

Incentives, Disincentives, and "Backstop Mechanisms"
for Nonpoint Source and Watershed Pollution

21 MR. EHRMANN: Are the members comfortable
22 with these recommendations? Okay, let's move then to

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1 incentives, disincentives, et cetera.

2 (Slide.)

3 COMMISSIONER SANDIFER: On a number of
4 occasions at differing discussions and differing
5 commissions, from Dr. Rosenberg to Admiral Gaffney
6 and others, have talked about the necessity to have
7 some default mechanisms in place in a variety of
8 areas.

9 This one deals specifically with nonpoint
10 source and watershed pollution. The intent is just
11 to bring forward some ideas of what both positive and
12 negative feedback might look like.

13 Under the current laws, the Clean Water
14 Act gives states the lead role in addressing nonpoint
15 source pollution. It does not give EPA the legal
16 authority to establish and enforce BMPs on nonpoint
17 sources, nor to implement and enforce nonpoint source

18 management measures that may be developed for
19 watersheds.

20 So there is a suite of federal tools that
21 could be utilized and phased in over time. The
22 intent here is--I think staff uses it--all parties

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1 would know what's coming next. I call it the "no
2 surprise rule."

3 Again, people are involved at the local
4 and national level in the formulation of these kinds
5 of incentives and disincentives from the beginning.
6 They clearly know what happens next.

7 There is a legal and policy precedent,
8 particularly in the Clean Air Act. If a state does
9 poorly and does not meet Clean Air standards for some
10 period of time, then the state may lose Federal
11 Highway Funds.

12 This was a significant element, for
13 example, in my neighboring State of Georgia, just
14 across the way from us in South Carolina, the
15 Metropolitan Area of Atlanta was not meeting air
16 standards and was about to lose a significant amount
17 of Federal Highway Funds.

18 If you have driven in Atlanta lately, you

19 would like to see them spend some funds to fix the
20 transportation problems in that area.

21 But they implemented a variety of things,
22 including land protection, green space protection,

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1 and all kinds of things to try to clean up their act.
2 There was a disincentive that they would lose
3 significant federal funds, and an incentive for them
4 to move forward to take a variety of actions from
5 regulatory to things that were nonregulatory like
6 buying up green space.

7 The intent here is that the Federal
8 Government would be in a default position to step in
9 only if all else fails. So the States would still be
10 in charge of their destinies, but they would--
11 hopefully through a negotiation process--come to the
12 point of agreeing that, if things got so that the
13 state could not control it, that is if it failed,
14 then there would be a federal default mechanism.

15 This would require data-gathering
16 mechanisms. As we've talked about earlier, this is
17 one more subset of the necessary national monitoring
18 kinds of efforts. It is not a new data gathering

19 system. It would fit right in to whatever the

20 coastal and ocean and water quality and air quality

21 monitoring system we're talking about.

22 Again we talked about what is coming next.

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1 It would only be--this kind of default mechanism
2 would only be phased in if a state did not make
3 reasonable progress, and it would be as incentive-
4 based as opposed to disincentive-based as practical.
5 Next slide.

6 That's it. Sorry. We have in our paper,
7 in fact you may have a few of these additional things
8 before you because we took out slides, to meet the
9 standards imposed upon us for the sessions--

10 VOICE: But you're going to discuss them
11 anyway--

12 (Laughter.)

13 COMMISSIONER SANDIFER: --I'm going to
14 discuss them anyway.

15 The kinds of things that I was just
16 talking about. The states would lead. The Federal
17 Government would control only if the states do not.
18 But a couple of places where you can work with this

19 is through USDA's for example the Farm Bill kinds of
20 conservation funds. Those are incentives, and
21 perhaps those incentives could be increased.

22 A disincentive would be the state didn't

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1 get to have their share, or as much of their share of
2 those kinds of funds if they did not either meet the
3 nonpoint source requirements or begin to make
4 reasonable progress toward them.

5 There might be tax incentives, Federal
6 Highway monies we just talked about, Army Corps of
7 Engineers Waterway Development Funds could be treated
8 the same way, WRTA funds, that's a big deal in a lot
9 of areas. Lillian and others are very knowledgeable
10 about those. Perhaps there could be a mechanism that
11 could connect at least some of those funds to good
12 behavior on the part of the states.

13 So that the first step here would be for
14 the state to participate in the development of goals
15 and objectives, and then to try to make reasonable
16 progress.

17 Failure to make reasonable progress would
18 result in disincentives of the financial nature.

19 Continued failure would then result in the Federal
20 Government actually stepping in to set standards for
21 the states.

22 That is basically the philosophical

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1 approach we're talking about. The paper will have a
2 lot more detail than that.

3 I'll stop there.

4 MR. EHRMANN: Thank you. Commissioner
5 Coleman?

6 COMMISSIONER COLEMAN: Paul, on one of the
7 slides that you didn't put up, the states are to lead
8 on nonpoint source pollution.

9 COMMISSIONER SANDIFER: Right.

10 COMMISSIONER COLEMAN: But it does get
11 very complicated, and especially in these large
12 watersheds.

13 For example, I am at the southern end of
14 one of the larger drainage basins in North America,
15 the Mississippi. We will never meet the regulations
16 and EPA Guidelines simply because we have 25 or 30
17 other states upstream.

18 How do you handle that?

19 COMMISSIONER SANDIFER: We did have some
20 discussions on this. While we didn't use the
21 technical term for where you are, the cloaca of the
22 Mississippi, I think there is clearly recognition

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1 amongst all of us that there would have to be a
2 realization of differing standards for being at the
3 end of a receiving chain.

4 And in fact, what staff has made clear to
5 us from the beginning is: nonpoint source pollution
6 is a much more significant problem in some areas than
7 others, and that's why we kept talking about the
8 states and locals having the lead. Because it is no
9 use at all to have a one-size-doesn't-fit-all but
10 imposed anyway federal standard that in inland Oregon
11 there's no reason for it at all, or wherever, but in
12 Mississippi it is a big deal, or in Iowa it's a big
13 deal.

14 So that was the reason for trying to have
15 the states take the lead in consultation with EPA,
16 depending on the level of local impairment and the
17 downstream impact. So that is what we were trying to

18 do.

19 I don't know whether the paper will
20 adequately address it, but that was the attempt.

21 MR. EHRMANN: Commissioner Rosenberg?

22 COMMISSIONER ROSENBERG: Thank you. I

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1 just have a very brief comment.

2 I want to thank Paul for his long,
3 scatological conversation this afternoon. It's been
4 fascinating.

5 (Laughter.)

6 COMMISSIONER ROSENBERG: I strongly
7 support the idea of incentive/disincentive/and
8 backstop mechanisms, as I think you are well aware.
9 I just think that in the language we should be
10 careful to make sure that it is not just applying
11 those kinds of incentives or disincentives to state
12 activities, but it is also to private activates.
13 Because of course we do provide a lot of subsidy
14 assistance programs, so it needs to be in there.

15 COMMISSIONER SANDIFER: That is the
16 intent, Andy. I was using the government as the
17 example, but it is the intent at any level that there

18 would be an activity.

19 MR. EHRMANN: Commissioner Miller-Karger?

20 COMMISSIONER MULLER-KARGER: Thank you. I

21 was wondering how, or whether there is a similar

22 mechanism as this to all the other things that we've

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1 talked about, like the Section 404 and the Louisiana
2 being careful not to lose more wetlands themselves.
3 or atmospheric deposition, the cruise ship issue, the
4 debris issue. Is this a formula that should be
5 applied wider? Here it is limited in this slide to
6 nonpoint source pollution and watershed pollution.

7 COMMISSIONER SANDIFER: The concept of
8 incentives and disincentives and default, I believe,
9 Frank, has been talked about enough in our working
10 group that it would apply to virtually any of the
11 stewardship issues.

12 We began talking about it first with
13 regard to Fisheries Management issues. And even
14 within state water, fisheries having a federal
15 default mechanism if the activities in the state
16 waters were affecting the resources of adjacent
17 states, and so on.

18 So I think the intent of the working

19 group, as I understood it, and a number of
20 Commissioners in discussions, is to make this
21 broader. The assignment to staff was to look
22 specifically at nonpoint source for this one because

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1 nonpoint source was such an egregious problem with
2 regard to pollution in this country.

3 And if we could come up with some things
4 that might be worth pursuing that the Commission felt
5 as a whole might be worth pursuing here, then we
6 could broaden that discussion to these other
7 elements, or staff could broaden it out a little bit
8 and send them around to us.

9 But I would really ask them to go back and
10 look at legal precedents and such, and that is where
11 the Clean Air Act and the Air Emissions kinds of
12 things hooked to Transportation Funds came up, and
13 now the possibility of taking water quality standards
14 perhaps and linking it to USDA conservation funding
15 program. Those might be some things that are worth
16 exploring.

17 So that's what they were doing, is using
18 this as a concept vehicle. But if it looked

19 promising to the Commission, we could broaden that.

20 MR. EHRMANN: Commissioner Borrone?

21 COMMISSIONER BORRONE: I think it is

22 useful as a concept to apply it to a particular

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1 example like NPS.

2 I would, though, be very cautious to think
3 about running it to make it a wholesale
4 recommendation. I think what we might do is make a
5 recommendation that if this process could evolve in a
6 way to be effectively used for this kind of issue, as
7 other issues emerge in the future the National Ocean
8 Council might look at whether this has applicability
9 or not.

10 Because I would hate, if I were in a local
11 area or a state, to find myself now confronted with
12 the potential of tremendous disincentives and trying
13 to deal with them all at the same time because I
14 don't have the ability to do certain things because I
15 don't have enough resources.

16 In other words, I don't want an unfunded
17 federal mandate.

18 COMMISSIONER SANDIFER: Lillian, while I

19 did try to generalize this a little bit, I remind you
20 that on the slide, the last point is: Incentive-
21 based, as incentive-based as possible.
22 I talked about some of the disincentives

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1 because those are in law, but what we really want to
2 find is the incentive side of this. That is the side
3 that really allows I think to make progress.

4 And it is not necessarily a financial
5 incentive. It could be, but it could be other
6 things, as well. For example, somebody who is a
7 very, very good performer and has done all these
8 things that need to be done on a farm or whatever and
9 has really demonstrated reduction, significant
10 reduction in nonpoint source, maybe they get either
11 tax credits, which of course is financial, or maybe
12 they get some regulatory relief in just not having to
13 file five more pounds of paper next year because
14 they've already demonstrated that they are operating
15 in good faith and doing what they're supposed to do.

16 You know, it's the "trust me" rule based
17 on: I did it, so trust me for next time and come
18 back and check me another year from now, as opposed

19 to having to file five pounds of paper.

20 I mean it's those kinds of things that I

21 think we could think of a little bit more regarding

22 the incentive side.

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1 MR. EHRMANN: Let me ask if any of the
2 staff have any questions, or need any more
3 information on any of the stewardship discussion
4 we've had since lunch?

5 (No response.)

6 MR. EHRMANN: Yes, Commissioner Coleman.

7 COMMISSIONER COLEMAN: Thank you, John.

8 I want to take the opportunity right now,
9 since this may be possibly our last public meeting,
10 to sincerely thank the staff. I am sure I speak for
11 all of the Commissioners.

12 When we started this project, we brought
13 in staff that probably didn't know one another, they
14 were from different backgrounds, and we had a wide
15 variety. And I have never worked with a staff that
16 has solidified a Commission like this one has.

17 You have done the work, and so thank you
18 very much on behalf of all the Commissioners.

19 (Applause.)

20 MR. EHRMANN: Mr. Chairman?

21 CHAIRMAN WATKINS: I had some asides with

22 the Executive Director here because the dialogue

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1 today, and really the dialogue in January, has been
2 so significant relative to the slides.

3 We've put up these slides and made them
4 available on the web site because they've been made
5 public, and they hardly tell the tale by themselves;
6 and we know that.

7 So because our minutes, and because this
8 dialogue is recorded by the recorder, and we've made
9 that part of our minutes, I have asked the Executive
10 Director, and in turn he will ask the staff to come
11 up with a set of words that will go on each one of
12 these slides.

13 It will say: These slides were presented
14 in public session. Significant dialogue, comments,
15 recommendations for change were made. And refer them
16 to the verbatim transcript. If they're going to take
17 anything out of this, then they'd better go to the
18 whole package and don't try to take on the Commission

19 by partial review of just a simplistic set of slides
20 that we recognize in the time constraints that the
21 Commission has imposed on it are the only things we
22 can bring here.

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1 We had, as somebody said, some 90 slides
2 but we could never have gotten through this. We had
3 to consolidate. So there is a lot of information
4 behind these slides and these recommendations that
5 are yet to come. But certainly the dialogue that
6 we've had recorded in each case can be put on the web
7 site and will be within a couple of weeks, and we
8 will hold up putting these on the web site until such
9 time as we have the verbatim transcript ready to put
10 thereon as well.

11 As you know, the verbatim transcript from
12 prior meetings are now on our web site. So anybody,
13 audience or anybody else, using these, it would only
14 be fair to listen to the entire dialogue plus these
15 slides as the minimal way to bring these to the
16 attention under the Federal Advisory Act Procedures
17 that we're following.

18 So I just make that statement.

19 I would like to take a break now until
20 3:30. Be back here and we will commence the public
21 comment here.
22 MR. EHRMANN: Commissioner Gaffney would

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1 like to make a comment, I think.

2 COMMISSIONER GAFFNEY: Before you break?

3 CHAIRMAN WATKINS: Go ahead, Paul.

4 COMMISSIONER GAFFNEY: Admiral, I think

5 that within the allotted time we checked every single

6 block. We had 40, or 50, or 100 different topics to

7 addressed. And within the amount of time we were

8 allocated, we checked every block and we presented

9 those here.

10 Some of the results of checking every

11 single block within the allotted time, some of the

12 results are less throaty than others.

13 When our recommendation is to urge: Send

14 money; coordinate more often; study; generally

15 do better, we ought to have the courage, just because

16 we put it up here, to just say we can't add anything

17 to the debate and we ought to drop it. That's a

18 suggestion I have.

19 Just because we covered every block here
20 doesn't mean, to me, that we have to cover every
21 block in the end, if we don't have something throaty
22 and useful to say.

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1 CHAIRMAN WATKINS: Well I agree with that.
2 But, you know, we have agreed on the Commission, and
3 we have announced this publicly--and maybe it is the
4 time to do it again--that these are working papers.
5 Decisions have not been finalized.

6 No Commissioner has voted on anything, and
7 will not until the entire package is available to us
8 so we can see all of the justification for the
9 recommendations we made.

10 And certainly recommendations that don't
11 have any stuff to them, no substance along the lines
12 that Admiral Gaffney mentioned, are not going to be
13 included. But that is for us to weed out as we begin
14 to package these things up and integrate them across
15 the working groups.

16 For public knowledge, we are out of the
17 working group business as of now. We are moving into
18 the Commission as a whole, and we have set up

19 procedures to follow the Commission as a whole, which
20 means that everything will go out to the Commission
21 as a whole on all issues.

22 Comments will come back. We will treat

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1 them at the staff level, at my level, at the
2 Executive Director level, not by the individual
3 associate directors who have been working hand-in-
4 glove with the chairs of the working groups. There
5 will be a new process that now we're beginning to
6 really put pen to paper and take all of these things
7 and integrate them in the proper way.

8 When we do that, things will change. No
9 question about it. We may find that we have gaps in
10 our thinking that need to be filled up. We may have
11 excesses in there that seem to be able to be dropped
12 off along the lines just discussed.

13 So we are commencing that process now of
14 what we call phase three of our process, going from
15 fact-finding to deliberation in public, to writing
16 the papers.

17 We will be in the Federal Register with
18 our draft sometime later on in the summer, and that

19 will be then available to everyone. It will be sent
20 out specifically to the governors, and all comments
21 then will come in, redraft, and go out again to the
22 President on his desk.

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1 So that is the general process we're going
2 to follow. And we certainly have I think benefited
3 from the open dialogue between Commissioners just
4 today alone. We have gained a lot of cross-talk
5 experience here that is very important, and things
6 will have to be modified significantly.

7 So are there any other points that need to
8 be raised now before we take a break?

9 (No response.)

10 CHAIRMAN WATKINS: Okay, we'll take a
11 break. Be back here a little after 3:30.