

Changes in federal environmental policy in the 1990s

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Paul Keough has served as the Deputy Regional Administrator of the New England office of the U.S. Environmental Protection Agency (EPA) for nearly 10 years. Prior to joining the EPA in 1971, Keough served as press secretary first to a lieutenant governor and then to a senate president. He also worked as a newspaper reporter and hosted a radio talk show. Among the changes in EPA's approach to regulation in recent years are more emphasis on pollution prevention and more willingness to develop and apply voluntary and market-based approaches to environmental protection. For future environmental initiatives, Keough foresees greater emphasis on risk-management and greater flexibility in state-federal relations.

The policy landscape for environmental regulation is constantly changing, and I expect to see some dramatic changes in our approaches to environmental regulations over the next five years. Most recently, the Bush administration has initiated an effort to reduce the burden of government regulation, and that initiative includes environmental regulation. Many in the administration feel that excessive regulation and red tape have imposed an enormous burden on our economy, a so-called "hidden tax" on the average American household in the form of higher prices for goods and services. Consequently, they have undertaken this moratorium and regulatory review over the next ninety days. A major goal of this review is to weed out unnecessary and burdensome government regulations that impose needless costs on consumers and substantially impede economic growth.

In a memorandum to department heads and agency heads, the president stated that the federal government must remember that even those regulatory programs that may have been justified when adopted often fail to keep pace with important innovations. He pointed out that new technologies and markets can make existing rules obsolete. He added that existing regulatory programs need to be revised to take advantage of regulatory innovations, such as flexible market-based approaches. EPA, like all of the other regulatory agencies, is looking at its overall regulatory scheme. Most of our regulations are exempt from this moratorium, because they contain statutory and judicial deadlines or because they are related to public health. But these are some areas where regulatory changes can certainly be made.

EPA Administrator William Reilly has asked that his key managers scrutinize existing regulations to assure that expected costs do not exceed expected benefits and that EPA continuously look at the most cost-effective strategies in our regulatory processes. In several areas, some regulatory review is now underway. I think the Administrator feels that EPA must look at the regulatory burden that it is putting on small communities and small businesses. We have a number of horror stories from small communities, particularly in the Safe Drinking Water Act, which requires that all surface water sources not presently receiving treatment be filtered. In

many communities, it will be very expensive to build those filtration plants. Yet, there are no federal programs and there are no state programs (in most states) to assist local communities to build these million dollar facilities. In metropolitan Boston, the Massachusetts Water Resource Authority is looking at building a water filtration plant that will cost in excess of \$600 million. They may have a rate structure sufficient to finance that, but many small communities cannot afford to make investments.

EPA's impact on small businesses is receiving a long, hard look. Our agency is also looking at ways to increase incentives, for example, for the use of clean fuels such as natural gas. We are asking how can we expand market-based approaches to regulations, how can we accelerate rules that reduce the regulatory burden on the economy, how can we speed biotechnology reforms, and how can we accelerate certain types of rule-making, such as negotiated rule-making. These questions are being examined as a way to bring some relief from the burdens that environmental regulations place on our society. Administrator Reilly feels that these questions are not inconsistent with our overall environmental protection priorities. In fact, he believes that these initiatives will advance the environmental interest by better integrating our efforts with national economic priorities, such as promoting jobs, investments and growth.

Based on the polls that I have seen, enduring public support for environmental protection depends on continued efforts to develop and implement the most economically efficient environmental programs. This does not mean that, because of the present economic crisis, we will abandon our commitment to strong environmental programs. We cannot afford to turn our backs on the twenty years of progress that has been made at the federal and state level. But clearly our approach to environmental regulation must change.

Current EPA initiatives

One of the most sweeping changes in regulatory approaches has been a major shift away from the end-of-the-pipe, top-of-the-stack type pollution controls towards preventing pollution in the first place. The basic philosophy is that an ounce of prevention is worth a pound of cure. If we continue to focus on treating waste rather than preventing it, new environmental problems will likely outstrip the progress being made. This is particularly true for the scattered and decentralized sources of pollution that we face, many of which result from the activities of million of citizens going about their daily lives: decentralized sources such as tailpipe emissions, use and release of chlorofluorocarbons, agricultural and urban runoff, indoor air pollution, and the use and disposal of consumer products containing toxic substances.

In New England, all of our states have now established pollution prevention offices and many have enacted legislation aimed at pollution prevention. I expect to see this trend continue at the national and local level. Pollution prevention is being integrated into all of EPA's operating programs and is becoming part of our organizational culture. We are building pollution prevention into permits that we issue. EPA is building pollution prevention into our enforcement agreements. Pollution prevention will become the overall ethic of our agency. In 1990, a new Pollution Prevention Act established pollution prevention as national policy. In the preamble it states, "The Congress hereby declares it to be the national policy of the United States that pollution should be prevented or reduced at the source whenever feasible."

We have a national pollution prevention policy that establishes a hierarchy of approaches to deal with waste: First, avoidance/elimination and source reduction; second, recycling; third, treatment; and, fourth, disposal. I believe that this pollution prevention ethic will be incorporated into future environmental regulations, such as in the reauthorization of the Resource Conservation Recovery Act and the Clean Water Act, which will be up for reauthorization this year and next.

In addition to pollution prevention, a second major shift is the development of voluntary and market-based approaches to environmental protection. EPA and many of our states are experimenting with non-regulatory, voluntary approaches to protect health and the environment, as well as market-based approaches. The Clean Air Act, for example, contains a series of market-based incentives that are designed to minimize the law's impact on the economy. These economic incentives include: tradeable emission allowances for sulfur dioxide; incentives for companies to act quickly to reduce toxic emissions and to go beyond the minimum requirements; commercially tradeable emission credits; and performance targets for reformulated fuels. We expect that market-based approaches will be included in the future regulatory actions at both the federal and the state level under all of our laws.

EPA has several voluntary programs that are experiencing significant success. One is called the 33-50 program. Under this program, the Environmental Protection Agency identified seventeen chemicals believed to be causing significant environmental problems and for which there were substitutes. Bill Reilly, the administrator, called together the chief executive officers of ten of the largest emitters of these seventeen toxins. He sat them in a room and he said, "I will lay out all of the emissions of these chemicals that your facilities all over the country put out." When he showed the company presidents this information, many said it was the first time they had seen integrated documentation which showed that the accumulative result of their actions was hundreds of millions of pounds of these toxic chemicals. Reilly told them, "Look, we need to get some voluntary programs going here, because if not, Congress will give EPA a regulatory program that you may not be able to live with." He asked these companies to go back and look at their processes and how they operate their facilities. He asked if they could come up with a reduction program that would result in a thirty-three percent reduction in the emission of those chemicals by 1992, and a fifty percent reduction by 1995. All ten companies came in within a relatively short period of time with plans to exceed those two targets.

Naturally, Bill Reilly said if it worked with ten, we will take it to the next layer. So the agency went to the next six hundred emitters and met with trade groups and associations and individual businesses. We have begun the process of meeting with the largest emitters of these chemicals in our region. Quite frankly, we are overwhelmed at the cooperative spirit of the regulated community. It has come forward, it has developed plans, and it is beginning to see meaningful reductions in the emissions of these chemicals. I think you will see more voluntary approaches like this.

Another EPA initiative, the "Green Lights Program," has companies work with EPA to assess their facilities - the energy situation, the light bulbs they use, the type of lighting they have - to see if they can reduce their energy use. Over 150 of the Fortune 500 companies have already signed up and have agreed to make investments in these low-energy devices. These investments

will be paid for very quickly. We hope that this will offset the need for development of new power plants or expansions in existing power plants and will lead to energy savings.

In addition to pollution prevention, using market-based incentives, and looking at voluntary programs, I think both the federal and the state officials will look at our regulatory programs from a multi-media standpoint. For many years, the laws that were passed and the way we carried out our functions looked solely at the Clean Water Act, the Clean Air Act, the Toxic Substance Act and the Resource Conservation Recovery Act. All of these acts are separate, single media issues. Now we recognize that many of these are related. Thus, we are developing multi-media approaches to environmental protection. For example, instead of sending one inspector to a facility, we would send a team of inspectors. We have a multi-media checklist. Our inspectors may go to a facility to look at National Pollution Discharge System permits or water discharge permits, but they carry this checklist and look for some other things as well. If there are problems in any of those areas, they can flag the problem for attention by other inspectors who specialize in that area.

EPA is also looking to target our efforts in a more cohesive way, and the states are doing the same. We are developing what we call "geographic initiatives." For example, one initiative in our region deals with the Merrimack River. It is a drinking water source; it is a major river in our region. We have agreements with the State of New Hampshire and the State of Massachusetts. We are looking at targeted inspections throughout that basin area and at pollution prevention programs. We are doing the same at Casco Bay as part of our national estuary program. Geographic targeting will be able to use geographical information systems and other tools to better focus our inspection efforts and our regulatory efforts so that we can maximize the impact from our resources.

I also expect to see a continuation of strong enforcement policy. Some feel that now is the time for EPA to take a step back, and for the states to take a step back and stop enforcing regulations. I do not think that would be wise. A very aggressive enforcement program, with both civil and criminal enforcement, must continue. Quite frankly, the vast majority of businesses and industries in our region are in compliance. But a few have tried to take advantage of the system. These few have willfully flaunted environmental laws, and by doing so, they enjoy an economic competitive advantage over their counterparts. For those who have made an investment in pollution control, it is not fair to have some competitor who has not done the right thing and who is saving costs by avoiding these controls. Many people have suggested that, because of the weak economy, perhaps the government should stop penalizing companies. I do not think that will happen. EPA will continue to make an example of those few who continue to flaunt environmental regulations.

New challenges and new approaches

What are some of the policy changes on the horizon and some of the different ways that we may be approaching our job? Clearly, we need to focus on risk-based decision-making, to make sure that we are focusing on the right things. EPA has done a number of risk studies using our Science Advisory Board. Many of the problems that we have been working on for many years were not those that posed the greatest risk. Our regional EPA office has completed a comparative

risk project and is developing a strategic plan to focus our limited resources to accomplish the most environmental good.

It is very difficult, however, to get everyone to agree to this approach. You might think that this would be easy. But every program has some advocate in Washington. If you say, "Well, I will take a few resources from here and put them over here," someone starts screaming. For example, in our strategic plan, one of our top priorities is to address the ozone and smog problem. Most of our region is in noncompliance with the public health standards on smog and ozone. We wanted to move one work-year from our stationary enforcement program into mobile source enforcement. From the reaction, you would think that we had done something truly outrageous. Fortunately, the Administrator has permitted us more flexibility to move resources to where they truly can accomplish the most environmental good.

We need to use better science, because our regulatory program must rest on sound scientific information. If we cannot justify our regulations from a sound scientific basis, then we have problems. How can we expect the regulated community to go along with these regulations if they are not based on sound science?

In another area, EPA needs more flexibility in our relationship with the states. The federal government has tended to be somewhat heavy-handed in dealing with the states. There now is a trend to allow the states more flexibility with the dollars EPA gives them to carry out programs. For a long time, EPA would give a grant and stipulate exactly what had to be done with that grant. Sometimes the states would say, "If only I could put this money over here I could accomplish much more environmental benefit." The federal level responded, "We gave you the money for this, so do it." We are beginning to allow the states more flexibility. Unless we allow this flexibility, we will have some very serious limitations in carrying out programs. The states are suffering severe economic problems; budget cutbacks are affecting environmental programs. We are delegating and authorizing the states to carry out certain programs, and then we find that the states do not have the ability to carry those programs out. Massachusetts recently told us that they could no longer carry out the Safe Drinking Water Act program, and that they were transferring their people out of the program. They were giving back the federal grant and telling us to run the program. EPA does not have the resources to run the program. I am afraid that more states will throw up their hands and say, "We cannot do it, let the feds do it." Well, the feds cannot do it. So what will happen in Massachusetts? I told Environmental Affairs Secretary Susan Tierney that we will take her money and we will hire the meanest, toughest inspectors we can find. We will inspect every water supply and make the people scream until Massachusetts will want the program back. EPA does not have the ability or resources to carry out environmental programs that are delegated to the states. That is why we must be more flexible in our requirements and why we must look at new ways of funding some of these environmental programs.

If we are to improve the environmental process, EPA must improve its relationship with Congress, because Congress is often the driving force behind what EPA does. Quite frankly, I would be willing to take some resources out of the Superfund program and put them into other program areas. Based on our risk analysis, we think that would be the best thing to do. But the political pressure forces us to keep our resources in Superfund. Congress has said, "You have to

do a better job; you must meet these objectives." They threaten that, if we do not do better on Superfund, they will take other resources away. Congress has tended to micro-manage the whole process by not allowing the agency some flexibility in how it applies the rules and regulations. Rather, Congress specifies very detailed targets that must be met. That limits our ability to give the states more flexibility and to put the resources where they can do the most good.

Finally, we need a much better dialogue with the regulated community, with business and industry. I have been meeting with corporate officials from some of the larger companies, not to talk about specific problems, but to talk about what they are doing for the environment and to let them know what we are doing. I am absolutely amazed at the response. I met with people from the Olin Corporation. They explained how their environmental program is organized and some of the tremendous programs that they have in place. I said, "But no one knows about this program but you people." That is a problem. Business and industry have not communicated the things that they have accomplished. The only time you hear about the EPA in the business community is when we are suing them or when we are taking an enforcement action. It should not be that way. We are all interested in the same thing: That is compliance.

How can we achieve better compliance? In our region, we have begun this dialogue with business leaders so they can have a better understanding of what we are doing and why we are doing it. Maybe we can gain a better understanding of their perspective. We met with the New England Council, about 100 business leaders from throughout the six states. Inspectors from each of our program medias explained how they do inspections, what are the most frequent violations, and what are some of the problems in dealing with the regulated community. We passed out our checklist, so everyone knew exactly what we look for when we come to a facility. This is part of a dialogue to let business and industry know what we are doing. We are not out there to play "I got you"; we are out there to improve compliance. We have received some good feedback from those meetings, and we intend to continue the dialogue.

I see many changes coming in the environmental area. Environmental protection remains very high on our national list of priorities, and we will continue an aggressive environmental protection program, regardless of the administration in place next year. We will not turn back on the twenty years of progress that EPA has made.

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