

Survey of State Support for Performance-Based Environmental Programs and Recommendations for Improved Effectiveness

Final Report

Executive Summary

At the request of Administrator Leavitt, the Environmental Council of the States (ECOS) has prepared this report to describe the level of support among states for Performance Track and state performance-based environmental leadership programs and to recommend actions states believe EPA should take to improve the effectiveness and enhance the value of these programs. These recommendations are based on interviews with commissioners and senior management from 40 state environmental protection agencies. ECOS also met with representatives of the Performance Track Participants Association to seek their input.

The fundamental goal of Performance Track and other state innovations programs is to achieve better environmental results. As such, these programs tend to focus on environmental outcomes (reduced emissions or higher compliance rates) rather than operationally-based output measures (number of inspections or permits). These programs often provide regulatory flexibility, creating opportunities for high performers to go beyond the compliance measures that are typically established by regulations. They also provide opportunities for state and federal government, as well as the regulated community, to target financial and human resources more strategically to produce better overall environmental results.

The ECOS states applaud Administrator Leavitt, Steve Johnson, and the key leaders at the Environmental Protection Agency for their leadership and vision to advance these goals through Performance Track and other state programs. These programs represent a fundamental change from the past approach to environmental protection, focusing on incentives and risk-based decision-making. They will require commitment and careful direction to succeed. With the priority and support currently coming from the administrator and his staff, these programs have the potential to move the country significantly forward in meeting and exceeding its environmental goals.

We found substantial interest among states in performance-based environmental leadership programs:

- More than 20 states have active state-level performance-based programs, and an additional five states are currently developing programs;
- Eighteen states rank performance-based leadership programs among their 10 top priorities (eleven of these rank them among their top five priorities);
- Nearly half of the states interviewed for this effort (19 states) report actively promoting Performance Track; and
- Nine states have signed Memoranda of Agreement (MOAs) with EPA to enhance coordination and alignment of their state-level efforts with EPA's Performance Track program.

ECOS believes that performance-based programs, such as EPA's Performance Track and similar state programs, have the potential to play an increasingly important role in our nation's environmental management system. Performance-based programs can:

- Encourage and reward strong and sustained environmental performance improvement among the regulated community that goes beyond compliance and addresses unregulated environmental issues;
- Foster greater collaboration between environmental regulatory agencies and high-performing companies and government facilities to achieve state and regional environmental goals and address environmental problems;

- Support the development of cost-effective approaches for achieving environmental goals that focus on performance results; and
- Free some agency compliance assurance resources to address higher environmental priorities.

Because of our strong support for performance-based programs, ECOS welcomes the opportunity to offer recommendations to EPA for actions that can strengthen both Performance Track and state programs and make them core elements of the environmental protection system in the U.S. Our recommendations fall into four main areas. These areas, along with recommended priority actions for attention in 2005, include:

1. Support State Programs and State Efforts to Work with Performance Track

- EPA and states, through Performance Partnership Agreements (PPAs) or other state planning agreements, should provide credit to states for environmental and compliance outcomes achieved through performance-based programs. Such credit should be negotiated between the state and their EPA Regional counterparts and include tradeoffs with traditional output measures. To facilitate this process we recommend that EPA and ECOS jointly develop guidance documents for Headquarters and Regional program staff that encourage and accept the use of alternative outcome measures of performance-based programs.
- Direct management to create specific line items in each office budget to include support for performance-based programs as a component of the FY 06 budget development process – both financial and in-kind (e.g., funding positions for experts within EPA regional offices to assist states). States can use this support for program management, outreach, recruitment and incentive implementation related to Performance Track and state performance-based environmental leadership programs.

2. Assure Program Support from All EPA Program Offices

- Establish an EPA-ECOS working group (perhaps through the ECOS Planning Committee) to facilitate building Performance Track into next year's strategic plan for each EPA regional program office. The plan development process should focus –on building support from program office staff and empowering them with appropriate performance measures. This will help move Performance Track goals and responsibilities into core programs and ensure that staff from all program offices at EPA Headquarters and Regions are familiar with, responsible for, and actively support federal and state performance-based programs.

3. Provide Better Incentives to Participants Faster

- Convene an EPA-ECOS working group to establish a revitalized system for identifying, developing, and implementing incentives for Performance Track and state programs. This effort should also include the National Pollution Prevention Roundtable (NPPR), Multi-State Working Group (MSWG) and participants in Performance Track and state performance-based programs – all partners in advancing the effectiveness of these programs. By September 2005, the working group should produce a detailed blueprint of a streamlined process for incentives development with lower transaction costs, which involves active participation of representatives from across EPA's program offices and ECOS.
- Establish a joint EPA-ECOS working group to conduct an evaluation of potential regulatory and statutory options for supporting performance-based programs and incentives by September 2005.

4. Conduct More Strategic Marketing and Education of the Programs

- Establish a working group, comprised of EPA, ECOS, NPPR, MSWG and participants in performance-based programs, to develop a long-term strategic plan by December 2005 for “branding” the Performance Track and state programs. The plan should identify strategic outreach and participant recruiting actions to pursue, including joint marketing of Performance Track and state programs at high visibility events, targeting “sectors of opportunity” at the state-level, and designing outreach and marketing materials that can be customized by states to meet their needs.

The attached report contains additional specific actions that ECOS recommends for making performance-based environmental programs more effective. **ECOS is firmly committed to working with EPA to implement these recommendations; members of our Cross-Media, Compliance and Planning Committees stand ready to participate in these activities and help advance the success of these important programs.** As proposed in this report, a joint EPA-ECOS working group, with additional participation from NPPR, MSWG and members of performance-based programs, could serve as an effective mechanism for making rapid progress on many of the specific recommendations in 2005.

I. Introduction

At the request of U.S. Environmental Protection Agency (EPA) Administrator Leavitt, the Environmental Council of the States (ECOS) has prepared this report to recommend actions states believe EPA should take to improve the effectiveness of performance-based environmental leadership programs. This request emerged from a breakfast discussion on performance-based programs between Administrator Leavitt and ECOS representatives on October 4, 2004 in Oklahoma City, Oklahoma.¹ These recommendations are based on interviews with commissioners and senior management from 40 state environmental protection agencies.

What are performance-based environmental leadership programs?

Performance-based environmental leadership programs, such as EPA's National Environmental Performance Track (<http://www.epa.gov/performance-track/>), are voluntary partnership programs that recognize and reward private and public facilities that demonstrate strong environmental performance beyond current requirements. The fundamental goal of Performance Track and other state innovations programs is to achieve better environmental results. As such, these programs tend to focus on environmental outcomes (reduced emissions or higher compliance rates) rather than operationally-based output measures (number of inspections or permits). These programs often provide regulatory flexibility, creating opportunities for high performers to go beyond the compliance measures that are typically established by regulations. They also provide opportunities for state and federal government, as well as the regulated community, to target financial and human resources more strategically to produce better overall environmental results.

Interest in performance-based environmental leadership programs has risen over the past decade: more than 20 states have active state-level performance-based programs, and an additional five states are currently developing programs. Based on our interviews with state commissioners and senior managers, 18 states rank performance-based leadership programs among their 10 top priorities (eleven of these rank them among their top five priorities), and nearly half of the states interviewed for this effort (19 states) report actively promoting Performance Track. In addition, nine states have signed Memoranda of Agreement (MOAs) with EPA to enhance coordination and alignment of their efforts with EPA's Performance Track program. These MOAs focus on joint outreach, application process alignment, reciprocity, and coordinated incentive development.

Why is this report needed?

Despite the interest and initial success of performance-based environmental leadership programs, EPA and states face substantial challenges in ensuring that these programs continue to grow and ultimately meet their full potential by becoming core elements of our nation's environmental management system. There is a need to **reduce transaction costs**², both for agencies in developing and implementing these programs, and for facilities that choose to participate in them. EPA and states also need to provide **better incentives faster** to attract and retain program participants. In addition, greater flexibility is needed to allow states to utilize performance-based programs to achieve state-specific environmental goals and address environmental problems.

¹ Representatives from the following states participated in the October 4, 2004 discussion with EPA Administrator Leavitt: California, Colorado, Delaware, Iowa, Maine, Massachusetts, Minnesota, North Carolina, Pennsylvania, South Carolina, Tennessee, Texas, Utah, and Virginia.

² In this report the term transaction cost is used to refer to the protracted time it takes to achieve a proposed result and the organizational resistance to change at multiple levels which requires continued and persistent advocacy for an uncertain outcome.

This report is intended to identify specific actions to effectively address these and other challenges in promoting and improving beyond-compliance performance through performance-based environmental leadership programs. In order to be successful, the states must join EPA in taking these important steps. Our hope is that this report serves as a blueprint for future collaboration between EPA and states that builds on the strong level of interest in performance-based programs at EPA and among states. Given the high level of interest in these programs that we found through interviewing state commissioners and senior managers, we are confident that the states will be effective partners for EPA in this important work.

The ECOS states applaud Administrator Leavitt, Steve Johnson, and the key leaders at the Environmental Protection Agency for their leadership and vision to advance Performance Track and state performance-based programs. These programs will require commitment and careful direction to succeed. With the priority and support currently coming from the administrator and his staff, these programs have the potential to move the country significantly forward in meeting and exceeding its environmental goals. We would like to affirm ECOS' strong support for EPA's Performance Track program and for state-level performance-based environmental leadership programs, as well as our interest in working with EPA to follow-up on the recommended actions presented in this report.

The EPA-ECOS working relationship has continually strengthened in recent years. The National Center for Environmental Innovation (NCEI) has worked closely with the Cross-Media Committee to develop a joint workplan and the chairs of the committee have been invited to sit as participating members of the Innovation Action Council (IAC). In addition, EPA has invited the ECOS Planning and Alignment Committee to work with it in developing agency strategic plans with state input and establishing joint performance measures. This is resulting in better communication, better goals, and a common direction for environmental protection. These committees are committed to continuing this relationship and welcome the opportunity to participate in building strong and effective innovations programs, such as Performance Track and state performance-based programs, which focus on achieving greater environmental results.

What is our vision for performance-based programs?

ECOS believes that effective performance-based programs can become an essential component of the environmental protection system in the U.S. Our vision for the future of these programs consists of the following four elements that we view as fundamental to their success:

- These programs are no longer “innovative,” but are counted among the core agency programs with measurable outcomes;
- Transaction costs of developing, implementing and participating in performance-based programs are low;
- States and EPA jointly implement sufficient incentives to inspire facilities to participate and to achieve meaningful beyond-compliance performance; and
- States are allowed and encouraged to utilize performance-based programs to work with regulated entities to develop creative and effective solutions that address state environmental priorities.

What was the process for preparing this report?

The ECOS Cross-Media Committee co-chairs convened a subgroup of interested state agency representatives to prepare this report in response to a request from Administrator Leavitt for a list of recommended actions to improve the effectiveness of performance-based environmental leadership programs. We were able to hold informal interviews with environmental commissioners and senior managers from 40 states. Based on the information from these interviews, which is summarized in Attachment A, we developed the recommendations outlined in this report. In addition, we met with representatives of the Performance Track Participants Association (PTPA) to obtain additional insights

from the perspective of program participants. These recommendations have been shared with state commissioners of all 50 states and received broad-based support. The Executive Officers of ECOS support this report and the chairs of the Cross-Media, Planning and Compliance Committees stand ready to work closely with EPA to implement these recommendations.

II. Recommendations to EPA

ECOS believes that performance-based programs, such as EPA's Performance Track Program and similar state programs, have the potential to play an increasingly important role in our nation's environmental protection system. Performance-based programs can:

- Encourage and reward strong and sustained environmental performance improvement among the regulated community that goes beyond compliance and addresses unregulated environmental issues;
- Foster greater collaboration between environmental regulatory agencies and high-performing companies and government facilities to achieve state and regional environmental goals and address environmental priorities;
- Support the development of cost-effective approaches to achieving environmental goals that focus on performance results; and
- Free some agency compliance assurance resources to address higher environmental priorities.

To accomplish these goals, ECOS recommends that EPA pursue specific actions in four main areas, as outlined below. The ECOS Cross-Media, Compliance and Planning Committees stand ready to work with EPA to implement these recommendations and to help realize the full potential of performance-based environmental programs.

1. Support State Programs and State Efforts to Work with Performance Track

High transaction costs between EPA and states combined with limited support from EPA program offices hinder state efforts to develop and implement performance-based environmental leadership programs, including efforts to work with the Performance Track program. Efforts are needed to align the EPA-state relationship to recognize and support performance-based programs and to reduce transaction costs associated with program implementation. ECOS recommends that EPA pursue the following specific actions:

- a. Allow states to receive credit for outcomes from performance-based and innovative work and clarify acceptable approaches with documented guidance to EPA staff.* The current focus on "bean-counting" provides strong disincentives for states and EPA to engage in performance-based and other innovative work that can produce better environmental results. Common themes from the interviews with ECOS and PTPA representatives indicate that it is essential for EPA to more firmly demonstrate that it values these efforts. For example, EPA could allow pollution prevention (P2), environmental management system (EMS), compliance assistance and other leadership program audits to count towards inspection quotas, or begin to evaluate performance-based programs based on outcomes and not outputs. We recommend that EPA develop guidance documents for Headquarters and Regional program staff in 2005, with consultation from ECOS, that encourage and accept these and other state measures of innovative work in lieu of traditional "bean-counting" measures.
- b. Work with volunteer states to develop agreements regarding goals, priorities and measurement of performance-based programs through revised Performance Partnership Agreements (PPAs) or other state planning agreements by September 2005.* States and EPA should use existing tools or develop new ones for coordinating EPA and state environmental protection activities. They should serve to identify key common priorities and to set goals for specific activities. It is critical to make Performance Track and state performance-based programs explicit priorities in these agreements, and to allow states to receive credit for performance-based programs and related innovations activities. This can be accomplished through including these activities in special collaboration categories or by incorporating them as tools within other core programs. As state programs are developed and

enhanced, EPA needs to support them by allowing a reduction in other work or a disinvestment in some of the traditional tools and approaches.

We recommend that EPA solicit volunteer states (across at least two EPA regions) to develop revised state planning agreements with regional offices by September 2005. The goal of this effort would be to develop standard language for use by other regions in support of Performance Track and other innovative programs. Specifically, this language should allow states to receive credit for performance-based and innovative work. This effort should be accompanied by aggressive outreach to staff responsible for these agreements in state agencies and EPA regional offices.

- c. *Establish a joint EPA-ECOS working group to reassess effectiveness of existing EPA-state coordination mechanisms by September 2005.* ECOS commends EPA for developing a variety of mechanisms to encourage coordination with states in developing and implementing performance-based programs – for example, EPA has signed formal MOAs with nine states, sponsors monthly conference calls with state agency staff working on performance-based programs, convenes an annual state and regional conference to promote performance-based programs, and has initiated the State Innovation Grants Program. ECOS recommends that EPA and states evaluate whether these and other mechanisms are providing sufficient opportunities for EPA-state communication and coordination, and consider whether there are additional ways to increase alignment of our efforts and reduce transaction costs. This reassessment could be conducted in conjunction with other joint EPA-ECOS working group efforts proposed in this report.
- d. *Identify opportunities for improving alignment and coordination of Performance Track with state and sector priorities in 2005.* EPA has recognized the varying priorities across regions by giving two-for-one credit to companies for Performance Track challenge commitments that address key regional environmental issues. We recommend that EPA extend this approach to commitments that address either state environmental priorities or key challenges for specific sectors. Specific opportunities for improving alignment and coordination of performance-based programs with state and sector priorities should be developed in conjunction with other joint EPA-ECOS working group efforts proposed in this report. Allowing greater flexibility for states to develop a performance-based approach to address these priorities or challenges could provide an effective alternative to pursuing a traditional regulatory approach of command and control and permitting. This approach could be highly effective at engaging new sectors, such as the agriculture sector, in performance-based programs.

In addition, states need greater flexibility to tailor performance-based efforts to match the profile of industries that they regulate. We recommend that the joint EPA-ECOS working group examine opportunities for supporting efforts to tailor performance-based programs to target specific sector-based opportunities and state environmental priorities. For example, states should have a clear path to develop performance-based approaches to address existing or emerging sector-specific problems. In such a setting, a state and EPA could work together with specific sectors to identify performance commitments and develop incentive packages. This process could lead to performance-based agreements that are highly relevant, addressing state environmental priorities in a manner that builds business value for participating companies within a sector. For example, Wisconsin's Green Tier Program contains provisions for sector-focused "charters," similar to those used in the Netherlands and Bavaria, Germany. This sector-focused environmental covenant approach to encouraging and responding to high performance provides an intriguing model for targeting performance-based programs on regional or state environmental priority areas.

Other examples of this approach include an innovative, performance-based partnership with the auto salvage industry and the dental industry to promote mercury reduction and achieve other goals; an agreement with confined animal feeding operations (CAFOs) or the agricultural community to achieve state goals; and an innovative stormwater excellence program to achieve greater compliance rates within the construction industry. In each of these examples, regulatory agencies work with

specific sectors or groups of companies to secure commitments for targeted performance improvements that address a state or regional environmental priority, and to develop incentives that encourage these commitments. The joint EPA-ECOS working group should examine ways to support, enhance, and streamline this process for targeting performance-based programs to address regional and state priorities and sector-based environmental improvement opportunities.

- e. *Establish a joint EPA-state working group to develop sub-categories of the Performance Track Program that are tailored to be less-burdensome for certain segments of the business community.* Performance Track, in its current design, has transaction costs associated with entry, reporting, and renewal that are too high to be attractive to certain segments of the business community, such as many small businesses, local governments, and the agriculture sector. States believe that opportunities exist to tailor performance-based programs to be relevant and attractive to companies within these business segments. ECOS recommends that EPA establish a working group through which EPA and interested states can collaborate to develop a component of the Performance Track program that is more relevant to small businesses, local governments, the agriculture sector, and other sectors where the current program model is less viable.
- f. *Direct management to include support – both financial and in-kind – for performance-based programs as a component of the FY 06 budget development process to enhance program management, outreach, recruitment, and incentives implementation.* Increases in EPA financial and in-kind support for implementation of performance-based environmental leadership programs to EPA regions and states would send a strong signal that EPA is committed to transforming Performance Track into a core agency program. Budget pressures in many states and EPA regions are preventing states from securing sustained resources to invest in the development of performance-based programs. Financial resources could be used to offset state costs for initial program implementation, to enable more state staff to participate in performance-based program implementation activities, or to support new incentives such as off-setting revenue shortfalls from the provision of reduced permitting fees to Performance Track participants. EPA should provide staff expertise at the regional level to assist states in developing and implementing performance-based leadership programs.

EPA should also provide the flexibility for states to use current funding to support innovation, education and outreach activities. If EPA allows for alternative measures and outcomes, as discussed above, states can use existing resources to develop, implement and promote incentives and performance-based programs.

2. Assure Support from All EPA Program Offices

EPA's and states' efforts in developing and implementing performance-based programs have been hindered by a lack of coordinated support from EPA's core program offices. Core program staff often rely on the historical regulatory command-and-control approach to environmental regulations upon which their programs were built. There is also no structure in place at EPA that rewards program staff for innovative approaches to environmental problems. Consequently, while there is often support for innovation at some management levels, staff support is frequently lacking. Efforts are needed to overcome several structural barriers that inhibit innovation and performance-based program implementation, such as:

- Lack of familiarity with performance-based programs and innovations, and poor understanding of how these can relate to core program functions, goals, and performance measures;
- Risk aversion due to lack of perceived reward for making changes;
- Cultural resistance to change (reliance on existing regulatory approaches); and
- Large numbers of approvals required to make changes or implement innovative approaches (transaction costs).

EPA should take action to build understanding and commitment from Headquarters and Regional staff in these offices so they can support the important role of performance-based programs in achieving better environmental results. We recommend that EPA take the following specific actions to increase internal support for performance-based programs:

- a. *Work with national and regional EPA program managers and ECOS to integrate Performance Track activities into next year's strategic plans and performance measures for each program office.* ECOS believes this is necessary to ensure that other core program staffs at EPA HQ and Regional Offices are familiar with, responsible for, and actively support federal and state performance-based programs. States frequently encounter EPA staff in core program offices at HQ and regions who are unfamiliar with or do not support Performance Track. This represents a major impediment to our ability to assist with the implementation of Performance Track incentives and other aspects of the program. Increased awareness of this program and the strong support that it has from senior EPA management is essential to its continued growth. We recommend that EPA work to garner the support of its national program managers and to clearly communicate this support to staff at all levels. We also recommend that EPA leadership work actively with these national program managers to address the structural barriers mentioned above. One way to encourage this greater awareness would be to “push Performance Track down through the ranks” by involving program staff at EPA Headquarters and Regional offices more actively in Performance Track program implementation, including incentives delivery and related pilot projects. Performance Track and state performance-based programs have the potential to help each program office meet its goals more effectively and each office should be involved in developing a program that works for them.

We also see the critical need to implement effectively the IAC “issue resolution process” to quickly identify and address situations where development and implementation of performance-based programs becomes mired in administrative process; this is particularly relevant to developing and implementing incentives. In the current state, incentive development can be delayed indefinitely by a single EPA office representative. One approach could be to have a mechanism for prompt elevation of incentive ideas to senior agency management to expedite review and approval. Another approach could be to have designated “innovations advocates” within OECA, OGC and program offices, or within NCEI, who have authority to challenge decisions unfavorable to innovations and to help expedite incentive development.

- b. *Improve coordination and alignment of Performance Track with other EPA voluntary programs.* We believe that there are opportunities to leverage the full suite of EPA voluntary programs to better identify and add value to performance-based program implementation. In many cases, voluntary programs such as EPA's Green Suppliers Network, Sector Strategies Program, Resource Conservation Challenge, and Pollution Prevention Assistance programs work directly with companies and federal facilities that are participating in or are good candidates for Performance Track. ECOS recommends that EPA establish a framework for improving coordination between these and other EPA voluntary programs and for identifying and pursuing potential synergies.

3. Provide Better Incentives to Participants Faster

It is critical to deliver better incentives faster to attract and retain program participants. Incentives must deliver significant business value to potential program participants — in the form of enhanced external reputation, operational cost reductions, or improved capital productivity. It is important to note that the longer-term success and attractiveness of performance-based programs is tied to the ability to deliver incentives that can optimize companies' capital investment strategies. Most current incentives focus on operational efficiency and flexibility, such as reducing inspections or reporting obligations. Providing incentives that alter the timing or focus of capital investment could make performance-based programs

significantly more attractive. For example, sector-focused incentives could enable qualifying participants to delay investment in certain pollution control equipment in exchange for making other investments that, in aggregate, bring greater environmental improvement faster. Similarly, incentives could increase participants' flexibility in controlling pollution through more cost-effective means. Efforts in these areas will broaden the attractiveness of participation beyond a small segment of industry leaders.

ECOS recommends that EPA pursue the following specific actions to support the provision of better incentives faster:

- a. *Develop and implement a revitalized system in 2005 for identifying, developing, and implementing incentives for Performance Track and state programs.* While important progress has been made in expanding federal and state program incentives, ECOS believes the incentives development system needs substantial improvement. It is critical to develop incentives that have greater value to participants, and to align federal and state incentives to achieve maximum impacts.

Incentive development should be more demand-driven, drawing more actively on perspectives and ideas from current and potential program participants. For example, EPA and states could more actively engage the members of their performance-based programs, trade associations, and other participating organizations. A demand-driven approach could also help prioritize incentive ideas based on their attractiveness to program participants, and build consensus around which incentives to pursue.

The incentive development system should also include a process to more systematically identify and evaluate incentives that would be attractive to specific economic or industrial sectors. For example, several states cited the need to develop incentives that are relevant and attractive to specific sectors such as agriculture, CAFOs, and pulp and paper. EPA could support a collaborative process to work with specific sector and state representatives to develop sector-focused incentive packages. We see two major advantages to developing sector-focused incentive packages: (1) they enhance recruitment efforts within a sector, and (2) they help EPA and the states use performance-based programs to target specific environmental impacts that may be associated with sector operations. Opportunities also exist for more active coordination and cooperation between Performance Track and other EPA programs that have sector-focused orientations, such as the Sector Strategies Program, the Green Suppliers Network, and the Resource Conservation Challenge.

Finally, efforts are needed to better align and coordinate incentive identification, development, and implementation between EPA and states. In many cases, states are the direct service providers, interacting with companies and federal facilities to conduct inspections, issue permits, and provide technical assistance. Improved alignment and coordination among EPA and interested states can help ensure that incentives are implemented in the desired way, and that respective federal and state roles complement each other in delivering incentives. Improved alignment and coordination can also help to identify and remove potential state regulatory or other barriers that could inhibit the effectiveness of a particular incentive. MOAs provide a useful framework for the necessary effort to align and coordinate EPA and state incentives activities.

- b. *Evaluate several specific ideas for incentives in 2005 that may be of significant value to current and potential program participants.* ECOS has identified several specific incentive ideas that could provide significant value to some current and potential future performance-based program participants. In addition, during our discussions with PTPA representatives they identified three priority areas for incentives implementation: priority permitting/streamlined permitting, reduced inspection frequency, and support for innovation alternatives. In light of input from ECOS and PTPA representatives, we recommend that EPA evaluate the following ideas in 2005 as part of the revitalized incentive development process:

- Expand permitting incentives that reduce time, uncertainty, and administrative burden, such as expedited permitting, expanded use of permitting techniques that afford operational flexibility, streamlined monitoring, recordkeeping and reporting provisions;
- Expand incentives that reduce inspections of participating facilities through the use of risk-based targeting of inspections;
- Enable the development of source and sector-specific innovation alternatives to conventional environmental requirements;
- Provide direct financial incentives such as access to government environmental research grant money and reduced or waived permitting fees;
- Establish financial and competitiveness incentives through preferences for program participants in federal and state contracting and procurement; and
- Promote the Performance Track program and members in the financial services sector, exploring options to better position participants with regard to company valuation and investment, lending, and insurance.

ECOS is also aware that several lists of potential incentives have been developed in recent years by various parties. These lists should be considered in the revitalized incentive development process recommended above. As mentioned elsewhere in this report, the incentive development process will need to accommodate efforts to identify and develop incentives that are specifically targeted at particular sectors or groups, including small businesses, local governments, and the agriculture sector.

- c. *Work with ECOS in 2005 to evaluate potential regulatory and statutory options for improving and streamlining the incentive implementation process.* The ability to drive significant environmental improvement through performance-based programs could be significantly enhanced through a federal statutory change or cross media regulation that: (1) recognizes performance-based programs as an important tool in the nation's environmental management system, and (2) addresses directly the challenge of establishing procedural and technology-based standards "equivalency" between conventional regulatory approaches and alternative improvement approaches developed through performance-based programs. Without doing away with the intent or general state of progress that the national air, water, and waste statutes have produced, such a statute or regulation could delegate to states the authority to approximate "equivalency," on at least an experimental basis.

We recommend that EPA work with interested states in 2005 to evaluate the potential scope for and desirability of pursuing regulatory or statutory options for supporting performance-based programs. A regulatory option would likely require careful analysis of existing enabling acts to develop a cross media performance-based regulatory program for Performance Track and state leadership program participants. Several states, including Texas and Virginia, have enacted or are pursuing legislative options to explicitly recognize the importance of providing performance-based incentives. These new state laws generally allow for variances to existing state regulations to support innovation and performance-based incentive provision. Federal regulation or legislation could be highly useful to complement and support these state efforts. These state legislative approaches could also provide models for federal legislation.

4. Conduct More Aggressive Marketing and Education of the Programs

More aggressive marketing, outreach and education are needed to increase awareness of Performance Track and state performance-based programs and to recruit new participants. The medium and long-term viability of performance-based environmental programs hinges on their ability to attract and retain new participants. Failure to increase program participation will erode states' willingness to invest in and support these programs. We believe that EPA can play an important leadership role in the promotion and outreach around Performance Track and state performance-based programs. ECOS recommends that

EPA pursue the following specific actions to recruit more program participants faster and to increase the national visibility of Performance Track:

- a. *Establish a joint EPA-ECOS working group to develop a long-term strategy for “branding” the Performance Track program and state programs.* This “branding” strategy development should be conducted in conjunction with other joint EPA-ECOS working group efforts for 2005 proposed in this report. Developing an identifiable “brand” for the Performance Track program is critical to supporting the recognition benefit to members, as well as to attracting new participants. The development of a long-term “branding” strategy would focus limited outreach and marketing resources to maximize awareness of the program among key constituencies. For example, “Energy Star” stickers on appliances are well-recognized. Targeted branding strategies can reach potential corporate and federal facility program participants, trade associations, professional organizations, financial markets, the public, and other groups that can contribute to the program’s success.
- b. *Meet with interested states in 2005 to develop an action plan for conducting aggressive outreach and participant recruitment.* There is much that EPA and states can do to improve the effectiveness and impact of Performance Track outreach and recruitment efforts. EPA should work more aggressively with interested states to coordinate outreach and to promote Performance Track and affiliated state programs. ECOS recommends several specific actions:
 - Senior EPA leadership should reach out to state Governors to promote Performance Track and state programs, and to enlist Governors’ support in marketing these programs at high visibility events;
 - States should identify “sectors of opportunity” within their state, where it would be desirable to increase participation in Performance Track so that joint state-EPA outreach can target those priority sectors;
 - EPA and interested states should meet in 2005 to develop coordinated action plans for outreach and program recruitment; and
 - EPA and state agency leadership should step up efforts to jointly participate in and conduct conferences and events to raise the profile of Performance Track and state performance-based programs.

EPA can play an important role in developing marketing and outreach materials that can promote both Performance Track and state performance-based leadership programs. We recommend that EPA consider the following ideas for marketing and outreach materials:

- Develop a brochure on Performance Track and affiliated state performance-based programs that states can customize and include in their outreach efforts;
- Further document and more widely disseminate information on participants’ cost savings and other program results; and
- Document the business case for company involvement in performance-based leadership programs, highlighting financial benefits associated with risk reduction and competitive advantage.

Attachment A
Summary of Interviews:
State Environmental Commissioners and Senior Managers

Exhibit A-1

STATE-SPECIFIC INFORMATION

State	Response	MOA	Promote Performance Track	Performance-based Environmental Leadership Program¹	Priority level²
Alabama	Yes	No	Yes	No	Middle
Alaska	Yes	No	No	No	Not a priority
Arizona	Yes	No	Unclear	Active	High
Arkansas	No	No	--	No	--
California	No	No	--	No	--
Colorado	Yes	Yes	Yes	Active	Middle
Connecticut	Yes	No	No	No	Not a priority
Delaware	Yes	No	Yes	Active	Low
Florida	Yes	No	No	No	Rank not specified
Georgia	Yes	Yes	Yes	Active	High
Hawaii	Yes	No	No	No	Not a priority
Idaho	Yes	No	Yes	Active	Middle
Illinois	Yes	No	No	Active ³	Low
Indiana	No	No	--	Active	--
Iowa	No	No	--	No	--
Kansas	No	No	--	No	--
Kentucky	Yes	No	No	Under development	High
Louisiana	Yes	No	No	Active	Mixed
Maine	Yes	Yes	Yes	Active	Middle
Maryland	Yes	No	Unclear	No	Mixed
Massachusetts	Yes	Yes	Yes	Currently inactive	Middle
Michigan	Yes	No	No	Active	High
Minnesota	Yes	No	Yes	No	Mixed
Mississippi	Yes	No	Yes	Under development	Middle
Missouri	Yes	No	Yes	Active	Low
Montana	Yes	No	No	No	Low
Nebraska	Yes	No	No	No	Low
Nevada	Yes	No	No	Under development	High
New Hampshire	Yes	No	Yes	No	Low
New Jersey	No	No	--	No	--
New Mexico	Yes	No	No	Active	High
New York	No	No	--	Under development	--
North Carolina	Yes	No ⁴	No	Active	High
North Dakota	No	No	--	No	--
Ohio	No	No	--	No	--
Oklahoma	Yes	No	Unclear	Active	Mixed
Oregon	Yes	No	No	Recently de-activated	Mixed
Pennsylvania	Yes	No	Yes	No	Rank not specified
Rhode Island	Yes	No	No	No	Low
South Carolina	Yes	No	Yes	Active	Mixed
South Dakota	Yes	No	No	No	Low

Exhibit A-1

STATE-SPECIFIC INFORMATION

State	Response	MOA	Promote Performance Track	Performance-based Environmental Leadership Program¹	Priority level²
Tennessee	Yes	Yes	Yes	Active	High
Texas	Yes	Yes	Yes	Active	Mixed
Utah	Yes	Yes	Yes	Active	High
Vermont	Yes	No	No	Active	Not a priority
Virginia	Yes	Yes	Yes	Active	High
Washington	Yes	Yes	Yes	No	Rank not specified
West Virginia	Yes	No	Yes	Under development	Middle
Wisconsin	Yes	No	No	Active	High
Wyoming	No	No	--	No	--
TOTAL	40	9	19		

¹ Information on state environmental leadership programs is provided to the best of our knowledge. Sources include interviews, state websites, and previous research conducted by Industrial Economics and Ross & Associates.

² Interview respondents interpreted the question regarding the priority level of leadership programs in several different ways. Some respondents refer to the priority level of Performance Track only, while others speak to both state and federal leadership programs. States where the priority level varied between senior management and program-level staff are marked as “Mixed.” For instance, in Minnesota, leadership programs are a high priority to the administration and a low priority within core program offices. States that ranked leadership programs among their top ten and top five priorities are marked as “Middle” and “High,” respectively.

³ Active, but no longer accepting applications.

⁴ North Carolina has recently introduced a new “Rising Steward” level into its Environmental Stewardship Initiative, which is similar to Performance Track. North Carolina indicated that it plans to work on developing an MOA over the next six months.

Exhibit A-2	
SUMMARY OF STATE PERFORMANCE-BASED PROGRAM STATUS AND PRIORITY	
State Performance-based Environmental Leadership Program	
Active	21
Under development	5
Currently inactive	1
Recently de-activated	1
No	22
Priority Level of Leadership Programs	
High	11
Middle	7
Low	8
Mixed	7
Not a priority	4
Rank not specified	3

SUMMARY OF INTERVIEW RESULTS:

I. Support State Programs and State Efforts to Work with Performance Track: (Number of states that commented on improving EPA-state coordination = 30)

- (23) Incorporate performance-based programs in PPA and allow credit for bean-counting [includes: (6) Reduce focus on bean-counting]
- (21) Funding and resources
- (5) Connect PT to state and core program priorities
- (6) Align Performance Track and state programs

II. Assure Program Support from All EPA Program Offices - Internal EPA Coordination: (Number of states that commented on internal EPA coordination = 13)

- (6) More involvement, specifically from program staff
- (3) Encourage culture change within EPA, OECA and OGC
- (2) Senior management communicate support
- (2) Improve coordination of all EPA voluntary programs and initiatives

III. Provide Better Incentives to Participants: (Number of states that commented on incentives = 26)

- (8) Regulatory incentives
- (7) Suggestions on considerations when developing incentives (state regulations, facility-specific, small businesses, other environmental issues, involvement of program staff)
- (4) Streamlined/Less reporting
- (4) Priority/Expedited permitting
- (3) Flexibility to states in implementing incentives
- (3) Economic incentives-green investment ratings
- (2) Expanded permit terms (years)
- (1) State purchasing program
- (1) Implement low priority for inspection
- (1) High profile activities
- (1) Discount to state parks for employees of member facilities

IV: Program Outreach and Marketing: (Number of states that commented on outreach and marketing = 20)

- (5) Expand program to accommodate small and medium sized businesses or facilities with small environmental footprint
- (5) Expand program to accommodate more sectors (including tribal groups) and engage facilities one-on-one
- (5) Demonstrate costs savings and program results, share success stories
- (4) Reach out to state governors, participate in state events, and utilize partnerships
- (4) Improve reputation through more stringent compliance or performance criteria
- (1) Provide assistance through guidance documents (sector-specific EMS guidance)
- (1) Reach out to national business leaders and encourage them to share the benefits of being an environmental steward from a business perspective.