

THE UNIVERSITY OF TEXAS SCHOOL OF LAW

November 2001

REPORT EVALUATING
PROGRESS TOWARD
JOINT AGENCY
COOPERATIVE
PARTNERSHIP

Written by

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For the

Environmental Protection Agency, Region 6

Texas Natural Resource Conservation Commission

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I. Introduction

Texas Natural Resource Conservation Commission (TNRCC), the environmental agency for Texas, and the U.S. Environmental Protection Agency, Region 6 (EPA) agree on a joint underlying mission: "To protect human health and the environment." Even with this joint underlying mission, the relationship between these two agencies has often been problematic and on some past occasions the size and scope of the altercations were legendary, such that stories still circulate.

On the national level, EPA and the states have initiated several programs to encourage environmental partnerships between the national agency and the states. A joint commitment between EPA and its State Capacity Task Force was executed in May, 1995 and is called the National Environmental Performance Partnership System. Commitments for partnership performance measures under this agreement continue to provide reference points and goals for both the state and federal environmental agencies.

EPA and TNRCC have jointly contracted with the Center for Public Policy Dispute Resolution (CPPDR) at the University of Texas School of Law to provide this evaluation of their efforts at establishing a joint cooperative partnership. This evaluation is based on a written survey and interviews with upper and middle management of both agencies.

According to our recent interviews with managers at both EPA and TNRCC, Texas efforts to seek cooperative partnership began in earnest during the past three to four years, and has been reflected in a number of efforts on the part of both agencies and their leaders. Two such efforts were clearly represented in the November, 1999 Senior Management Retreat and the March, 2000 Senior/Middle Management Retreat, both held at Baylor University in Waco, Texas. The sole focus for both retreats was establishment of a joint cooperative partnership between the TNRCC and the EPA, Region 6. Attendees in both retreats adopted Action Plans to further the goal of cooperative partnership.

In the Senior Management Retreat, three Action Plans are noted: the first was the preparation and circulation to the employees of a Memorandum of Agreement, signed by all senior management, clearly articulating their personal commitment and goal of cooperative partnership (See *Attachment G* for a copy of this Agreement); the second Action Plan noted was a commitment to hold to a Middle Management Retreat in March, 2000; and the third Action Plan was a commitment for joint enforcement and inspection programs. The March retreat included approximately 100 attendees including all middle managers as well as senior managers of the agencies. A large number of Action Plans were adopted and most of these have been completed or are now part of regular operations in the agencies. At these retreats, the commitment to partnership received strong, visible and widespread support from agency top management as well as from many middle managers.

The Management Retreats appear to be important in developing cooperative partnerships in four ways:

- the concrete, visual statement from upper management confirming commitment to the concept of cooperative partnership (i.e. "It mattered just seeing Bob and Gregg and the other top people in the circles interacting in a friendly, committed manner");
- the simple fact in itself that they happened;
- the sole focus of the retreat was to develop cooperative partnership; and
- the Action Plans implementation of cooperative partnership actually created a basis for continual cooperative interaction.

The survey data was collected and the interviews were conducted by CPPDR between October 2 and October 11, 2001. All managers surveyed and interviewed were those who had attended the Upper/Middle Managers Retreat held in March, 2000 in Waco, Texas.

The results of the survey and the interviews clearly indicate substantial progress in developing a cooperative partnership between EPA, Region 6 and TNRCC. We have included survey results and analysis as well as anecdotal/stories of successful partnership actions from interviews. These success "stories" are found in Attachment H. A primary reason for this progress as shown below in the report is to be credited to the tone and commitment established by the leadership in both agencies.

II. Methodology

The upper management of both EPA, Region 6 and TNRCC held a retreat in November, 1999. As one of the proposed Action Plans from this upper management retreat, a follow-up retreat was held in March, 2000 and included middle and senior managers from both agencies. Both retreats were held at Baylor University in Waco, TX. The primary objective of these retreats was *to establish a commitment for a cooperative partnership*. This evaluation consists of a written survey and interviews of managers from both agencies who attended the March retreat.

Following initial interviews with two to three top managers from each agency, we developed the questionnaire (Attachment A) that was then e-mailed to 79 managers (42 from TNRCC and 37 from EPA). Ten managers who attended the March, 2000 retreat are no longer with the agencies and ten facilitators that led workshops were not included in the survey.

Of the seventy-nine questionnaires sent to these managers, 53 (68%) were returned. Of the 42 sent to TNRCC, thirty-four (81%) were returned. Of the 37 sent to EPA, nineteen (53%) were returned. (The September 11th New York Trade Center attacks, in all likelihood, affected the response rate.)

The questionnaire responses were supplemented with individual interviews of managers who attended the March, 2000 retreat. We asked Margaret Hoffman and Glenn Schankle at TNRCC and Larry Starfield from EPA to assist in the selection of those managers who represented a cross section of managers from media areas and length of service with agencies.

We interviewed a total of 34 (44%) managers who received questionnaires, fifteen (42%) from EPA and nineteen (45%) from TNRCC.

Our interview process:

- provided assurances of confidentiality
- used the completed questionnaire as a framework for gaining insight into their responses and providing consistency in data collection.

This is the first effort to formally evaluate the joint agency effort to improve the cooperative partnership between the agencies. This can be used to establish a baseline for future evaluations. The analysis and findings must necessarily rely on subjective assessments and opinions of the managers participating because no baseline data is available for comparison.

III. Analysis and Discussion of Survey Data

This analysis and discussion will center on responses to the questionnaire, supported by interviews (**Attachments B through F contain the data collected from each of the questions in the survey**).

Question 1 - Overall opinion of agencies' effectiveness in establishing a cooperative partnership? *See Attachment B*

The combined responses for rating the overall effectiveness of the agencies' efforts to establish a cooperative partnership is 83% favorable. There are no unfavorable responses.

Several interviewees said that their responses would have been less favorable 3-4 years ago, and even 2-3 years ago. This was a pivotal period when commitment for the goal of a cooperative partnership occurred. In both agencies, and across all media/functions that are measurable, the reason for the shift is credited to the leadership at both agencies. It was clearly stated that the retreats were the visual and concrete reflection of this commitment and were pivotal in solidifying the commitment.

Question 2 - Extent of gaining an increased understanding of each other at the retreat(s)? *See Attachment B*

Eighty-seven percent (87%) responded fair to favorable, 13% were unfavorable in that there was no increase in understanding. Thirty-six percent (36%) responded favorable indicating a significant increase. For some individuals, the retreats offered the opportunity to observe/hear the leadership's commitment. And they provided the opportunity to put names with faces and gain "the other side's perspective." For those managers, the retreats served as a significant event in creating paradigm shifts towards "buying-in" to working for a more cooperative environment. Individuals in certain working groups were already familiar with their counterparts at the other agency.

Questions 3A/3B - Report of projects influenced by effort to cooperate? / Factors that made it successful? *See Attachment C (a highlighted list is included in Attachment C and specific success stories are found in Attachment H)*

Question 4 - What barriers currently prohibit formation of a cooperative partnership? *See Attachment D (a highlighted list is attached and further study of these issues is a recommendation)*

Questions 5-10 *See Attachment B*

In this series of questions, we attempt to gain comparative evaluations of the partnership at the agency, divisional and individual levels before and after the retreats.

	Responses			
	<u>Before Retreat</u>		<u>After Retreat</u>	
	Favorable	Unfavorable	Favorable	Unfavorable
Agency Level-	23%	17%	69%	2%
Divisional Level-	68%	6%	94%	0%
Individual Level-	75%	6%	96%	2%

The reasons for the favorable gains after the retreats, based on interviews, are rooted in:

- Seeing/hearing the leadership during the retreat
- The leadership's continual reinforcement since the retreat
- Developing more comfortable relationships with counterparts since the retreats
- Follow-up activities following the retreats which greatly increased overall contact of individuals and groups
- Experiencing success in working together to resolve issues and complete assignments

Note: Of the Action Plans that came from both retreats, the overwhelming majority were implemented. Several managers expressed satisfaction about the follow-up activities.

Questions 11A, 11B - Extent to which upper management is supportive?/How expressed?
See Attachment E

Ratings of upper management's support received a **favorable response of 96%**. There were no unfavorable responses.

Many expressions of support are shown in the Attachment E. The overwhelmingly cited expressions of support were the modeling behavior of the leadership and the personal involvement of Commissioner and Director in attempt to facilitate cooperation. These factors were mentioned in almost 50% of the questionnaires and strongly supported in the interviews.

Question 12 - In your opinion, if there has been collaboration, to what extent has it become institutionalized? *See Attachment B*

	Not At All	Slightly Institutionalized	Somewhat Institutionalized	Highly Institutionalized	Very Highly Institutionalized
TNRCC (N=29)	0	6	19	4	0
EPA (N=18)	3	1	7	6	1
Total (N=47)	3	7	26	10	1

The commitment to developing a cooperative partnership has been reflected in highly positive responses throughout this study. However, the subjective evaluation of institutionalization (or permanence) is markedly more neutral - just favorable.

Since this involves culture change, it will take time. This issue is largely dependent upon two factors: 1) The continued commitment and support by agency leadership, and 2) The process for embedding the changes.

A number of managers said they did not know what would happen when a change in leadership occurs. There is acknowledgement that a continued commitment to partnership will be necessary for institutionalization to develop further.

There are some managers who believe that in some cases, relationships at the staff levels have developed and that they will continue to work together when leadership changes occur.

IV. Analysis by Media

We attempted to determine the extent of progress toward partnership within the following media areas:

- Air
- Water
- Remediation
- Enforcement/Inspection
- Other (Administrative and Legal)

We found this difficult, in large part because of organizational differences between agencies, changing roles, and assignments that cover more than one medium. Of the fifty-three survey returns, 50% did not assign themselves to a specific medium. These included administrative managers and executive level management.

Based on our observations from interviews and review of responses to Question 1, (**Rating of the overall effectiveness to establish a cooperative partnership**), there is a favorable response across the media/function spectrum. The one area that presents a unique challenge is **water**. Because of agency turnover in this area and TNRCC's functional or matrix organization, we could not gain much clarity of the partnership status within this medium.

Our subjective observations clearly indicate that the **air** and **enforcement/inspection** media have progressed very favorably.

V. Findings and Future Considerations

A. Recommendations from Manager Survey Questions

Attachment F contains a consolidated list of recommendations made by managers. These stand alone and are worthy of consideration. We *highlight* that:

- a) *Sixteen* managers expressed an interest in *follow-up* meetings. Based on interviews, this interest is rooted in:
 - The desire to reinforce relationships that are working
 - To meet new people resulting from turnover and organizational changes(Ideas about agenda, format, frequency and attendees are varied)
- b) In interviews, several managers expressed awareness of the "walk in my shoes" program, an Action Plan from the middle management retreat. One manager from each agency specifically *recommended an expansion of this program*.
- c) Managers expressed interest in publicly acknowledging successful program/project outcomes.
- d) Joint development of objective meaningful program performance criteria, joint end of year evaluations, and operating principles.

B. Recommendations and Findings from the Evaluations as a Whole - Questions and Interviews

We recommend that:

- The agencies develop an appropriate plan for the follow-up joint meetings that many respondents requested - meetings which are both task oriented and focused on relationship.
- Senior management devote time to identifying barriers to the partnership (including resistant personalities) and develop strategies to overcome obstacles. (*See Attachment D* for a list of barriers identified by the survey)
- Institute an annual recognition of projects and people exemplifying cooperative partnership goals.
- Continue efforts at implementation of Action Plans developed at both retreats - consider institutionalization of those plans that are working.

Our primary conclusion is that during the past 3-4 years, there has been considerable progress toward developing a cooperative partnership. The responses to the objective questions in the survey, as shown in Attachment B, reflect significant success toward a cooperative partnership between EPA and TNRCC. Though there was no baseline data for comparison, these subjective

assessments reflected in the survey were confirmed and strengthened by individual interviews of thirty-four managers, upper and middle managers of the agencies.

The primary reason for the development of a cooperative partnership is credited to the leadership in both agencies who jointly sponsored two management retreats focused on this topic and who have greatly encouraged, supported, and exemplified a cooperative partnership spirit in their interactions and job duties throughout the agencies. Additionally, this tone, set by the leadership, has led to widespread positive and individual experiences in the planning and carrying out of joint management projects and programs.

The majority of managers who participated in the interviews of this study are also positive about the gains in the productivity within each agency, made because of the cooperative partnership environment. They also expressed hope that it would continue.

It is important to note that some managers expressed concerns and skepticism that organizational, political and policy differences will continue to pose challenges and possibly barriers for a cooperative partnership between the agencies. A very few of these managers wonder if "cooperative partnership" is the proper relationship and express concern that it could be taken too far.

ATTACHMENT A

**QUESTIONNAIRE FOR PROJECT ESTABLISHING
COOPERATIVE PARTNERSHIP**

Attachment A

MEMORANDUM TO ACCOMPANY SURVEY

DATE: October 2, 2001

TO: Upper and Middle Managers at TNRCC and EPA Region 6

FROM: Jan Summer, Executive Director
Center for Public Policy Dispute Resolution
University of Texas School of Law

On March 27 - 28, 2000, you attended an EPA Region 6 - TNRCC management retreat at Baylor University in Waco. Its purpose was to begin to improve the cooperative partnership between the agencies.

The Center for Public Policy Dispute Resolution (CPPDR) at the University of Texas Law School has been asked to evaluate the effects of the agencies' efforts to improve the partnership

All attendees are asked to complete the attached questionnaire and return it directly by e-mail to Jan Summer, Executive Director, CPPDR, using the e-mail address set forth below. We are planning a limited number of selected interviews with attendees across all media to supplement this questionnaire.

Individual responses will be held in strict confidence. We will report only general findings to the administrations at both agencies.

Because of a committed time line, we would appreciate receiving your completed questionnaire by Friday, October 12, 2001.

Jan Summer, Executive Director
Center for Public Policy Dispute Resolution
Phone: (512) 471-3507
email: cppdr@mail.law.utexas.edu

Attachment A (continued)

3A. Please describe a successful interagency project, meeting, communication, or other collaborative effort that has been influenced by the agencies' effort to establish a cooperative partnership.

3B. What factors made it successful?

4. What barriers currently prohibit formation of a cooperative partnership between the agencies?

5. Please rate your opinion of the partnership between the agencies prior to the retreat.

1	2	3	4	5
<i>Very Low</i>	<i>Low</i>	<i>Fair</i>	<i>High</i>	<i>Very High</i>

6. Please rate your current opinion of the partnership.

1	2	3	4	5
<i>Very Low</i>	<i>Low</i>	<i>Fair</i>	<i>High</i>	<i>Very High</i>

7. To what extent is your division currently committed to collaborating with TNRCC/EPA?

1	2	3	4	5
<i>Not Committed</i>	<i>Slightly Committed</i>	<i>Somewhat Committed</i>	<i>Highly Committed</i>	<i>Very Highly Committed</i>

8. To what extent was your division committed prior to the retreat?

1	2	3	4	5
<i>Not Committed</i>	<i>Slightly Committed</i>	<i>Somewhat Committed</i>	<i>Highly Committed</i>	<i>Very Highly Committed</i>

Attachment A (continued)

9. To what extent are you personally committed to collaborating with TNRCC/EPA?

1	2	3	4	5
<i>Not Committed</i>	<i>Slightly Committed</i>	<i>Somewhat Committed</i>	<i>Highly Committed</i>	<i>Very Highly Committed</i>

10. To what extent were you personally committed prior to the retreat?

1	2	3	4	5
<i>Not Committed</i>	<i>Slightly Committed</i>	<i>Somewhat Committed</i>	<i>Highly Committed</i>	<i>Very Highly Committed</i>

11A. To what extent has upper management been supportive of the efforts to establish a cooperative partnership?

1	2	3	4	5
<i>Not Supportive</i>	<i>Slightly Supportive</i>	<i>Somewhat Supportive</i>	<i>Highly Supportive</i>	<i>Very Highly Supportive</i>

11B. How has that support been expressed?

12. In your opinion, if there has been improved collaboration, to what extent has it become institutionalized in the agencies?

1	2	3	4	5
<i>Not At All</i>	<i>Slightly Institutionalized</i>	<i>Somewhat Institutionalized</i>	<i>Highly Institutionalized</i>	<i>Very Highly Institutionalized</i>

13. What recommendations do you have for improving collaboration in the future?

ATTACHMENT B

**RESPONSES TO OBJECTIVE
QUESTIONS 1, 2, 5-10, 12**


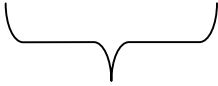

Attachment B
Responses to Objective Questions

Findings

Attachment B contains responses from each agency's attendees to the objective questions on the survey. Responses to open-ended questions are shown in Attachments C, D, E and F.




Question 1 - Overall effectiveness of establishing a cooperative partnership?

	Very Low	Low	Fair	High	Very High
TNRCC (N=34)	0	0	9	20	5
EPA (N=19)	0	0	1	13	5
Total (N=53)	0	0	10	33	10

		
0% unfavorable	19% fair	81% favorable

Question 2 - Extent to which you gained an increased understanding of each other?

	No Increase	Slightly Increased	Somewhat Increased	Highly Increased	Very Highly Increased
TNRCC (N=34)	0	4	18	9	3
EPA (N=19)	2	1	9	6	1
Total (N=53)	2	5	27	15	4

		
13% unfavorable	51% fair	36% favorable

Question 3A/3B - Project influenced by effort to cooperate?/ Factors that made it successful? *See Attachment C*

Question 4 - Barriers to forming a cooperative partnership? *See Attachment D*

Attachment B (continued)
Responses to Objective Questions

Question 5 - Opinion of the partnership prior to the retreat?

	Very Low	Low	Fair	High	Very High
TNRCC (N=34)	0	7	23	4	0
EPA (N=19)	0	2	9	7	1
Total (N=53)	0	9	32	11	1

}		}		}	
17% unfavorable		60% fair		23% favorable	

Question 6 - Current opinion of the partnership?

	Very Low	Low	Fair	High	Very High
TNRCC (N=34)	0	1	10	20	3
EPA (N=19)	0	0	5	12	2
Total (N=53)	0	1	15	32	5

}		}		}	
2% unfavorable		28% fair		70% favorable	

Question 7 - Extent of your division's current commitment to collaborating with TNRCC/EPA?

	Not Committed	Slightly Committed	Somewhat Committed	Highly Committed	Very Highly Committed
TNRCC (N=32)	0	0	3	16	13
EPA (N=19)	0	0	0	12	7
Total (N=51)	0	0	3	28	20

}		}		}	
0% unfavorable		6% fair		94% favorable	

Question 8 - Extent of your division's commitment prior to the retreat?

	Not Committed	Slightly Committed	Somewhat Committed	Highly Committed	Very High Committed
TNRCC (N=32)	0	0	8	19	5
EPA (N=19)	0	0	2	12	5
Total (N=51)	0	0	10	31	10

}		}		}	
0% unfavorable		20% fair		80% favorable	

Attachment B (continued)
Responses to Objective Questions

Question 9 - Extent of your current personal commitment to collaborating with the TNRCC/EPA?

	Not Committed	Slightly Committed	Somewhat Committed	Highly Committed	Very Highly Committed
TNRCC (N=34)	0	1	1	19	13
EPA (N=19)	0	0	0	7	12
Total (N=53)	0	1	1	26	25

Question 10 - Extent of your personal commitment prior to the retreat?

	Not Committed	Slightly Committed	Somewhat Committed	Highly Committed	Very Highly Committed
TNRCC (N=34)	1	2	9	14	8
EPA (N=19)	0	0	1	7	11
Total (N=53)	1	2	10	21	19

Question 12 - In your opinion, if there has been collaboration, to what extent has it become institutionalized?

	Not At All	Slightly Institutionalized	Somewhat Institutionalized	Highly Institutionalized	Very Highly Institutionalized
TNRCC (N=29)	0	6	19	4	0
EPA (N=18)	3	1	7	6	1
Total (N=47)	3	7	26	10	1

ATTACHMENT C

QUESTIONS 3A AND 3B

**EXAMPLES OF SUCCESSFUL
INTERAGENCY PROJECTS
AND ACTIONS**

Attachment C

Examples of Successful Interagency Projects/Factors that made them successful? (Questions 3A/3B) See Attachment H for anecdotes

Below are some selected examples. A separate handout is available containing ALL projects identified by managers.

- 1) Authorization of NPDES program; Approval of TITLE V program
 - cooperation, sharing ideas, finding solutions

- 2) Ozone SIP
 - Regional Administrator/Commissioners involvement
 - Region's willingness to focus on importance of TNRCC's strong plans and resolve to make hard decisions

- 3) Working closely with the Permit Admin. Section on administrative issues (i.e. PCS coding, Public Notices, State Permits, etc.)
 - Understanding each other's perspectives/framework
 - Communication
 - Being charitable in spirit

- 4) RCRA "permits" program
 - Mutually developed goals
 - Willingness of EPA to support TNRCC
 - Treat state with respect

- 5) Compliance Planning Process
 - Willingness to work together
 - TNRCC established agenda for the first time with compliments from EPA

- 6) Implementing the Storm Water Program
 - Open discussions

- 7) Border XXI Principles of Coordination
 - Desire for successful outcomes
 - EPA's willingness to listen

- 8) Completing a backlog of NPDES permits
 - EPA's commitment to helping TNRCC and acknowledgement that they dropped the ball

- 9) Joint TNRCC/EPA efforts on environmental justice/equity issues surrounding a recycling facility in San Antonio

- 10) Alcoa/Rockdale facility - pertaining to grandfathering issue and joint review of records

Attachment C (continued)

- 11) Cooperation on the McGregor naval facility in Waco, on-site remediation, and the Texas Bucket Brigade in Houston on citizen sampling project
- 12) EPA accommodation and evaluation of TNRCC in its refinery initiative
- 13) The negotiation and execution of the Performance Partnership Grant Agreement
 - A model effort of TNRCC and EPA
- 14) Brownfields/Voluntary Cleanup Program is a very successful program
- 15) TNRCC/EPA joint inspection strategy
 - Border warehouse inspectors
- 16) EPA assistance in review of background reports on sites that are part of the Government Performance Results Act (GPRA)
 - 500 man-hours spent by EPA in helping TNRCC, so TNRCC reduced their backlog and EPA showed an increase in GPRA measures this year

ATTACHMENT D

QUESTION 4

**WHAT BARRIERS CURRENTLY PROHIBIT
FORMATION OF A COOPERATIVE PARTNERSHIP
BETWEEN THE AGENCIES?**

Attachment D

What Barriers Currently Prohibit Formation of a Cooperative Partnership between the Agencies? (Question 4)

TNRCC

- Inflexibility (4)
- Time Limitations (3)
- Political Pressures (2)
- IS incompatibility
- Communications insufficiency
- Different perspectives
- Institutional traditions
- EPA's funding for travel
- Organizational differences
- Blaming others
- EPA embracing new ideas
- FTE shortfall problem in implementation of delegated programs

EPA

- Communications (3)
- Different Rules/Objectives (2)
- Inflexibility
- Enforcement v. Permitting (polar opposites on the same issue)
- Distrust at staff level
- TNRCC FTE shortfalls
- Implementation v. primary agreements on delegated programs
- TNRCC Legal Staff makes it difficult
- Long-standing friction
- External parties bureaucracy (e.g. Dept. of Justice staff levels)
- Lack of understanding of priorities and driving force behind priorities

ATTACHMENT E

QUESTIONS 11A AND 11B

**THE EXTENT TO WHICH UPPER MANAGEMENT
HAS BEEN SUPPORTIVE?
HOW HAS SUPPORT BEEN EXPRESSED?**

Attachment E

Question 11A - Extent to which upper management has been supportive?

	Not Supportive	Slightly Supportive	Somewhat Supportive	Highly Supportive	Very Highly Supportive
TNRCC (N=34)	0	0	2	18	14
EPA (N=19)	0	0	0	6	13
Total (N=53)	0	0	2	14	27

0% unfavorable
4% fair
96% favorable

Question 11B - How has support been expressed?

- Upper management's oral/written expressions of commitment and support (20+)
- Establishing/attending retreats/money spent at retreats (5)
- "Walk in my shoes program" (2)
- Meetings with EPA are part of discussion at staff meetings (2)
- Inclusiveness (2)
- Commissioners and Executive Director's personal involvement and support
- Retreat follow-up meetings/ensuring retreat commitments were met
- Encouragement for partnerships as a surprise policy
- Traveling to Austin for meetings
- Sharing drafts of potentially controversial documents
- Alignment of EPA enforcement planning with state budget/planning cycle
- Modeling behavior
- 2/13/01 meetings for water programs with TNRCC
- Divisional commitment to make sure all agreements with EPA are implemented
- Less hostile actions
- Joint training exercises

ATTACHMENT F

QUESTION 13

EPA AND TNRCC RECOMMENDATIONS

Attachment F

EPA Recommendations (Question 13)

- ◆ More follow-up joint meetings (3)
- ◆ Hold joint meetings at staff level (2)
- ◆ Continue the commitment to working with the state
- ◆ These upper management retreats should include Deputy levels
- ◆ "Stay the course"
- ◆ Reward collaborative behavior - set up a recognized award system and performance evaluation
- ◆ Align goals and objectives, enhance joint planning
- ◆ Expand "Walk in my Shoes" program
- ◆ Set up a regular series of meetings with EPA Region 6 personnel and State personnel (separate meetings for each state) as follows:
 - A. Senior staff (EPA Regional Administrator and Division Directors-with state counterparts). 1/2 day
 - B. First and Second line supervisors for - EPA & State counterparts, separate meetings for each program. 1 to 2 days
 - C. Key staff - EPA and State counterparts, separate meetings for each program. 2 to 3 days
 - D. Meetings should be held on an annual or semiannual basis and alternate between EPA & State offices. Discussions should include programs, operations, and team building.

A suggested course of action for EPA:

- 1] measure EPA's program specific success as a function of how well the States are doing
- 2] develop, with the States, objective program performance criteria...[for both the Region and the States]...put an emphasis on meaningful human health/environmental criteria/progress
- 3] institutionalize end-of-year program evaluations [using above criteria] for both the States and EPA...typically the EPA evaluates the States' performance...the States need to be given an opportunity to evaluate EPA's performance as well
- 4] mutually agree on "operating" principles...i.e.:
 - a] how we will perform oversight;
 - b] how we will communicate on major issues;
 - c] the extent to which we will "allow" state discretion for regulatory interpretations;
 - d] program priorities...
 - e] etc...

Attachment F (continued)

TNRCC Recommendations (Question 13)

- More follow-up meetings/interactions (11)
- Continued expressions of commitment to partnership from management (4)
- Announce and reward successes (2)
- Continued commitment to flexibility (2)
- Walk the talk
- Implement the MOU
- Develop joint strategies early
- Small EPA satellite in Austin
- Expand "Walk in my Shoes" program
- Regional support of State with Feds.
- Keep each other abreast of organizational changes
- Seek out joint projects
- Look for new processes (e.g. ARAR's in Superfund)
- At EPA's Annual Regional Training sessions, express support for the cooperative partnership

ATTACHMENT G

**EPA AND TNRCC
MEMORANDUM OF AGREEMENT**



Attachment G

November 30, 1999



MEMORANDUM

SUBJECT: Working Relationship Between the Environmental Protection Agency (EPA)
Region 6 and the Texas Natural Resource Conservation Commission
(TNRCC)

FROM: EPA and TNRCC Senior Management

TO: EPA and TNRCC Staff

The leadership of EPA Region 6 and TNRCC met on November 2 to gain a better understanding of each other, both professionally and personally, and to establish a commitment for an improved cooperative working relationship between the two agencies. We discussed basic assumptions that impact our relationship, such as the high level of accomplishment we share, the fact that our respective staffs are highly competent and do their jobs well, and that as Agency leaders, we establish the tone and priorities within our organizations.

We agreed that we are truly committed to a cooperative partnership and that this partnership will allow us and our respective staffs to more effectively accomplish our jobs and to better achieve our mutual goal of protecting human health and the environment, while respecting our individual responsibilities and legitimate differences in perspectives. Our commitment recognizes that problem solving based on a desire to address the important "interests" of each agency (e.g., cleaning the water) is more effective than arguing based on "positions" the Agencies may have staked out (e.g., "we've always done it this way ...").

We developed some basic principles which embody the discussions. These will provide general guidance as we continue to develop activities which further the relationship .

- EPA and TNRCC share the common goal of protection of human health and the environment. Each Agency has inherent strengths and highly competent staffs that allow us collectively to make progress toward this goal. Given our common goal we should not presume disagreement at the outset of every discussion.
- Cooperatively resolving an issue is more desirable than winning an adversarial discussion. Adversarial positioning can create bickering, lead to inefficiencies, and impede making good decisions.

Attachment G - (continued)

- The leadership of both Agencies is committed to "interest-based" problem solving, as discussed above. This process leads to better collaboration and increased understanding of external pressures on each organization, and provides staff the opportunity to problem-solve in lieu of proving a position.
- Attaining a cooperative relationship is an evolutionary process which requires the continued involvement of senior management and stepwise execution of specific relationship building tasks.

We believe the commitment to the cooperative relationship will be essential for the long term success of our organizations as we carry out our respective missions. We will lead by example in our dealings with each other and with our staffs. We recognize that we will not agree on every issue; however, we will strive to establish lines of communication and processes which minimize the impacts of these policy disagreements on how the staff accomplishes their work, while management focuses on means to resolve the underlying dispute. By signing this agreement, we are committing to the principles embodied herein and to holding ourselves and our staffs accountable to honoring these principles of cooperative decision making which we believe will further our common goal of protecting human health and the environment.

Signed:

TNRCC:

Bob Huston

Jeff Saitas

Glenn Shankle

Duncan Norton

Leigh Ing

Jim Phillips

Ed Serna

Joe Vogel

Randy Wood

EPA:

Gregg Cooke

Jerry Clifford

Lynda Carron

Samuel Coleman

Carl Edlund

David Gray

Bill Hathaway

Myron Knudson

Larry Starfield

ATTACHMENT H

**ANECDOTAL STORIES
FROM INTERVIEWS**

Attachment H **Anecdotal Stories from Interviews**

"It's not that you must always agree, but how you handle the conflict that counts."

-Gregg Cooke, 2001

1. State Implementation Plan for Air Quality (SIP) in Houston, Texas

The application of the Cooperative Partnership is vividly reflected in many aspects of the process leading to an October 15, 2001 joint approval by both TNRCC and EPA of the Houston Area State Implementation Plan for Clean Air (SIP). During the negotiation of this SIP, agency employees from both TNRCC and EPA experienced a change in attitude toward cooperative partnerships (win-win) approaches due to the intense involvement of top EPA and TNRCC executives. Both leaders insisted on and brought all their resources to the table to support the use of a Cooperative Partnership approach. The content of the Houston SIP reflected a number of difficult and unique pre-approvals by the national office of EPA - innovative ideas such as interim measures and reports, as well as the use of new technology yet to be available. Texas legislative action and funding had to be in place regarding the development of the new technology. High dedication of staff time and cooperative efforts from both agencies, as well as senior management, was required to bring the Plan to the approval stage. In the final approval process, EPA and TNRCC employed a parallel approval process for the SIP requiring both agencies to simultaneously proceed through the stages of their respective Administrative Procedures Acts. The jointly approved SIP was a remarkable feat of trust, dedication and commitment between the agencies, especially given the national profile, complexity and widespread political nature of this issue. Interestingly, law suits from both the environmental and the business interests have followed.

2. EPA Assistance in 2001 Legislative Session

EPA's senior management provided to TNRCC legislative input and assistance, as requested, during the 2001 Legislative Session. The 2001 Session was a "Sunset Session" for TNRCC. Sunset evaluations and the Houston SIP presented a number of legislative issues especially related to specific measures to augment the Houston SIP, such as SB5. SB5 represented an innovative effort to replace "command and control" type measures with economic incentives. With a strong joint presence, the 2001 Session was very successful for TNRCC and the passage of SB5 funding the technology needs of the Houston SIP.

3. Joint Enforcement Cooperative Protocol Agreement

In the upper management retreat of November, 1999, an important Action Plan outlined a new policy to plan and conduct joint enforcement actions between TNRCC and EPA. This important new step was implemented by senior management from both agencies. On June 15, 2000, a Joint Enforcement Cooperative Protocol Agreement was signed by Paul Sarahan, Director, Litigation Division, TNRCC and Chuck Sheehan, Deputy Regional Counsel for Enforcement, U.S. Environmental Protection Agency. The agreement outlined the necessary actions that both agencies agreed to take in order to insure coordination of their joint inspection and enforcement activities (administrative and judicial). Joint inspection and enforcement activities have helped

Attachment H (continued)

with a number of recent dual agency efforts including the Formosa Enforcement Order and Hazardous Waste Storage on the Texas border.

4. Angelina River

In July, 2001, TNRCC and EPA agreed to disagree in the case of the reclassification of the quality designation (TMDL) of a segment of the Angelina River near Lufkin, Texas. TNRCC approved the reclassification of the river segment receiving waste water discharge from the Donahue Paper mill. TNRCC and EPA were engaged in conversations about the problem throughout the approval process, but EPA just could not agree. TNRCC leadership knew of EPA's action before it happened and agreed to a different way to handle this conflict. Rather than engage in a public debate which might have marked past disagreements, the agencies leaders participated in a series of inclusive stakeholders (Donahue Industries, environmentalists, local community) meetings at the local level seeking and finding a win-win result for those concerned. Innovative ideas included use of penalty monies to provide water quality enhancement actions and voluntary industry commitments to undertake environmental projects benefiting the community and enhancing the water quality of the whole region.

5. Metal Study in El Paso County

In July, 2001, students from the University of Texas El Paso sampled campus soil and found lead and arsenic in the samples. EPA disagreed with the Texas Department of Health and the TNRCC findings that the levels were acceptable. It took several phone contacts at middle and upper management to set the steps for working together on this problem. The University was very concerned with fall semester approaching, and other political hot spots cropped up too. The State of Texas avoided embarrassment though the initial reactions between the agencies had reflected the old style of dealing. Additional testing is ongoing, but a safe window was established for continued use of the campus.

6. EPA Helps Out: A Simple Solution

TNRCC personnel were going to investigate a pollution report involving an entity who intensely distrusted TNRCC. A TNRCC staff member called and requested an EPA staff person go with TNRCC to jointly investigate. The presence of the EPA staff neutralized the interactions and keep disputes to a minimum and the EPA presence also helped create credibility in the inspection findings.

7. The Truck Load of Permits upon NRDRS Delegation

In connection with the 1990 delegation of the federal water program to Texas, EPA delivered a truck load of backlogged application for permit files (3,900 files). The files were delivered in 1998. Gregg Cooke and Bob Huston began their service as agency heads in early 1999, their commitment teamwork lead to a one year turnaround in all files. TNRCC did not go to the newspapers. EPA provided financial assistance for contract support and made the commitment to help clear up the files. They gave moral and technical support, and assumed joint responsibility for processing these files.