waste Program work. Ecology will establish and maintain a system to assure that each inspector, permit writer, and corrective action/closure lead will review the data for each facility they are responsible for on a monthly basis and submit revisions for data input. At no time should the data for any facility be more than two months behind."

Water Quality – (comments C20, C21, C22)

C20: The PPA calls for Ecology to implement Phase 3 of the Wetland Mitigation Evaluation Study by June 30, 2002. This project will implement the recommendations of the Phase 1 report (as well as the soon to be published Phase 2 report) including compliance tracking and enforcement of mitigation project requirements.

C21. Although (in Ecology's opinion) Washington State has one of the best water quality protection programs in the nation, we feel that there is always room for improvement. There are many demands on the state budget, and lack of resources to do everything that needs to be done is something we will always face. Thus, we must set priorities for our work and continually seek improvements in efficiency and effectiveness. This is a fact of life and would not change by re-writing the PPA document.

We agree that the public has a right to know what work and inspections are, and are not, being done. We are continually looking for ways to better communicate with the public on these matters. We will consider this in the preparation of our next Environmental Health and/or other agency and program publications.

C22: This suggestion makes good sense. Unfortunately, the current database is in disrepair and we are not able to track and report on the requested information. However, it is a high priority to develop a functional database and begin tracking and reporting such information as soon as possible.

Air Quality – (comments C14 (C14 was mistakenly duplicated in PEER's comments. The C14 referred to here is the C14 listed under the heading Air Quality Program), C15)

C14: The Washington Department of Health's responsibility to produce a Radiation License (which becomes an applicable requirement that must be added to the Air Operating Permit) is spelled out in a MOU between Ecology and the Department of Health, as well as the applicable regulations. The PPA is an agreement between the Washington Department of Ecology and EPA. The fact that WDOH is not a party to

the PPA does not make the PPA deficient. EPA may, if they wish reach a separate agreement with the Department of Health.

C15: A defined schedule has not been yet established. The issue of finishing the first round of Air Operating Permits is being negotiated in response to a Notice of Intent to Sue and in response to comments received this Spring where citizens were asked to comment to EPA on perceived program deficiencies. This issue will be addressed in due course, but it is not now ripe. Therefore we believe that it is not yet the time to place this issue in the PPA.

Ecology and EPA Response to Puget Soundkeeper Alliance Comments

EPA General Response to Soundkeeper Alliance Comments:

The Soundkeeper Alliance Comments providing suggestions on how to improve the language in the Performance Partnership Agreement (PPA) between EPA and Ecology is appreciated. Several suggestions are made to EPA and Ecology including: year-end reviews/evaluations to determine the overall effectiveness of Ecology's compliance program; clearly identifying Ecology's yearly penalty enforcement actions, looking at penalties issued compared to the final settlement amount; looking at the number of violations recorded annually against the number of enforcement cases initiated; and, encouraging EPA to pay attention to over-filing when appropriate responses have not been taken by Ecology. We will consider these suggestions as we implement this biennial PPA.

Q Is Ecology responsibly implementing and enforcing the goals of the Clean Water Act and penalizing those who fail to comply?

A **Ecology Responds:** The PPA and other publications of Ecology's Water Quality Program describe its efforts to implement the goals of both the federal CWA and state water quality laws. Specifically, with respect to compliance and enforcement, Ecology is in the process of finishing and publishing its Water Quality Enforcement Report for calendar year 2000. That report should answer many questions. A copy will be provided to the Puget Soundkeeper Alliance as soon as it is available, and staff are available to answer specific questions about compliance and enforcement.

EPA Responds: The Department of Ecology does enforce the Clean Water Act as a delegated program from EPA. EPA oversees Ecology's enforcement work. As part of our oversight, we conducted an audit of Ecology's NPDES compliance program in 1999. Specific audit findings were that Ecology demonstrated "above average performance, successful

enforcement activities, innovative activities" and that "Ecology's enforcement response met the EPA timely and appropriate guidance". In addition, we routinely oversee Ecology's enforcement response to facilities that are determined to be in significant noncompliance. Our oversight ensures that timely and appropriate responses are taken on such facilities. Ensuring that Washington and all delegated states are carrying out their Clean Water Act responsibilities is an extremely important responsibility. As such, we will continue to conduct periodic audits and general oversight of Ecology's water quality enforcement program.

Q The Soundkeeper Alliance letter stated that the median penalty assessed from 1994-98 was \$3,000, and that this amount was insufficient.

A During the last two years, the median penalties have risen to over \$9,000 for both years 1999 and 2000.

Q The letter goes on to suggest that, "the DOE needs to discuss what areas are lacking in their enforcement program, as a result of lack of funding or/and a lack of resources, so that the public as well as the EPA know what areas are a known problem that are not being addressed."

A Ecology has responsibilities for not only point source enforcement but also nonpoint enforcement. Ecology indicated through discussions with legislators that it needed additional resources to enforce existing water laws for nonpoint pollution control. The Legislature responded and gave the Water Quality Program 3 new FTEs for nonpoint compliance.

Ecology and EPA Response to Weyerhaeuser Comments

Q With regard to the rule-making process for water quality standards revisions, the PPA over-commits Ecology to a predetermined outcome. Until the rule development and adoption process is complete it is not possible to know what will be included in the regulation revision. The language in this section of the PPA should be amended to refer to the regulation amendment process, without seeming to prescribe the outcome.

A We agree that the rule-making process, including public review, should dictate the outcome of the water quality standards revisions. The PPA is a plan to help guide our anticipated work and allow us to allocate resources to specific tasks. As such, it is subject to revision. See above ("Changes to the Final FY2002-03 PPA in Response to Public Comment") for changes made to the final PPA in response to this.

Ecology and EPA Response to Kalispel Tribe Natural Resources Department Comments

Comment: The Water Quality, Columbia and Snake Rivers section states that TMDLs will be developed for the mainstems of these two rivers and incorporated into FERC licenses. In Washington there are several dams under FERC jurisdiction on these two rivers. And there are federal dams not subject to FERC jurisdiction. There are numerous other dams within the State of Washington that are under FERC jurisdiction and contribute to elevated temperatures and total dissolved gas. The PPA agrees to address these dams and other rivers but does not provide a timeline. It is our hope that the Columbia/Snake TMDL can be used as a model for other rivers and further TMDLs be implemented soon thereafter.

Response: The mainstem Columbia and Snake River TMDLs will address both FERC licensed and federally operated dams. The TMDLs will also consider inputs from tributary streams. Later TMDLs, if necessary, will address dams on tributary streams. The agreement to meet applicable water quality standards and to participate in FERC relicensing and 401 certifications is a critical component.

Comment: The Water Quality, Water Quality Standards section describes passage of revised water quality standards but does not address 303(d) listing. The following section, Reporting, does address 303(d) listing. An important shortcoming of the 303(d) list is that only known impaired waters are listed. Waters that are unassessed are not listed and the default assumption is that they are not impaired. It would be useful to include a list of all waters, a list of documented impaired waters, and a list of unassessed waters. Additionally, certain waters were left off the 1998 303(d) list due to lack of sufficient data although there is reason to suspect impairment.

Response: At this time the 303(d) listing rules do not require identification of waters that have not been assessed due to lack of data, nor does the final list need to indicate waters that have been assessed and found to be meeting standards. Ecology is considering establishing a separate list of "undetermined" waters that are suspected of having water quality problems but lack sufficient data to make a determination. In the longer term Ecology would prefer to track all these categories, but lacks resources to do so at this time. Ecology is investigating the use of new assessment tools that may make this possible.

CHANGES TO THE FINAL FY2002-03 PPA IN RESPONSE TO PUBLIC COMMENT

TEXT CHANGES IN RESPONSE TO PEER COMMENTS

1. In response to PEER comment C7 and other comments regarding accountability, the following language was added to the PPA Public Comment Draft in the Performance Partnership Overview Section "Quality Assurance and Evaluation Process", after the last paragraph: "Ecology and EPA will establish a site on their respective webpages devoted to assessment and oversight of the PPA process. This site will include relevant public documents such as mid- and end-of-year reports for the different media Programs."
2. Also in response to PEER's general comments on accountability, the following language concerning GPRA goals has been added to the Hazardous Waste Program portion of the PPA: under Closure and Corrective Action between the second and third sentences of the first paragraph (on page 34): "The goal for corrective action is that by 2005, 95% of high-priority RCRA facilities will have human exposure to toxins controlled and 70% of these facilities will have toxic releases to groundwater controlled.", and under Permitting on page 35 between the first and second sentence: "The specific goal for permitting is that by 2005, at least 80% of hazardous waste management facilities will have controls in place to prevent dangerous releases to air, soil and groundwater."
3. In response to PEER comment C16 the following language was added to the PPA Public Comment Draft on page 1, at the end of the first paragraph: "This Performance Partnership Agreement (PPA) in no way restricts the legal oversight enforcement authority of the federal Environmental Protection Agency (EPA)."
4. In response to PEER comment C19 the following language was added to the PPA Public Comment Draft in the Nuclear Waste Program portion, under the new Section "Information Management": "The Nuclear Waste Program will input into the EPA national RCRA data system (RCRAInfo) all hazardous waste inspections, enforcement actions, return to compliance information, corrective action milestones, closure/post-closure milestones, permit milestones and any other data necessary to track Nuclear Waste Program work. Ecology will establish and maintain a system to assure that each inspector, permit writer, and corrective action/closure lead will review the data for each facility they are responsible for on a monthly basis and submit revisions for data input. At no time should the data for any facility be more than two months behind."

TEXT CHANGES IN RESPONSE TO WEYERHAEUSER COMMENTS

Following are the changes (indicated by reproducing the "Water quality standards" portion of the Public Comment Draft, and showing changes as strikeouts and underlines) in the Public Comment Draft PPA incorporated into the final PPA in response to Weyerhaeuser comments on Water Quality Standards.

Water quality standards

Environmental goal

1. The development and adoption of water quality criteria and standards that will serve to protect and restore the biological, chemical, and physical integrity of the state's surface waters.
2. The standards shall serve to achieve the "fishable and swimmable" goals established by the CWA, including protection of human health, fish, wildlife, and other aquatic species, especially threatened and endangered species.

What needs to be done to achieve the goal?

1. Completion of the state's current triennial review process, which is examining proposed revisions to the water quality standards, including an anti-degradation plan, use-based standards, revised criteria for temperature and ; dissolved oxygen to protect aquatic species (including endangered or threatened salmonids and bull trout), ~~and~~ revised bacteria criteria, and other miscellaneous changes.
2. Approval of and consultation on the final ~~current~~ proposals to revise the standards.
3. Implementation of the final ~~currently proposed~~ approved revisions.
4. Development of a long term water quality standards strategy for the state, including priorities and timeframes for revisions and additions to the standards, such as nutrient criteria, beach water standards, and other suggested revisions.
5. Development of a strategy for ESA consultation on the standards (see ESA/CWA integration above).
6. Completion of the Regional Temperature Criteria Guidance project.

What measures will be used to show progress?

- A. Adoption by Ecology of final ~~currently proposed~~ revisions, including protection of endangered or threatened aquatic species.
- B. Consultation on and approval of the ~~currently~~ final proposed revisions.
- C. Evaluation and action on the Sauk River anti-degradation petition.
- D. Development of a long-term water quality standards strategy.
- E. Completion of the Regional Temperature Criteria Guidance project.

Steps and Activities

Ecology commits to complete its currently proposed rule making by ~~April~~ May 2002.

EPA and Ecology commit to develop the biological assessment for the current proposals by ~~June~~ July 2002.

EPA commits to working with the Services to complete ESA consultation for the current proposals by ~~August~~ September 2002.

EPA commits to final action on the revised standards by ~~September~~ October 2002.

EPA and Ecology commit to participate in and help to complete the Regional Temperature Criteria Guidance project by November 2001.

Ecology commits to evaluate the Guidance and either incorporate the guidance, or equivalent criteria, into the water quality standards.

Ecology commits to evaluate and take action on the Sauk River petition by June 2003.

EPA and Ecology commit to development of a long-term strategy for the water quality standards by June 2003. Among other topics, the strategy will address the national Water Quality Criteria and Standards Plan.

EPA and Ecology commit to coordinate with tribes on development of state and tribal water quality standards.

FTEs: 2.7