Reinventing Environmental Regulation Via the Government Performance and Results Act: Where's the Money?

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Editors' Summary: In 1993, Congress passed the Government Performance and Results Act (GPRA), which requires federal agencies to prepare strategic plans containing mission statements and statements of their goals and objectives. The plans must explain how the agencies will achieve these goals and must describe the resources they need to do so. The statute also requires agencies to begin preparing annual performance reports in March 2000 that compare their goals and performance indicators with their actual program performance.

This Dialogue examines the impact of GPRA on EPA, and specifically on the Agency's strategic planning and budget processes. The Dialogue begins with an explanation of GPRA and the part the statute plays in recent efforts to "reinvent" government. It then examines historical trends in EPA's budget, especially in light of congressional mandates imposed on the Agency. The Dialogue considers the Agency's 1997 Strategic Plan and 1999 Annual Plan, and discusses the nexus between these documents and the actual fiscal allocations proposed by EPA. In an upcoming Dialogue, the authors will examine GPRA's impact on EPA's relationship with its state counterparts.

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Sometimes it seems that the Federal bureaucracy has the speed and agility of a garden slug. It plods along without seeming to know where it's going or when it will get there, leaving a trial of slime in its wake.

— Sen. William Cohen (R-Me.)

The law simply requires that we chart a course for every endeavor that we take the people's money for, see how well we are progressing … and stop the things that don't work ….

— President Clinton

Equate the size of the federal government with the number of civil servants is a widely held, but misleading, belief and practice. In point of fact, the number of civil servants in the federal government relative to the overall U.S. work force has been steadily declining … Agency after agency has become hollow ….

— Ronald C. Moe

In dingy conference rooms deep in the bowels of federal and state bureaucracies, far from the maddening crowds of inside-the-Beltway policy wonks and the fourth estate, a revolution is ostensibly taking place. Spurred by enactment of the Government Performance and
Results Act of 1993 (GPRA, pronounced "gipra"), the U.S. Environmental Protection Agency (EPA) and its fellow agencies and departments are struggling to reinvent themselves by eschewing "bean counting" for "results."

Cynics who believe in the immutable autonomy of the federal bureaucracy may dismiss these labors as a meaningless exercise in repackaging the status quo. But there are early indications that this particular brand of government "reinvention" could have a profound and lasting impact, achieving results far different from the publicly stated goals of Congress or the President. Despite such high stakes, EPA's struggle to implement the statute has been virtually invisible for the last half-decade, with only subscribers to such esoteric journals as Government Computer News or The Public Manager: The New Bureaucrat fully informed on such developments.3

This Dialogue is the first of a two-part report from the GPRA trenches. It focuses on the law's impact on EPA's strategic planning and budget processes, which in turn determine how the Agency deploys its grossly inadequate resources to implement its overwhelming statutory mandates. Part II will consider GPRA’s impact on EPA’s relationship with its state counterparts, as the Agency strives to persuade increasingly hostile state regulators of the wisdom of its new ways and the necessity of its old.

The Dialogue argues that while GPRA was intended to force EPA to triage its programs, concentrating on those that will deliver tangible benefits for public health and the environment, it is unlikely to accomplish that goal in any sensible or timely fashion. Instead, GPRA will further distract the Agency from what everyone should agree are its core missions. As the EPA career bureaucracy struggles to justify its existence by touting its "actual performance" (e.g., percent of toxic emissions reduced) instead of its administrative accomplishments (e.g., Clean Air Act permits issued, revised, and enforced), there is a real danger that the data supporting those measurements will get cooked, giving us a false sense of the state of the environment and the progress we are making in protecting it.

Equally serious, GPRA gives EPA's congressional critics a new way to avoid responsibility for saddling the Agency with popular programs while starving it of resources, a phenomenon graphically described as "battered agency syndrome" by one of its former administrators.8 That damage is exacerbated by the political opportunism of the Clinton Administration, which has embraced the insidious notion that agencies responsible for the public health and safety should treat regulated industries as "customers" and do more with less to "serve" such constituencies in its own government reform campaign, the National Performance Review (NPR), which is spearheaded by Vice President Gore.2

Ultimately, it is possible that GPRA and comparable initiatives will threaten the principle that fundamental change in national environmental policy must be wrought by Congress, acting in a manner that is transparent to the general public. Because public opinion supporting aggressive environmental regulation is in direct conflict with the views of the leadership in Congress and its corporate constituents, the conservative commitment to reform environmental law has been driven underground, with potentially grave consequences for EPA's long-term viability.

The Dialogue begins with an explanation of the nature and scope of GPRA and where it fits in the galaxy of reinvention initiatives. Because GPRA is first and foremost a vehicle for melding strategic planning and the budget process, the Dialogue next considers the overall EPA budget trends over the last two decades, comparing the Agency's actual spending power with the mandates assigned by Congress. With that critical backdrop established, the Dialogue considers the content of the two EPA documents required by GPRA: the 1997 Strategic Plan and the 1999 Annual Plan, which marked the first time the statute's requirements were applied to the EPA budget process. Finally, the Dialogue discusses the nexus between those documents and the actual fiscal allocations proposed by the Agency.

What GPRA Says

GPRA is short, if not sweet. It begins, appropriately enough, by articulating its own mission: "[W]aste and inefficiency in Federal programs undermine the confidence of the American people in the Government and reduces [sic] the Federal Government's ability to address adequately vital public needs .... [T]he purpose of this Act is to improve [that] confidence … by systematically holding Federal agencies accountable for achieving program results."10

The statute orders all agencies to submit strategic plans covering a period of "not less" than five years to Congress and the director of the Office of Management and Budget (OMB) no later than September 1997.11 Those plans must contain a "comprehensive mission statement," as well as general "goals and objectives."12 Agencies must explain how they intend to achieve their goals and then describe the "human, capital, information, and other resources" they will need to do so.13 They must identify the "key factors external to the
agency and beyond its control” that could affect achievement of their “general” goals and objectives. The agencies are instructed to consult with Congress and also “solicit and consider” the views of all “entities” that are “potentially affected by or interested in” their plans. Lastly, in an offhand acknowledgement of the controversial influence of federal contractors, GPRA requires that strategic plans be prepared “only by Federal employees.”

Strategic plans, apparently intended to be visionary and “big picture,” must be supplemented by “performance plans,” covering each “program activity” set forth in the agency’s budget. Performance plans must establish goals, expressing them in “objective, quantifiable, and measurable form.” They must identify the “indicators” agencies will use to assess “outputs, service levels, and outcomes,” and the “means” they will use to “verify and validate measured values.” Agencies may ask the OMB for waivers of the requirement that they quantify goals, but must justify why they feel an exception is necessary.

Shifting into post hoc gear, GPRA further requires the agencies to begin preparing annual “program performance reports” in March 2000 that compare their goals and indicators with their “actual program performance.” If they fail to achieve success, they must explain why, what they intend to do about it, and whether the goals or indicators themselves are the problem and must be changed.

Having redirected the agencies as best it could through paperwork requirements, Congress throws a potentially significant sop to the political appointees who lead them: beginning in fiscal year (FY) 1999, performance plans may propose waivers of “administrative procedural requirements and controls … including specification of personnel staffing levels, limitations on compensation or remuneration, and prohibitions or restrictions on funding transfers among budget object classifications.” The OMB is authorized to grant such waivers, but is told to implement them on a temporary basis before making them permanent. To date, EPA has not used this procedure.

GPRA began life as a bipartisan accomplishment of the 103d Congress. The legislation was considered by three Congresses before it was enacted and is part of a line of “good government” statutes dating back to the late ’70s. However, as GPRA’s recent history illustrates, these statutes are rarely implemented in a benign atmosphere but instead are commandeered by the political dynamics between the Executive Branch and Congress.

**Big Government and the People**

Beating up on “Big Government” and the federal bureaucracy is a noble tradition in post-Cold War American politics, and all of the reinvention initiatives derive their momentum from those basic instincts. Whether one is a Reagan Republican, a New Democrat, a frustrated Fortune 100 chief executive officer, or a western populist, by keeping the rhetoric simple and avoiding proposals to cut specific programs, it is possible to pitch a big tent with plenty of room for inconsistent substantive agendas. The ’90s name for this exercise is “reinvention,” as in the movement to reinvent government so that it will be “cheaper” but also “cleaner and smarter.”

The problem, of course, is that at some point one’s audience demands to know how the proponent of reinvention intends to improve the status quo, and solutions that are both effective and do not gore the oxen of one’s tent mates are very hard to find. For example, it takes far fewer bureaucrats to prosecute violators of stringent environmental laws than it takes to jawbone the universe of regulated entities into compliance, but this solution presents serious difficulties for industry constituents of the reinvention movement. Similarly, filling the yawning gaps in information about the toxicity of common chemicals is the only truly effective way to establish priorities among environmental risks, conserving resources by targeting those that pose the greatest danger, but this solution not only will cost more money and require more bureaucrats in the short run, it would provoke strenuous resistance by market leaders in several key industries.

Industry representatives will undoubtedly bridle at our provocative use of the word “resistance.” Yet the sad truth is that all the effort expended over the last decade on debating the appropriate methodology for measuring and evaluating risk has yet to produce the information we so obviously need to regulate the most damaging pollution more effectively. In a recent report covering 2,863 organic chemicals produced or imported in amount above one million pounds annually, EPA concluded that there is no basic toxicity information available for 43 percent of such chemicals and that a full set of basic toxicity information is available for only 7 percent. Given this track record, it is reasonable to conclude that crucial interest groups not only lack effective incentives to cooperate in a comprehensive research agenda, but have an affirmative interest in thwarting it. In this atmosphere, limiting government resources without creating those incentives will mean that the vast gaps in knowledge are not bridged anytime soon.

The difficulty of finding substantive solutions that are effective, practical, and politically palatable drives the reinventers to procedural alternatives intended to compel the bureaucrats to downsize themselves, a kind of “one-size-fits-all” reform that applies equally to agencies that distribute public entitlements, run massive public works programs, conduct the nation’s defense, and regulate industry to
protect public health and safety. The risk that administrative gridlock and paralysis will result from this approach does not displease many of the movement's most enthusiastic participants.

GPRA is just such a procedural reform. Ironically, given its bipartisan roots and enthusiastic endorsement by the Clinton Administration, the statute has become the poster child of the Republican Congress, which openly resents Democratic efforts to "hijack" the Big Government issue. On the other hand, clearly aware that GPRA has the potential to aggravate them in a major way, the Clinton Administration's senior executives have decided to put the best possible face on matters, asserting that GPRA and their own brand of reform, the NPR, are entirely consistent and that, as [28 ELR 10566] public servants, they will use them both to produce great results for the people.

Meanwhile, each agency has spawned numerous initiatives of its own, all designed to get out in front of the reinvention game before congressional committee chairmen inflict real damage. Because the Clinton Administration controls the bureaucracy and has proved a better publicist than the Republicans, who are still recovering from the black eye of government shutdowns, EPA's long list of reinvention projects is far more familiar to environmental policymakers and practitioners than the strategic planning GPRA has generated.

It is beyond the scope of this Dialogue to analyze the distinctions between GPRA implementation and the NPR, although the subject is fascinating and well worth further study. For these purposes, it is sufficient to note that the two campaigns have become highly politicized and are susceptible to being confused with each other.

Both campaigns stress doing more with less, reducing federal budgets, and the federal work force. Both give the OMB more power, insisting that cost/benefit analysis be at the forefront of agency decisionmaking. Only the fact that the OMB itself lacks resources prevents it from becoming by far the most powerful entity in the Executive Branch, which some think it is in any event.

But these similarities, as important as they are, can obscure equally important differences between the two campaigns, especially the distinction between the NPR's fixation on "total quality management" principles such as continuous improvement through self-analysis and enhanced morale, on the one hand, and GPRA's authorization of rigorous, even punitive congressional oversight, on the other. Indeed, one scholar has suggested that the NPR is based on the "paradigm" of empowering the bureaucracy to "satisfy the needs of the American people free of politics, red tape, and hierarchy" by shifting "the balance of decision-making power from politics to administration" and by "delaying and downsizing bureaucracy, empowering front-line administrators, and establishing customer service as the objective of federal operations." The Clinton Administration's simultaneous support of GPRA is "paradoxical," because GPRA will "proliferate red tape and increase congressional oversight powers," further politicizing the delivery of government services.

In the near term, the NPR is likely to prove ineffective in deterring Congress from subjecting EPA to withering scrutiny. GPRA gives the congressional leadership a powerful tool to punish agencies through the budget process. If the Republicans keep control of both houses and become better publicists, EPA and other agencies will be driven to justify their activities in a more intrusive manner than ever before, at the same time that the NPR downsizes the work force available to deliver on the promises they make.

**EPA's Actual Spending Power**

Because the reinvention movement derives its political appeal from bashing Big Government, its proponents always promise that reforms will reduce overall agency budgets and staff. The notion that there is fat in every agency's budget is accepted as dogma, and it is heresy to suggest that reinvention could require a major infusion of resources. This endorsement of budget cutting as an overriding value — which is embraced by the full political spectrum — is especially counterproductive in EPA's case, because the Agency suffers from extraordinarily severe budget shortfalls by any objective measure.

In making this argument, we do not intend to suggest that EPA is an exemplar among federal agencies and never wastes money. Rather, we contend that on an aggregate basis, the actual cost of implementing the Agency's statutory mandates outstrips its appropriations by hundreds of millions, if not billions, of dollars. To correctly gauge the effects of GPRA on EPA's performance over the long term, this shortfall must be taken into account. The shortfall has two dimensions: first, the Agency's "outlays" (i.e., money actually spent during a given fiscal year), adjusted for inflation to determine actual purchasing power, and, second, the statutory mandates assigned to the Agency.

**The Money**
For the purposes of this analysis, we focus on the period beginning in 1980, when EPA's outlays peaked in inflation-adjusted — or "real" — dollars. Figure 1 represents EPA outlays (as opposed to authorized or appropriated amounts), reported in actual dollars (top line) and inflation-adjusted or real dollars (bottom line), using a base year of 1970 and the gross domestic product (GDP) implicit price deflator to measure inflation:

[28 ELR 10567]

As Figure 1 illustrates, EPA funding dropped sharply during the period from 1980 to 1984, the first term of the Reagan Administration. Between 1980 and 1984, EPA outlays fell from $2.84 billion to $1.64 billion, or 42 percent. Since 1984, the Agency's spending has either experienced modest increases, small cuts, or has remained stable. However, when these amounts are adjusted for inflation, using the GDP deflator, it is clear that total outlays have remained relatively constant in the years since 1984.

Figure 1-EPA Total Outlays in Actual and Inflation Adjusted ("Real") Dollars, 1970-1996

[SEE ILLUSTRATION IN ORIGINAL]

Source: original computations by authors.

EPA's budget consists of three major components: (1) "operations," a category that consists of salaries, research and development, implementation of regulatory programs, and administration (other than programs associated with trust funds); (2) "construction grants" or "water infrastructure grants," a category that includes grants and loans for such purposes as improved sewage and drinking water treatment systems; and (3) "trust funds," a category that consists of the trust funds earmarked for such purposes as the cleanup of oil spills and toxic waste. EPA has no discretion to shift funds between the three categories to make up for perceived shortfalls.

Figure 2-EPA Budget outlays by Category Measured in Real Dollars, 1970-1996

[SEE ILLUSTRATION IN ORIGINAL]

Source: original computations by the authors.

The following figure illustrates the breakdown between outlays for the three categories during the period 1970-1998, with all amounts adjusted for inflation, again using the GDP deflator and 1970 as the base year:

The most sensible way to gauge the adequacy of EPA resources is to focus on the operational category of the budget and omit from consideration construction grants and trust funds. When adjusted for inflation, the total amounts committed to operations reflect EPA's true purchasing power for designing, writing, implementing, and enforcing regulatory programs, as well as research in support of such efforts. Although construction grant and trust fund spending raise similar issues about the adequacy of the federal resources devoted to environmental protection, they unnecessarily complicate the analysis that is necessary in this context. The proposition that EPA's appropriate role is to set national standards for prospective conduct, as defined by the regulatory programs established by statute, is less controversial than the propositions that the federal government must continue to fund water infrastructure or that the Superfund program is a wise use of the people's money. Many disagree with the statutory mandates themselves, but to our knowledge, no one has suggested that EPA take it upon itself to affirmatively ignore them.

In any event, Figure 2 illustrates that outlays for the operational category of EPA activities, measured in real dollars and using 1970 as the base year, peaked in 1980, and then fell by 25 percent (or $164 million in real dollars) between FY 1980-1984, during the first term of the Reagan Administration. Since FY 1984, the operations budget remained basically level in real dollars until FY 1990, when it began a period of modest increases, reaching its highest point in FY 1993, when it was 15 percent higher in real dollars than the FY 1980 budget.

The adequacy of the recent percent increase must be judged in the context of the extraordinary legislative activism that occurred during the same period, when Congress dramatically expanded the nature and scope of EPA's statutory mandates. A quick review of those mandates, which were added to an already expansive set of pollution control programs, demonstrates just how stark the Agency's funding gap has become.
It is important to keep in mind throughout this analysis that funding shortfalls in any given year have a cumulative effect on the Agency. As it falls behind in implementing its core programs, it is faced with the difficult choice of either using its new money to catch up or to manage mandates that come due that year. A period of decreased or even relatively level funding, as occurred in the decade between FY 1980 and FY 1990, could have a far more devastating impact on the Agency than the recent increase, viewed in isolation, would indicate.

The Mission

Nine major environmental statutes have defined the bulk of EPA's statutory mandates, with some dating back to the period immediately after World War II. They have expanded in scope gradually as new problems emerged, additional industries were regulated, and the federal government's conception of its role became more elaborate, particularly after the creation of EPA in 1970.

By 1980, when the Reagan Administration took office and, coincidentally, EPA outlays peaked, the federal government played a major role in regulating air and water pollution, evaluating pesticide hazards, and supervising drinking water systems. But even those ambitious efforts pale in comparison to the dramatic expansion of the federal role that began in the middle of that decade, during the Reagan Administration's second term. In a display of remarkable legislative activism, Congress overhauled the most important statutes once, and in some cases, twice.

The unifying theme of all these changes is to circumscribe EPA's discretion, directing its activities at a level of detail that even their sponsors acknowledge is unprecedented, even extreme, but which Congress adopted in response to the controversy that plagued the Agency during President Reagan's first term. Having become accustomed to writing such specific legislation, Congress has continued in that vein.

There are myriad examples of expansive new mandates conferred on the Agency, and a brief laundry list of some of the more conspicuous gives an adequate sense of why the gap between congressional expectations and EPA performance has widened to the point that it threatens the Agency's viability as a credible institution.

Beginning with one of the oldest laws, 1987 amendments to the Clean Water Act drastically expanded the scope of EPA's regulation of direct dischargers, requiring it to write new regulations establishing effluent limitations for a lengthy list of contaminants according to a rigorous schedule, with failures to meet those deadlines subject to citizen suits. EPA was also told to develop a program for controlling municipal stormwater discharges and to issue regulations specifying management practices for sewage sludge. The Agency was instructed to launch ambitious new research on the harmful effects of water pollutants, especially as they might affect aquatic ecosystems.

The 1990 amendments to the Clean Air Act for the first time required EPA to set up a system for establishing, tracking, and, if necessary, enforcing the proper use of allowances to emit sulfur dioxide, the cause of acid rain. Although this program may require fewer resources than a traditional command-and-control regulatory program, designing and implementing it was nevertheless a major effort.

Recognizing that EPA had become paralyzed in its effort to control toxic air pollutants, the 1990 amendments established an actual list of substances that must be considered for regulation and put EPA on a rigorous schedule for establishing priorities among such pollutants and regulating the sources that emit them. Congress further mandated that EPA undertake expansive new analysis of the costs and benefits of such regulations, before issuing them and after implementation.

The 1990 amendments also required that EPA revamp the system used to write permits under the Act, placing new and heavy burdens not only on the Agency but on its state counterparts. The amendments made a series of changes in EPA's implementation of the Act's core programs concerning attainment of national ambient air quality standards (NAAQS) and the regulation of mobile sources, further complicating its already delicate relationships with state and local governments. Lastly, they required EPA to establish new programs covering such problems as deposition of toxics in the Great Lakes and coastal waters and the need for more effective emergency planning at facilities using hazardous chemicals.

The Hazardous and Solid Waste Act of 1984 extended EPA regulatory authority under the Resource Conservation and Recovery Act to so-called small quantity generators, bringing thousands of small businesses within the ambit of the Act and requiring the Agency to revamp its regulation of waste management practices. If EPA failed to meet these deadlines, the amendments specified that a "hammer" would fall, subjecting thousands of small quantity generators to the same regulations as apply to large quantity generators.
These amendments also required EPA to develop complex new requirements regarding the land disposal of hazardous waste, providing not only that it could be sued if it failed to meet demanding statutory deadlines but that such failures would trigger statutory "hammers" imposing even more rigorous requirements on industry.\textsuperscript{52}

The Agency was further instructed to write regulations and establish programs to control disposal of hazardous waste by deep well injection and incineration, two increasingly popular methods of managing such materials.\textsuperscript{53} The 1984 amendments required EPA to revise its regulations defining the "characteristics" of hazardous waste.\textsuperscript{54} They put EPA on a strict schedule for issuing permits to hazardous waste treatment, storage, and disposal facilities.\textsuperscript{55} The Agency was required to issue a series of reports and studies analyzing the desirability of regulating a wide range of "special" wastes, including those derived from the mining of coal, uranium, and other metals, burning fossil fuel, operating cement kilns, and oil and gas extraction.\textsuperscript{56}

Safe Drinking Water Act amendments enacted in 1986 placed EPA on a schedule to issue regulations covering a prioritized list of 85 specific contaminants within 3 years of the date of enactment.\textsuperscript{57} The amendments also commanded the Agency to develop complex new regulations concerning the filtration of surface water supplies.\textsuperscript{58} In 1996, Congress reversed gears in this crucial area, removing the numerical quota for regulatory output, but instructing EPA to apply different standards when writing new regulations.\textsuperscript{59}

Last but not least, Congress acted in 1988 and 1996 to address EPA's slow progress in reviewing the safety of widely used pesticides, amending the Federal Insecticide, Fungicide, and Rodenticide Act to require that EPA reregister pesticides still in use\textsuperscript{60} and establishing a continuous process that compels the Agency to review each pesticide product every 15 years of its market life.\textsuperscript{61} The 1996 amendments further required EPA to reevaluate pesticide residue tolerance standards, and existing exemptions from such standards, taking into account the sensitivities of such vulnerable groups as infants and young children.\textsuperscript{62}

The task of carrying out the above mandates is complicated by three relatively recent trends in administrative rulemaking: use of risk assessment to select regulatory targets and design final standards; application of cost/benefit analysis to justify proposed and final rules; and expanded public participation that includes extensive consultation before proposals are published, efforts to negotiate consensus solutions to tough issues, and elaborate rulemaking proceedings that include hearings to take live testimony throughout the country. EPA has embraced all three approaches with a vengeance, in large measure as a response to growing criticism of the Agency.\textsuperscript{63} Whatever their value in improving the quality of final rules, they significantly increase the length and expense of the regulatory process. Yet even these additional burdens have not shaken EPA's top leadership under three presidents from a stance of stoic acceptance of its severe budget limitations.

\section*{EPA as Battered Partner}

The Senate Environment and Public Works Committee, which is responsible for the Senate's participation in crafting all of the legislation reviewed here, has held a hearing on the EPA budget every year since 1980. Six very different administrators — four Republicans (Ann Gorsuch Burford, William Ruckelshaus, Lee Thomas, and William Reilly) and two Democrats (Douglas Costle and Carol Browner) — have testified, sometimes encountering pointed questioning from senators concerned about EPA's shrinking resources.\textsuperscript{64} To a person, they have defended the budget choices made by the president who appointed them.

\subsection*{[28 ELR 10570]}

While this fact is absolutely unremarkable from a political science perspective, it is a telling symptom of the dynamic that makes GPRA so treacherous. Much like the proverbial family that refuses to notice the elephant sitting in its living room while its members have tea, the administrators' unwillingness to articulate their Agency's resource crisis\textsuperscript{65} gives its congressional critics free rein to blame it for the destructive effects of extravagant mandates and fiscal austerity. Add pressure to develop tangible performance measures to the mix, and the stage is set for a new challenge to EPA's wounded credibility.

\section*{EPA's Interpretation of GPRA}

How has EPA interpreted GPRA's mandates, as championed by the congressional leadership in a period of budget austerity? The short answer is that the contest between Democrats and Republicans for control of the Big Government issue has compelled EPA's senior political leadership to accept the status quo of demanding statutory mandates and a budget that has not increased in real dollars for two decades. The Agency has issued two major documents in response to GPRA: the 1997 \textit{Strategic Plan} and the 1999 \textit{Annual Plan}.\textsuperscript{66}

GPRA provides that strategic plans should be "big picture," visionary documents, while annual plans serve as the vehicle for agencies
to present detailed explanations of the methods they will use to reach those goals and how they will spend their requested budget allocations. EPA's 1999 Annual Plan, prepared only a year after its Strategic Plan, does not make noticeable progress toward more specificity and, as a practical matter, with the exception of the addition of budget numbers to the 1999 plan, the two documents are indistinguishable.

GPRA is so new that EPA deserves a grace period to refine its response to this different way of doing business and judgments about its performance are arguably premature. But a close look at the goals and measures it has articulated thus far suggests that time and experience will not solve the Agency's fundamental dilemma. Rather, it is likely to have persistent and serious problems responding to GPRA's demands for the foreseeable future. Unless EPA gets many more resources or is relieved of many of its statutory mandates, it will have tremendous difficulty developing quantifiable performance measures. Even if it does manage to come up with numbers its critics can use to evaluate its performance, these constraints are so severe that the Agency will be forced to manipulate the data it uses to demonstrate progress. Neither scenario is appealing from either a public policy or a management perspective. The building blocks of these unfortunate outcomes are explained below in the order that EPA apparently conceived them.

**Fulsome Prose**

The EPA Strategic Plan begins auspiciously enough, declaring that "The Mission of the Environmental Protection Agency is to protect human health and to safeguard the natural environment — air, water, and land — upon which life depends." It is well written, rich in adjectives and lovely pictures, and unfailingly cheerful and optimistic in tone. Indeed, it is more challenging to read than many EPA publications because the reader soon starts skimming the text, passing quickly by what could be significant passages, and continually looking back to see if there is anything meaty one might have missed.

It is difficult to believe that the same Agency that has been so beleaguered in recent years, that has been described as "battered" and the subject of a "tragedy of distrust" by former administrators and commentators, could really produce such blithe statements as:

EPA's purpose is to ensure that all Americans are protected from significant risks to human health and the environment where they live, learn and work.

EPA's mission reflects the will of the American people as expressed through Congress and six successive Presidents …

EPA's goals [are that] the air in every American community will be safe and healthy to breathe …. All Americans will have drinking water that is clean and safe to drink …. The foods Americans eat will be free from unsafe pesticide residues …. Pollution prevention and risk management strategies … will result in cleaner and safer environments …. America's wastes will be stored, treated, and disposed of in ways that prevent harm to people and to the natural environment …. The United States will lead other nations in successful, multilateral efforts to reduce significant risks …. Easy access to a wealth of information … will expand citizen involvement …. EPA will ensure full compliance with [the law].

EPA and many external stakeholders are now asking "How do we move beyond mere compliance with environmental standards and create a system that consistently delivers better results?" EPA believes that better results will be achieved through performance-based approaches that create incentives for continuous improvements, and through tailored management strategies that take into account the unique conditions and circumstances facing specific industries or communities …

Achieving the Agency's goals is a vast undertaking that will require a wide range of approaches and substantial human, capital, and technological resources. We believe the goals can be reached with our anticipated resources.

Ironically, as self-evident as these statements describing mission and purpose seem, EPA's conception is not devoid of controversy. For example, in a letter dated July 28, 1997, the Republican chairmen of crucial EPA oversight committees commented that EPA's "mission statement" is "overly ambitious and detached from the statutes and regulations which are its founding documents." "For example," the letter continues, "EPA is not, primarily, a 'public health' organization. If public health were the true mission of the Agency, then the goals and measures adopted should relate to public health not, as they do in the draft plan, to measures of ambient environmental quality."
To the extent that EPA wrote the plan to address a broader audience beyond Washington, it was wise to use this opportunity to restate basic ideals. Ultimately, however, the decision to resort to cheerful rhetoric sacrifices an even more important opportunity to explain the brutally hard tradeoffs EPA will be forced to make. By insisting that creative management, "performance-based standards," and new "incentives" will allow it to do much more with less, the Agency's leadership has put it in the classic position of a victim of abuse, implying that when things go wrong, its own shortcomings are primarily to blame.

Contradictory Criteria

Beyond ideals, there remains the task of specifying goals, as well as the methods and resources that EPA will use to meet them. The Agency articulates three criteria for selecting the "specific measurable outcomes" it will achieve over the "next few years," including whether the outcome will: (1) reduce risk to human health and the environment; (2) achieve statutory mandates; and (3) improve the quality and quantity of services delivered. These presumably uncontroversial statements obscure profound contradictions and practical problems.

To begin with, does EPA — or, more precisely, the Agency's top political leadership — believe that all of its statutory mandates would reduce risk if achieved? If it does, why make the painstaking distinction between the first and second criteria? If it does not, which mandates does it have in mind and what are its recommendations for changing — or even discarding — those requirements? Whether one believes that the statutory mandates are of overriding importance and must be maintained or one is convinced that they are excessive and must be reformed, little progress will be made until this underlying issue is faced squarely by all participants in the reinvention debate.

Further, "reducing risk" presumably means reducing pollution or, at the very least, reducing the exposure of people and nature to levels of pollution that will harm them. Whether one believes in the old model of command-and-control regulation or is convinced that the proper set of incentives could motivate beneficial changes in industrial practices, the role of regulator is fundamentally different from the role of service provider included as the third criterion.

Of course, it is always possible to interpret language to fit circumstances. Thus, EPA is in some sense providing a "service" when it writes permits for major industrial facilities, but few of its "customers" would equate the product they are "buying" as helpful to their business in the same manner as the many services they voluntarily purchase in the marketplace. The notion that regulatory agencies have "customers" does not advance, and may well retard, the debate over how they can enforce the law more efficiently because it suggests that they must keep their customers happy, a goal that is impossible in that context.

On the other hand, making EPA's frequently embattled and demoralized bureaucracy more accessible, energetic, flexible, and productive is both an extremely important and very challenging proposition. Especially in a highly technical area like environmental protection, where professionals skilled in certain disciplines are also in great demand in the private sector, improving the morale, productivity, and longevity of the federal work force may well require dramatic departures from traditional pay scales and personnel policies. But the Strategic Plan is the wrong place to look for such proposals, which would depart from the cheerful tone it otherwise adopts in response to those who bash the bureaucracy.

Vague Goals and Indefinite Measures

Given its acceptance of the relationship between its statutory mandates and its funding levels, EPA faces a very difficult task as it struggles to comply with GPRA's requirement that broad ideals be translated into quantifiable results so that congressional overseers can evaluate its performance. The spectacle presented by this struggle is both sad and funny, as EPA vacillates between statements that are vague to the point of being meaningless; that forecast results far into the future; or that make carefully worded, limited promises that specific numbers will be met.

Thus, the Agency promises that by 2010, it will "improve air quality" and make "the air safer to breathe" for Americans who live in areas that do not comply with NAAQS for ozone, and that all areas will come into attainment with the standard no later than 2012. It also promises that by 2005 "visibility will improve nationwide," and that visibility in "national parks and wilderness areas" will improve by "10-30 percent from 1985 levels." As for water, EPA says that by 2005, it will "reduce": (1) consumption of contaminated fish and shellfish; (2) exposure to contamination in waters used for recreation; and (3) "air deposition" of "key" pollutants "impacting water bodies." Also in 2005, 95 percent of people served by community systems will receive drinking water that meets "existing health-based standards" and discharges...
from "key" [28 ELR 10572] point and nonpoint sources will be reduced by "at least 20 percent" from 1992 levels.  

Under a picture of an adorable child eating a cluster of luscious grapes, EPA promises to "reduce by 50 percent" the "risk" posed by agricultural use of pesticides.  

Perhaps finding this simultaneously precise and amorphous statement difficult to digest even in its determined, "can do" frame of mind, EPA explains that risk in this context will be determined by tracking a small number of pesticides as "surrogates" for the large number of products that are not monitored, acknowledging in passing that "the challenge of direct measurement of pesticide risk has not yet been met."  

At an even higher level of generality, the Agency promises that by 2005, the number of young children with "high" levels of lead in their blood will be "significantly reduced from the early 1990's."  

Lead poisoning is an acute and irreversible problem for families in America's older cities, and may well be the most urgent environmental threat facing the nation's children.  

But EPA has neither a statutory mandate to pursue the problem nor the political will to ask for one, and certainly lacks any spare resources to take significant remedial steps on its own, even if it thought that such a goal was of overriding importance.  

In a similarly ambiguous vein, the Strategic Plan pledges that by 2005 (1) "we will significantly increase the introduction by industry of safer or 'greener' chemicals which will decrease the need for regulatory management by EPA"; (2) "15 million more Americans will live or work in homes, schools, or office buildings with healthier indoor air than in 1994"; and (3) "EPA and its partners will increase recycling and decrease the quantity and toxicity of waste generated."  

**Congressional Pressure**  

Such statements have provided easy targets for EPA's congressional critics, who have attacked the Agency for presenting goals and objectives that are "subjective and aspirational."  

They have also exhorted EPA to expend considerably more effort on quantifying the compliance costs of its objectives.  

They have warned the Agency not to stray from its statutory mandates, chiding it for recommending that its mandates be expanded in such areas as community right-to-know and urging it to justify all regulatory objectives by referring to the specific statutory provisions that authorize such activities.  

These critiques are encouraged by conservative organizations like the Heritage Foundation, which reported in a recent edition of its political publication the *Backgrounder* that there are six "early lessons" from agency strategic plans: agencies suffer from "mission creep"; they are committed to "feel good" objectives; they are "tripping over one another"; they want to become "Big Brother"; they will take the "easy way out," ignoring major management deficiencies; and there are only a "smattering" of good results among the agencies reviewed.  

EPA is used as an example of an agency that is doing a miserable job under GPRA throughout this paper, which concludes by declaring that "[i]f the federal government were a business, it would have declared bankruptcy long ago."  

It certainly is no surprise that the congressional leadership has chosen to pursue its political agenda in the context of GPRA, but it is also crucial to recognize the effect this kind of critique will have on EPA's ability to use the planning process envisioned by the statute in a constructive way. Because EPA's senior political leadership, as well as its career staff, fundamentally disagree with the conservative agenda, they will inevitably view GPRA as dangerous territory that they must traverse in a defensive posture. The more pressure that Congress applies, the more EPA staff will be tempted either to avoid the risk of specifying quantitatively precise goals they may not be able to meet or, worse yet, to manipulate the data to support goals that appear quantitative. Three particularly telling areas — air toxics, drinking water, and enforcement — illustrate the dangers of the second course.  

**Manipulating the Data**  

*Air Toxics.* EPA's 1999 Annual Plan proposes to spend some $ 92 million and 390 work years to reduce "air toxic emissions" by 12 percent in 1999, with the Agency promising to meet this quota by "promulgating and implementing" maximum achievable control technology (MACT) standards as required by the Clean Air Act.  

However, it is careful never to specify which chemicals it is talking about, and its choice of 1993 as the baseline year is telling.  

In 1993, a scant three years after the 1990 Clean Air Act amendments sought to move the air toxics program off dead center, EPA had not yet issued final regulations for the vast majority of chemicals and sources specified in the 1990 amendments and, in the absence of regulation, such emissions are rarely monitored.  

Even now, five years after the [28 ELR 10573] year it chose as its baseline, monitoring remains sketchy and many standards have yet to be issued.  

In light of all these difficulties, it is not surprising that EPA fails to name the chemicals covered by its projected 12 percent reduction.
Nevertheless, this figure is a prime example of the cooked data for which GPRA may well become famous. Indeed, in the fine print that accompanies this discussion, EPA opines, in a classic understatement, that "[p]rocedures for quality assurance/quality control (QA/QC) of emission and ambient air toxics data are not as institutionalized as those used for the criteria pollutant program. Air toxics data are not required of states, but are voluntary."96

Congressional critics wielding GPRA as a weapon could draw three possible conclusions from all this waffling: (1) EPA is stubbornly refusing to hold itself accountable for quantifiable "results" with respect to air toxics and must be punished for its intransigence; (2) if the problem of air toxics is so difficult to quantify, it cannot be all that important; or (3) EPA and the states need considerably more resources to evaluate the nature and scope of the air toxics problem, and it is not fair to hold them accountable until they are given the tools to make an honest assessment. The remote possibility that the third alternative will surface in the current atmosphere strikes at the heart of why GPRA could prove so destructive over the long term.

[] Safe Drinking Water. EPA's promises in the drinking water area raise a different, equally important problem: the numbers look specific, but the gist of the weakness of the current regulatory system is that there is no way to determine if they are really true. The Strategic Plan pledges that by 2005, 95 percent of the population served by community water systems will receive water that meets drinking water standards.97 For FY 1999, the Agency requests some $1 billion and 855 work years to support its efforts to reach this goal, with over three-quarters of the money to be spent through the Drinking Water Revolving Fund.98

If EPA's 1999 Annual Plan ever became a topic for dinner table discussion, many people would be shocked to learn that in seven years from now, 5 percent of the people living in the richest nation in the world would drink unhealthy water. Putting aside that threshold question, however, recent history indicates that without drastic changes in the regulatory system, there is no reliable way to determine if drinking water systems are meeting EPA's slowly evolving standards, especially the small ones that cannot take advantage of economies of scale.

In 1990, the U.S. General Accounting Office (GAO) reported that the number of violations reported to EPA was "considerably understated" because water system operators did not know how to perform tests or deliberately falsified them.99 In 1993, GAO completed an analysis of states' efforts to conduct so-called sanitary surveys, the primary method under the law for evaluating compliance other than drinking water system self-reporting.100 It found that 45 states omitted 1 or more of the 14 key components recommended by EPA from the surveys they conducted.101 At least 26 states did not conduct surveys every 3 years as recommended by EPA, and more than half of the state inspectors nationwide lacked any formal training on how to do their job.102 Even when surveys uncovered violations, state regulators did not take effective action to follow up; some 80 percent of the 200 surveys examined by the GAO disclosed serious deficiencies and 60 percent cited the same problems identified in previous surveys.103

These findings indicate the huge effort it will take to achieve the goal of making drinking water safe for 95 percent of the population. Admittedly, EPA proposes to throw a large sum of money at the problem, but this money will primarily be spent to help small water systems upgrade, rather than to verify compliance. Further, the $775 million EPA wants to devote to such loans and grants must be assessed in the context of how much it will cost to install needed pollution control, an amount estimated by one well respected technical firm at $17 billion through the year 2000.104

However much aid EPA gives drinking water systems, only a dramatically improved program for verifying compliance at the state level will verify whether this GPRA goal has been met. As will be discussed at greater length in a subsequent Dialogue, EPA is in no position to do much if the states fall down on this important job. The Agency's own budget shortfalls mean that it cannot credibly threaten to withdraw state authority to run federally authorized drinking water programs.105 In fact, there is no mention in either the Strategic Plan or the Annual Plan of any plans to enhance the effectiveness of such programs.

Ultimately, GPRA's demand that EPA commit itself to quantifiable goals could have the perverse effect of giving the Agency and its state counterparts a powerful incentive not to check too carefully if the drinking water systems they regulate have in fact met those goals. Alternatively, federal and state regulators could lower the standards for judging whether water is safe so that more public water systems can achieve compliance. Under either scenario, the public will receive a false picture of drinking water safety, a state of affairs[28 ELR 10574] that could continue until a public health catastrophe like the 1993 incident in Milwaukee provokes another turn of the pendulum that has so shaken the Agency.106
resources for such efforts.

Thus, in an article on EPA's FY 1997 enforcement priorities that was published in the National Association of Attorneys General magazine *Environmental Enforcement Journal*, Herman admits he was alarmed to discover at the end of FY 1996 that the number of inspections of regulated facilities — "the critical activity used to assess compliance and feed the future enforcement 'pipeline'" — had fallen by a whopping 40 percent. He blames this disconcerting statistic on the "effects of the government shutdowns and the prolonged budget impasse" and reassures readers that once these problems were resolved, EPA staff went "full speed ahead" to implement their mission.\(^{107}\)

Herman does not mention that EPA's *Enforcement and Compliance Assurance Accomplishment Report* for FY 1996 reveals that between FY 1993 and 1996, administrative actions initiated by EPA dropped by 39 percent to the lowest level since 1983;\(^{108}\) state administrative actions dropped by 22 percent; and judicial referrals dropped by 37 percent.\(^{109}\) Instead, the report makes the transition to reporting GPRA-inspired "outcomes" by describing at some length how EPA settlements reduced pollution and produced financial value for the public.\(^{110}\)

There is certainly nothing intrinsically wrong with touting settlements that substantially reduce toxic releases by a major discharger and gain millions of dollars in penalties (or, for that matter, increased expenditures on compliance). Focusing primarily on such results, however, will inevitably erode the *deterrent* value of enforcement, especially if federal and state regulators succumb to the temptation to hit a few big companies in order to make their numbers with as few resources as possible. As inspections of other facilities fall precipitously, and the total number of cases drops, crucial segments of regulated industry will figure out that the chances of getting caught for their transgressions are much more remote. For the same reason that local police walk a beat or bring their official cars home at night, quick arrests that win large jackpots do not keep the streets safe for everyone.

Even more treacherous, EPA has proposed that federal and state regulators begin to use a "Performance Index" to "measure" — estimate is undoubtedly a more accurate term — the effects of their enforcement and "compliance assurance" activities on "external" behaviors, especially compliance rates among regulated entities.\(^{111}\) Picking up the theme of serving customers introduced by the Clinton Administration's NPR, the Index would retain reporting of traditional "outputs" such as inspections conducted, but would add statistics on compliance assistance efforts and some-how derive from that information the rate at which regulated entities comply with rules.\(^{112}\)

Once again, this effort could improve the effectiveness of EPA and state enforcement programs if it results in significantly increased and more rigorous inspections that have as their goal the determination of overall compliance as opposed to the discovery of more minor violations that justify the "bean" of an enforcement action. Without more resources, however, it is far more likely that federal and state regulators will resort to less reliable gauges of compliance rates, extrapolating from a smaller universe of actual experience in the field as pressure to demonstrate "outcomes" mounts.

At a 1997 conference on the implementation of the new system, state regulators pleaded with EPA to keep the new system clear and simple, stressing the difficulty of estimating compliance rates, as opposed to enforcement actions taken.\(^{113}\) As these line regulators debated the merits of various performance measures, negotiating to make the new paradigm liveable at all levels of government, one particularly perceptive EPA regional office employee began to envision the long-term implications of producing optimistic estimates of compliance rates to satisfy the Agency's critics. "Just because the crime rate goes down, you don't start firing the cops," she commented, and probably should have added, "Do you?"\(^{114}\)

**The 1998 Budget Numbers**

Given the pressure that GPRA, the NPR, and its own self-generated reforms have created to do more with less, we reach the final question in this analysis: has EPA significantly changed the way it spends its money? As Figures 3 and 4 demonstrate, in the context of an overall budget request of $ 7.6 billion for FY 1998, EPA has made only incremental [28 ELR 10575] shifts in budgeting for its two most intensive regulatory programs: air and water.

**Figure 3-Budget Appropriations for Air and Water Programs 1994-1998 (measured in actual dollars).**

[SEE ILLUSTRATION IN ORIGINAL]

Source: original computations by authors.\(^{115}\)
Figure 4-Core Air Regulatory Program Expenditures, 1994-1995 (in millions).

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As Figure 3 demonstrates, from 1994 to 1998, the budget for water regulation has increased 22 percent, or an average of 5.5 percent per year, while the budget for air regulation has increased by 25 percent, or an average of 6.25 percent per year. However, given an annual rate of inflation of approximately 3 percent, in real dollars, increases in these regulatory budgets are significantly less.

Figure 3 further shows that funding for the air programs jumped from $572 million in the approved 1997 budget to $668 million in the requested 1998 budget. Nearly half of this increase is due to a $42 million request for additional funding of the "Global Change Program."116 That program is the subject of significant controversy between the Clinton Administration and Congress and received approximately $33 million less than the Administration requested in FY 1997.117

A closer look at the budget breakdown for air regulation reveals that EPA's program-specific allocations have not changed significantly since GPRA was enacted. Figure 4 represents a cross-section of programs that develop and implement regulations, including money spent on research, standards development, and state assistance for regulatory implementation.118 Ironically, in its FY 1998 budget request, EPA consolidated several budgetary programs with the result that it is now more difficult to determine the break-down of money spent on these specific regulatory activities. However, comparison of the trends between these crucial categories shows merely incremental changes in most of them.

Although the congressional leadership will undoubtedly conclude otherwise, willful resistance to GPRA is the least important — and least interesting — reason that EPA budget allocations have remained relatively stable since GPRA was enacted in 1993. Rather, EPA's contortions over these figures bear more resemblance to an effort to rearrange the proverbial deck chairs on the Titanic, with the Agency emphasizing the regulatory efforts that are the source of its greatest pride while still managing to stay one step ahead of its statutory mandates and the numerous lawsuits that have been brought to enforce the deadlines conferred by earlier Congresses. The simple truth is that EPA does not have much, if any, discretion to triage the components of its overall mission and will continue to take routine beatings until Congress not only recognizes but responds to this reality.

Conclusion
If Congress really wants GPRA to serve as a moment of truth, as opposed to an instrument for punishing bureaucrats in the press, and if the Clinton Administration is really serious about reinventing EPA, as opposed to eliminating Federal Register pages and trimming the number of full-time employees, they must ask the Agency a different set of questions than it has answered thus far. What resources does EPA need to fulfill its statutory mandates? How would the Agency rank those mandates as they affect the short- and long-term protection of the environment and human health? Are there ways that its authorizing statutes could be modified to allow it to write and enforce regulations more efficiently?

Unless they are willing to ask — and hear the answers — to such tough questions, GPRA will not serve the legitimate purpose intended by the bipartisan coalition that enacted it: compelling bureaucracies to evaluate the effect of their activities on the real world, continuously justifying the money they spend in relation to their accomplishments. Instead, GPRA will force a beleaguered EPA to develop misleading measurements that lull the public into a false sense that it has achieved its mission, once again removing the debate in Washington from what is happening in the real world.


5. An on-line search of the Lexis-Nexis on-line database of national magazines yielded only a small handful of articles on GPRA in any publication that could remotely be described as popular or mainstream, but produced literally dozens of articles debating the nuances of the law and federal agency efforts to implement it in journals catering to business, management, or financial professionals.


7. See, e.g., Moe, supra note 3, at 111, which describes the distribution of laminated wallet cards at an event where Vice President Gore presented the NPR to President Clinton and the public on September 7, 1993. The cards said:

We will invent a government that puts people first, by:

* serving its customers

* empowering its employees

* fostering excellence

Here's How: We will —

* create a clear sense of mission.

* delegate authority and responsibility.

* replace regulations with incentives.

* develop budget based outcomes.

* measure our success by customer satisfaction.
Reinventing Environmental Regulation Via the Government Performance and Results Act: Where's the Money?


9. U.S. EPA, 1999 Annual Plan [hereinafter 1999 Annual Plan] (copy on file with authors). This document has never been published, but can be obtained in an unbound, photocopied version from EPA.


12. Id. § 306(a)(1).

13. Id. § 306(a)(2).

14. Id. § 306(a)(5).

15. Id. § 306(d).


17. Id. § 1115(a)(2) (emphasis added).

18. Id. § 1115(a)(4), (6).

19. Id. § 1115(b).

20. Id. § 1116 (provisions regarding program performance reports).

21. Id. § 9703.


27. For example, one of the Clinton Administration's most influential policymakers, Alice Rivlin, at the time Director of the OMB, has explained GPRA as a way to "reduce the [budget] deficit in an intelligent way." Alice M. Rivlin, Linking Resources to Results: Management and Budgeting in a Time of Resource Constraints; Government Performance and Results Act of 1993, PUB. MANAGER: NEW BUREAUCRAT, June 22, 1995, at 3, 4; see also Shoop, supra note 26.


Amy Waldman has argued that "GPRA will work only if Congress takes an interest in it," because the OMB "needs some serious beefing up," and noted that in 1955, the OMB had 450 staffers for a federal budget of $ 68.4 billion, while today, it has 550 people to oversee a budget in excess of $ 1 trillion. Waldman, supra note 29, at 36.

Republican leaders have already issued such threats and, over strenuous objections from the OMB and the agencies. House Republicans recently passed a bill requiring agencies to submit new strategic plans by September 1998 because they thought the 1997 plans were so inadequate. See Shin, supra note 26; House Passes GPRA Change, GOV'T COMPUTER NEWS, Mar. 23, 1998, at 6.

Outlay figures were obtained from EXECUTIVE OFFICE OF THE PRESIDENT, BUDGET OF THE UNITED STATES GOVERNMENT FISCAL YEAR 1999: HISTORICAL TABLES 67-69 (1998). The GDP implicit price deflator is a commonly used measure of aggregate price change for the entire U.S. economy. Id. at 169-70; see also The People and Information Exchange, Inflation Rates and Adjustments: Implicit Price Deflator 1959-1996 (visited July 2, 1998) http://pie.mhsc.org/DataPages/sd-079.htm (copy on file with authors) [hereinafter GDP Deflator Rates], The methodology used in this Dialogue to calculate EPA's outlays in real dollars is also specified in that publication.


For a concise history of this evolution, see ROBERT V. PERCIVAL ET AL., ENVIRONMENTAL REGULATION LAW, SCIENCE AND POLICY 102-14 (2d ed. 1996).


Id. at 3871.

Id. at 3877.

Id. at 3867-70.

Id. at 3881 (Great Lakes program); id. at 3872-73 (emergency planning requirements).


Id. at 5658.

Id. at 5657-59.

Id. at 5675-76.

Id. at 5665-66.

Id. at 5661-62, 5664-65.


EPA's first and best-known administrator, William Ruckelshaus, deserves much credit for delivering this message forcefully since he left office. See, e.g., Ruckelshaus, supra note 6.

STRATEGIC PLAN, supra note 8; 1999 Annual Plan, supra note 9.


Ruckelshaus, supra note 6.


STRATEGIC PLAN, supra note 8, at 16.

Id.

Id. at 16-17.

Id. at 9.

Id. at 24 (emphasis added).

77. Id.

78. STRATEGIC PLAN, supra note 8, at 24.

79. Id. at 26.

80. Id. at 27.

81. Id. at 29.

82. Id.

83. Id. at 35.

84. Id. at 36. For a general description of EPA's difficulties in this area, see U.S. GAO, PESTICIDES — EPA'S EFFORTS TO COLLECT AND TAKE ACTION ON EXPOSURE INCIDENT DATA, RCED 95-163 (1995).

85. STRATEGIC PLAN, supra note 8, at 37.


87. STRATEGIC PLAN, supra note 8, at 37.

88. Congressional Letter, supra note 76.

89. Id.

90. Id.

91. Angela Antonelli & Geoffrey Freeman, Warning: Expect Bad Results From the Results Act Without Congressional Oversight, HERITAGE FOUND. BACKGROUNDER, Sept. 23, 1997, at 4 (copy on file with authors).

92. Id. at 14.

93. "Work year" is a unit measuring the output of a single person working full time for one fiscal year. See 1999 Annual Plan, supra note 9, at 1-3.

94. Section 112 requires EPA to set technology-based standards for sources of 188 air toxics over a 10-year period beginning on November 15, 1990. 42 U.S.C. § 7412(e), ELR STAT. CAA § 112(e). EPA has identified 174 source categories that will be subject to MACT standards for those air toxics, but as of early 1998, the Agency reported to Congress that it had completed about one-quarter of the regulations expected to result from the statute, a goal it was supposed to have achieved three years earlier. Alec Zacaroli, Air Toxics: Air Toxics Regulations Will Cut Emissions by 1 Million Tons Per Year, Report Says, 28 Env't Rep. (BNA) 1749 (Jan. 16, 1998) [hereinafter Air Toxics]; 42 U.S.C. § 7412(e)(1)(C), ELR STAT. CAA § 112(e)(1)(C) (setting 1994 deadline).

95. See, e.g., Air Toxics, supra note 94. Because EPA is preoccupied with the defense of decisions to tighten standards for particulate matter and ozone, the prospects for tremendous improvement in this aspect of its regulatory agenda appear dim for the foreseeable future. Alec Zacaroli, Stationary Sources: Implementation of Ozone. PM Standards to Dominate EPA Air Agenda in 1998, in ENVIRONMENTAL OUTLOOK '98, 28 Env't Rep. (BNA) S-7 (Jan. 16, 1998).

96. 1999 Annual Plan, supra note 9, at 1-31.

97. STRATEGIC PLAN, supra note 8, at 29.
1999 Annual Plan, supra note 9, at II-4.


Id. Among the items routinely omitted were evaluations of operator qualifications and the condition of distribution systems.

Id. at 15-16, 23.

Id. at 4. The most frequently observed deficiency was failure to prevent cross-connections that mix potable and contaminated water.

APOGEE RESEARCH, INC., AMERICA'S ENVIRONMENTAL INFRASTRUCTURE: A WATER AND WASTEWATER INVESTMENT STUDY 6 (1990). This estimate is based on necessarily speculative predictions concerning such factors as the costs of future regulations and the capital investment needed to repair aging infrastructure.

See, e.g., 1993 Browner Testimony, supra note 64, at 23 ("There are some States that have seriously considered returning primacy to the Federal government. I will be very honest with you, we don't have the resources to manage even one major State if primacy were to be returned.").

In the spring of 1993, the city of Milwaukee suffered the largest waterborne disease outbreak ever recorded in the United States. More than 400,000 people fell ill following exposure to the intestinal parasite cryptosporidium; 44,000 visited health care facilities, and 4,400 were hospitalized. Post mortems blamed a combination of factors, including operator error, bad weather, and the lack of federal standards for this particular strain of microbial contaminant. See, e.g., Velma Smith, Disaster in Milwaukee, EPA J., Summer 1994, at 16; Ruth L. Berkelman et al., Infectious Disease Surveillance: A Crumbling Foundation, 264 SCIENCE 368 (1994). For the characterization of EPA's fortunes as the product of a swinging political pendulum, see Ruckelshaus, supra note 6.


Id. tbl. A-6.

Id. § 2.4 ("Impacts of Settlements") (visited June 24, 1998) http://es.epa.gov/oeca/96accomp/2.html.


Id.

Enforcement: State Officials Say New Tools Needed to Gauge Compliance Program Effectiveness, 28 Env't Rep. (BNA) 321 (June 13, 1997). To its credit, EPA has insisted that any new measures be superimposed on the current system of tracking the number of inspections and different types of enforcement actions actually accomplished. Id.

Id.
Figures were derived from U.S. EPA, FISCAL YEAR 1996 JUSTIFICATION OF APPROPRIATION: ESTIMATES FOR THE COMMITTEE ON APPROPRIATIONS ADMINISTRATION & RESOURCE MANAGEMENT 2-1, 2-15, 2-48, 2-57, 2-71, 2-80, 2-85, 2-94, 2-115, 4-1, 4-11, 4-21, 4-29, 4-33, 4-40 to 4-41, 4-60, 4-75, 4-83 (1995) [hereinafter FY 1996 JUSTIFICATION]; and U.S. EPA, FISCAL YEAR 1998 JUSTIFICATION OF APPROPRIATION: ESTIMATES FOR THE COMMITTEE ON APPROPRIATIONS ADMINISTRATION & RESOURCE MANAGEMENT 2-289 to 2-300, 3-151 to 3-154, 9-51 to 9-53 (1997) [hereinafter FY 1998 JUSTIFICATION]. It is important to note that the figures shown for FY 1998 are EPA's budget requests, as opposed to the final congressional appropriations shown for the previous years, because detailed breakdowns of appropriations received are generally not available until the following fiscal year. Further, these figures do not include water infrastructure grants.


Figures were derived from FY 1996 JUSTIFICATION, supra note 115, at 2-1, 2-15, 2-48, 2-57, 2-71, 2-80, 2-85, 2-94, 2-115, 4-1, 4-11, 4-21, 4-29, 4-33, 4-40 to 4-41, 4-60, 4-75, 4-83; and FY 1998 JUSTIFICATION, supra note 115, at 2-289 to 2-300, 3-151 to 3-154, 9-51 to 9-53. Once again, FY 1998 figures reflect EPA's budget requests and do not include water infrastructure grants.