



The NEPA Task Force,  
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Dear National Environmental Policy Act Task Force Members:

In the July 9, 2002 Federal Register (page 45510), there was an announcement that a task force was being established to work on the National Environmental Policy Act. The mission of this task force is to "explore opportunities to improve and modernize National Environmental Policy Act (NEPA) practices and foster improved coordination of environmental impact reviews between all levels of government and the public."

The Business & Industry Association of New Hampshire (BIA) offers the following comments for the consideration of the newly established task force. These suggestions on the whole are federal recommendations, however there are some specific recommendations geared to New Hampshire. It is the BIA's hope that these suggestions, dealing with: (1) General Comments, (2) Air, (3) Enforcement, (4) Brownfields/Waste, and (5) Water; are helpful, insightful, and provide a framework for action for improving and modernizing national environmental policy.

### **(1) General Comments**

- A good national environmental policy encourages state-specific solutions to environmental problems unique to the individual state.
  - State environmental agencies are better positioned to implement environmental policy and address local concerns than national agencies.
  - The EPA has traditionally used states and their environmental agencies as policy laboratories, in order to develop innovative solutions to national problems. The BIA encourages this process and form of innovation and requests that the states be further afforded the opportunity to develop state-specific solutions to environmental problems.
- Additional State Responsibility Requires Significant Federal Financial Support.
  - The states cannot take additional responsibility or develop innovative environmental policy solutions without financial support. Resources should be granted by the federal government to the states, in order to rectify environmental problems unique to their jurisdiction. Ideally, federal funding should be shifted from cooperative agreements to block grants allowing states to have the flexibility to establish their own environmental policies.

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### **(2) Air Issues**

- The New Source Review (NSR) program is widely recognized as the most complicated program established under the Clean Air Act of 1990 (CAA). The complexity of NSR,

plethora of interpretive guidance documents and policies, and apparent dichotomy between proposed reform measures and enforcement actions have created undesirable conditions for the business community.

**Suggested Action:**

- Upon reform, a concise, comprehensive, and clear final guidance document regarding current NSR rules and policies must be produced. The more clear it is, and the better the explanations; the higher the rate of compliance will.
- Traditionally small stationary sources have been the target of state and federal legislation and rulemaking pertaining to air pollution. This is a misguided approach to air pollution control because vehicular emissions account for 44.1% of the human health risk from air toxins. A renewed focus on mobile emissions is required, with a reduced emphasis on regulating stationary sources.

**Suggested Action:**

- Encourage diesel engine retrofits with emission controls through voluntary, federally funded programs.
- Link a percentage of federal highway funding to intersection and traffic pattern improvements, which will help mitigate idling and improve overall vehicle emissions.
- Fund an on-road remote sensor study, specific to New Hampshire, which will improve the basis of predictions of on-road vehicle emissions and will help validate computer models.
- Support flexibility for New Hampshire and regional MtBE alternatives.
- Encourage development of a state/regional transportation plan, addressing rail infrastructure improvements.
- Upwind sources of air pollution often cause downwind states to be in violation of the National Ambient Air Quality Standard for ozone. Upwind sources should be required to meet applicable Clean Air Act requirements and reduce their emissions like New Hampshire sources. Upwind states and their polluters must be held accountable for the pollution that they cause in downwind states.

**Suggested Action:**

- Support enforcement of EPA's State Implementation Plan (SIP), as modified by recent court decisions, including implementation of SIP action as approved by EPA.
- Congressional hearings should be conducted so as to focus awareness on interstate ozone transport issues.
- The CAA places businesses under immense pressure to comply with hundreds of new emission reduction and control requirements. Non-compliance is strictly enforced with severe financial penalties. These regulations and tight compliance schedules are often very specific and ignore the fact that industrial operations can vary significantly. The result is compliance requirements that make little economical and environmental sense.

**Suggested Action:**

- Design future EPA regulations determining the results that must be achieved but not how it is accomplished.

- Allow business and industry to develop emission reductions that correspond with, and can be adapted to their specific operation.
- Allow alternative test methods in determining compliance with CAA emission limits.
- Facilitate federal and state agencies' strategic planning, helping to ensure efficient leverage of resources.

### (3) Authorization & Enforcement Issues

- The federal government often micro-manages environmental policy and does not provide the states with necessary discretion or funding to develop innovative environmental implementation strategies.

#### **Suggested Action:**

- Provide grants for the development and implementation of state programs with fewer strings attached.
  - Allow states greater discretion in the implementation of environmental programs.
  - Support greater funding to state institutions, for the development of business-academic partnerships that address environmental issues.
  - Support educational institutions that provide students with business internship opportunities that are geared toward dealing with industrial and business pollution control. Internship programs help produce greater technology and innovations, and give students hands-on experience, resulting in a better-educated, more productive, and experienced, workforce.
- EPA's enforcement approaches, "Command and Control" and deterrence models are too draconian and are increasingly ineffective at achieving compliance. Command and Control has a tendency to stifle innovation, creativity and "Good Old Fashion American Know-How." Overemphasis on enforcement is counter-productive and consumes significant resources and costs, and results in delay in resolution. The EPA should analyze success based on results, and must administer policy and legislation accordingly.

#### **Suggested Action:**

- All states should be granted the flexibility to demonstrate compliance within the parameters of federal programs. All parties are best served by EPA benchmarking environmental compliance rather than by them employing the current approach, which is an over-simplified accounting of total penalties.
- EPA should have greater interaction with the individuals who are impacted by their policies. This would give the EPA a greater understanding of the individual's specific needs, goals and desires. The EPA has long utilized "interim guidance" documents, memoranda, and other interpretive documents as a substitute for formal rulemaking, resulting in the imposition of far-reaching rules. A fair and formal opportunity for input by stakeholders and the public is obligatory, particularly by the groups that are adversely affected by the policies and formal rulemaking.

#### **Suggested Action:**

- EPA should better identify those regulatory determinations under consideration that are likely to have a significant impact upon the regulated community or the public. Where significant impacts are identified, either formal rulemaking

procedures should be employed or, at a minimum, a fair opportunity must be provided for comment upon the proposed regulatory interpretation.

- Business and industry, particularly small businesses, lack the professional expertise and support to cope with the myriad of federal permitting and compliance issues.

**Suggested Action:**

- Support stable, non-grant federal funding for environmental assistance for small businesses. This can be done by the federal government paying for state workers to assist them in compliance with federal environmental rules and regulations.

**(4). Waste & Brownfield Issues**

- Brownfields are under-utilized property. The Government Accounting Office (GAO) estimates shows that there are 450,000 such sites in America today.
- It is well recognized that liability for clean-up stifles and frustrates potential activity by developers. In particular federal liability remains a significant impediment to Brownfield restoration. Federal liability results in businesses not developing brownfields, instead property in surrounding communities are used. By not redeveloping brownfields, and opting for other communities, sprawl increases and urban redevelopment is suspended.
- Sprawl can be mitigated if taxpayers could take credits against taxes for the qualifying costs of redeveloping brownfields properties in targeted urban areas. This type of tax credit solution would address clean-up issues, and would help to improve the environment. A tax credit would be a great incentive for businesses to convert environmental liabilities into assets.

**Suggested Action:**

- Provide targeted tax credits for redevelopment of brownfields property.
- A major factor in the ability of a developer to receive funding and convert a brownfield property into an economically viable project is the ability to locate end users for the facilities before redevelopment. There is currently no comprehensive mechanism for publicizing the availability of these brownfields properties. Since there is no centralized source of information, a business looking to relocate or expand would need to conduct an independent search on a town by town, or, city by city basis.

- Independent searches for brownfields are expensive, often proving to be a roadblock in developing. A centralized information base could be the motivating factor, and incentive for businesses developing brownfields.

**Suggested Action:**

- A publicly accessible federal data base of brownfields should be developed and publicized. This database could be as simple as a web-based bulletin board where property owners, municipalities, or developers post pertinent information on properties. This database would be inexpensive to create and maintain and would provide a great deal of benefit and assistance to a lot of individuals.

- The current approach to ensuring quality in environmental analytical measurements in support of the brownfields program relies on technology developed years ago. Also, the Contract Laboratory Program (CLP) relies on rigorous adherence to prescriptive procedures and extensive documentation of all activities in the laboratory. It is an antiquated program developed years ago, premised on old technological assertions, and is an expensive and time-consuming means of acquiring needed environmental data.

**Suggested Action:**

- Contact appropriate EPA officials responsible for brownfields program and demonstrate support of the environmental industry efforts to move away from the CLP approach to quality control in favor of a more focused and cost-effective approach.
- Restore EPA funding in support of the National Environmental Laboratory Accreditation Committee (NELAC).
- Encourage the Office of Solid Waste and Emergency Response to continue its annual funding effort to accelerate the development of national standards in the area of environmental sampling, analysis, and quality assurance/quality control.

**(5) Water Issues**

- Federal water programs have provided the funding, technical data and policy direction to safeguard water. However, the number of programs has multiplied to the point of being redundant, and many of these programs contradict each other. The business community is concerned that duplicative programs and programs of questionable technical or societal value have not been continually reviewed to insure that federal spending is matched to meet societal needs.

**Suggested Action:**

- Encourage periodic review or institutionalized performance audits of federal water programs to insure that their effectiveness and policy focus remains sound and that limited resources are well spent.
- Water and wastewater infrastructure exists in large part due to federal investments. Business and industry rely on this infrastructure to support expansion of business activity and job growth. Combined Sewer Overflows (CSOs) is currently a striking need. Much of the present system is antiquated and/or aging, and requires significant reinvestment. EPA has consistently underestimated the cost of infrastructure and proposed inadequate federal funding. Consequently, there is a need to update or replace systems that have been continually and neglectfully under-funded.

**Suggested Action:**

- Support increased federal funding for water infrastructure improvements.
- Increase flexibility in use of the funds allowed to be applied to innovative delivery of water infrastructure.
- States throughout the country are in process of creating and or adopting water regulations that may severely impact the allocation and use of both ground and surface waters in the state. Few if any of these states have ascertained the amount of water that can be safely extracted from the system, either via groundwater or surface water withdrawals. The states are also

uncertain as to the ecological, hydrological and economic impacts of water withdrawal regulations, and are forcing businesses and municipalities to pay for water studies.

- Businesses throughout the nation believe that it is unfair for the state to ask individual private water users or municipalities to be fully responsible for developing the baseline data for the state. The imposition of state and federal regulations based on inaccurate information is inappropriate and will unnecessarily result in business shutdowns or slowdowns without protecting the environment.

**Suggested Action:**

- Support greater federal funding to the states for assessment of potential maximum watershed yield on selected watersheds.
  - Support the development of a technically defensible estimate for the yields of the watershed as well as information on the extremes of river flow and groundwater level fluctuation.
  - Support additional funding for the federal gauging network throughout the entire country.
- The country's rivers and lakes are under increasing stress to support public recreation in a safe and sustainable manner. There is growing evidence that the United States' lakes, rivers and ponds are approaching their capacity to sustain recreation and tourism. There is a need to more fully understand how to manage the competing demands on lakes and rivers,

**Suggested Action:**

- Support federal funding for a management study of lakes to determine the optimum way to manage diverse activities on public water bodies. These studies will assist the state in appropriately managing their resources.
- Wetland systems perform valuable functions for our environment, yet they are being fragmented and impacted by land development. Our existing wetland permit process seems to be capable of protecting only small wetlands of questionable value and function. Federal policy considers off-site wetlands mitigation only as a last resort. When the existing process does little to help the applicant or the permit issuing agency meet its goals, it is clearly time to try some different approaches.

**Suggested Action:**

- Support granting states more authority over wetland permitting.
- Support legislative, regulatory and policy changes that preserve strictly an advisory and technical role for federal agency involvement in wetland permitting process. There is a need to maintain the diminished regulatory role of these agencies.
- Encourage state wetland mitigation banking and habitat banking programs.
- Support seed funding to procure land and perform the necessary scientific and legal work required to properly implement wetland mitigation banks.

The Business & Industry Association of New Hampshire appreciates this opportunity to offer comments in regard to the National Environmental Policy. We also hope that our comments prove to be insightful, and provide a framework for action for you in your attempts to improve and modernize the national environmental policy. If any part of this is unclear, or if a personal explanation or clarification is needed, please do not hesitate to contact me at your convenience. I look forward to discussing this with the new

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task force should the opportunity arise.

Your efforts on this important issue are greatly appreciated.

Respectfully submitted,



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