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A Review of the EPA's Common Sense Initiative**

**Cary Coglianese and Laurie K. Allen**

2003

RPP-2003-10

**Regulatory Policy Program**

**Center for Business and Government**  
John F. Kennedy School of Government  
79 John F. Kennedy Street, Weil Hall  
Cambridge, MA 02138

## **Citation**

This paper may be cited as: Coglianesi, Cary and Laurie K. Allen. 2003. "Building Sector-Based Consensus: A Review of the EPA's Common Sense Initiative." Regulatory Policy Program Working Paper RPP-2003-10. Cambridge, MA: Center for Business and Government, John F. Kennedy School of Government, Harvard University. Comments may be directed to the authors.

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## **Building Sector-Based Consensus: A Review of the EPA's Common Sense Initiative**

Cary Coglianese\* and Laurie K. Allen\*\*

From 1994-1998, the US Environmental Protection Agency (EPA) conducted what then-Administrator Carol Browner called a “bold experiment” in regulatory reinvention. The agency brought together representatives from six industrial sectors and sought to forge a consensus within each sector on innovations in environmental management and policy. In this paper, we examine the impact of EPA’s sector-focused, consensus-based program called the Common Sense Initiative (CSI) to determine how well it achieved the agency’s goals of improving technological innovation and environmental results.

The paper begins by examining the structure and goals of CSI and then considers its relatively modest accomplishments. The paper concludes with a discussion of a key factor that explains the Initiative’s failure to achieve its most ambitious goals: EPA’s reliance on consensus as a decision rule. By expecting CSI’s committees to achieve consensus before EPA would take action, the agency constrained its ability to spur sector-based technological change and achieve significant environmental improvements. Although consensus-based processes have been touted as innovative and promising strategies for regulators to pursue in environmental policy, often in the absence of clear legislative mandates, EPA’s limited success with CSI illustrates some of the shortcomings of policymaking by consensus and suggests the need for clear legislative authorization in order to make significant regulatory change in the United States.

### **I. The Common Sense Initiative**

EPA developed the Common Sense Initiative in the 1990s as part of the early Clinton Administration’s platform to “reinvent government” (Norberg-Bohm 1999). The agency has long faced criticism for the way it deals with environmental problems, including repeated claims that its regulations are burdensome, ineffective, and inefficient. EPA’s regulatory activities, grounded principally in environmental legislation adopted in the 1970s, have been characterized as “command-and-control” strategies that are targeted at individual pollutants in individual media, such as air, land, and water. While the agency’s past efforts have succeeded in reducing some environmental problems, they have been criticized for being too costly or for failing to achieve other goals, such as encouraging continuous environmental improvements or solving cross-media environmental problems (Thompson 1996). The agency’s traditional approach has also frequently been criticized as being too adversarial, leading EPA to miss opportunities for purported win-win policy changes that could improve the environment at lower costs.

EPA launched CSI as the agency’s “flagship program” to overcome the limitations attributed to traditional environmental regulation (Browner 1998). From July 1994 through December 1998, the agency attempted to use CSI to develop “cleaner, cheaper, and smarter”

approaches to environmental pollution control. By bringing together industry, environmental groups, and other interested parties within a sector, the agency sought agreement on new and better ways of defining and achieving environmental performance goals.

How well did this bold experiment work? The agency has claimed that CSI represented “an innovative approach” and “a pathfinding forum,” but the tangible results have been quite modest. CSI clearly had an “ambitious vision” (Fiorino 1996) and made a major commitment of agency resources, staff time, and support from agency leadership. However, nearly four years after the four-year Initiative came to an end, only about five of the approximately 30 subcommittee recommendations (amounting to about 45 distinct projects) that emerged from the CSI process have resulted in actual revisions to EPA regulations. Moreover, relatively few of the project's accomplishments, according to the agency's own reports, have produced technological innovations, pollution prevention, or resulted in any other significant policy change. The majority of projects resulted only in the production of educational material or the collection of information.

#### *A. Goals of the Common Sense Initiative.*

CSI was the “centerpiece” of the agency's reinvention efforts (GAO 1997). In announcing CSI, Administrator Browner heralded it as “probably the biggest new direction in environmental protection since the founding of the EPA” (Lee 2001). The agency predicted that CSI would “result in significant improvements to current regulations, as well as proposals for Congress to consider” (EPA 1994). Lofty and revolutionary, the overarching goals of CSI were to make dramatic changes that would result in “cheaper, cleaner, smarter” solutions to environmental problems. Upon launching the program, Administrator Browner promised bold action: “I don't think anyone in this country, whether environmental leader or corporate CEO, believes incremental steps will achieve the kind of future we all want” (EPA 1994).

The original advisory committee charter for CSI listed six objectives, or what EPA termed “programmatically elements,” of the project (EPA 1996a):

1. Regulation. EPA aimed to review existing regulations for improvement opportunities, better environmental protection, and lower compliance costs.
2. Pollution prevention. EPA sought to integrate pollution prevention into standard business practice within each of the sectors.
3. Reporting and record keeping. EPA hoped to make record keeping easier for industry and more available to public.
4. Compliance and enforcement. EPA wanted to encourage companies to exceed minimal requirements, while enhancing enforcement against intransigent violators.
5. Permitting. EPA aimed to improve its permitting procedures by eliminating duplication and inconsistencies and enhancing public participation.
6. Environmental technology. EPA aimed to provide industry with incentives for adopting innovative technologies to reduce pollution and lower costs.

EPA renewed the original two-year charter of the CSI in 1996, and shortly afterwards the CSI Council identified two additional goals for the Initiative:

7. Community Involvement. EPA would promote community involvement in environmental management and policy making; and
8. Emerging Issues. EPA would identify future issues of concern within each sector (Kerr et al. 1999).

Launched in the same year that Philip Howard published his best-selling *The Death of Common Sense* (1994), CSI promised to cut through the senselessness of regulatory red tape.<sup>1</sup> Administrator Carol Browner claimed that CSI would lead to a “fundamentally different system” (EPA 1998), one that would make more sense both in terms of achieving environmental protection and reducing the cost and inconsistency associated with the existing system of environmental control. By focusing on specific industrial sectors, EPA sought to identify specific instances in which the existing regulatory approach hampered efforts to achieve sensible environmental improvements. The involvement of industry, government, and non-governmental organizations in consensus-based deliberations was designed to take advantage of the insights of those working within each sector and lend legitimacy to the resulting recommendations and projects.

### B. *The Structure of CSI*

CSI had a two-level structure, a Council and specialized subcommittees; the members of both groups were appointed by the EPA Administrator for one-year renewable terms. These members included representatives from industry, national and local environmental organizations, environmental justice and community groups, labor unions, state, local, and federal governments. The Council consisted of approximately 30 members whose responsibility was to evaluate subcommittee project proposals and decide whether any recommended projects within each sector should be reported to the EPA Administrator. The EPA Administrator would consider those recommendations and if accepted would see that they were shepherded through the agency’s normal procedures for implementation.

Six subcommittees reported to the Council, one for each industrial sector included in the project: 1. automobile manufacturing; 2. computers and electronics; 3. iron and steel; 4. metal finishing; 5. petroleum refining; and 6. printing. These subcommittees had the flexibility to do research, propose pilot projects, conduct preliminary information gathering, and recommend demonstration projects for consideration by the CSI Council. As Figure 1 shows, all but one of the CSI subcommittees for these sectors met for the entire length of the Initiative, from 1994-1998. The subcommittee for one sector, metal finishing, actually was an extension of earlier efforts to reform regulation in this sector through EPA’s Sustainable Industries Program.

Funded by various EPA program offices, CSI was established as an advisory committee in October, 1994.<sup>2</sup> Meetings were conducted under standard advisory committee rules that require advance public notice of meetings, public access to meetings, the keeping of meeting minutes, and the opportunity for public comment. EPA retained the ultimate discretion and responsibility for implementing any CSI-recommended regulatory projects through its normal program offices and within the confines of existing law.

In addition to the six CSI Charter goals, CSI's operating framework consisted of the use of consensus as the decision rule to be used by the Initiative's advisory committee (Norberg-Bohm 1999). Participants interpreted consensus to mean strict unanimity; this gave each player effective veto power (EPA 1997b). Several years into the process, EPA recognized the difficulties posed by strict unanimity as a decision-making principle. In 1996, the agency responded to these difficulties by modestly redefining consensus as something that would be reached "when all Council members at the table can accept or support a particular position, even though the position may not be their first choice" (EPA 1996b). Even under this definition, consensus as a decision rule demanded that all the interests represented within CSI needed to reach agreement on new proposals or projects.

In 1997, midway through the Initiative, two reviews of CSI identified a number of problems associated with EPA's use of consensus as a decision rule. The first review was conducted by the Scientific Consulting Group (SCG) at EPA's request; the second was undertaken by the US General Accounting Office (GAO). In response to these reviews, EPA again re-evaluated its operating definition of consensus.

In a white paper on the consensus-decision-making principles (EPA 1997a), EPA argued that consensus was intended to bring out participants' underlying interests and stimulate creative problem solving. EPA urged the CSI Council, as well as CSI subcommittees and workgroups, to "try to reach full agreement on as many substantive and procedural issues as possible," but allowed the Council to evaluate different member opinions that were submitted separately. The agency also allowed subcommittees and workgroups to determine if a project could go forward without a consensus (EPA 1997a). Some subcommittees, such as the one for the automobile sector, required strict unanimity, while others, such as the metal finishing subcommittee, followed a more informal interpretation (Kerr et al. 1999).

## **II. What Did CSI Accomplish?**

Each of the six sector subcommittees charted its own course toward a "cleaner, better, cheaper" regulatory system. EPA established broad goals along a number of dimensions of policy concern, and each committee independently tried to achieve consensus on more specific performance measures and ways of achieving these goals. The results, perhaps not surprisingly, varied across the several sectors, with over 40 diverse projects emerging from all the sectors taken together. These projects ranged from the development of compliance manuals for small firms to the development of voluntary environmental performance targets. This part of the paper first reviews the scope of the efforts within each subcommittee, and then provides an overall account of the accomplishments of CSI.

### *A. CSI Subcommittee Results*

The sectors chosen for CSI varied. Some sectors consisted of a few large firms (such as automobile manufacturing), while others included a large number of small firms (such as the metal finishing and printing). Some sectors represented longstanding industrial activities (such as petroleum refining and iron and steel), while one sector reflected the industrial activity of the new information-based

economy (computers and electronics). Figure 2 shows the number of meetings held for each CSI sector held during two years of the Initiative. This section discusses what each of the six sector subcommittees accomplished through all of their meetings during CSI's four-year lifespan.

Automobile Manufacturing. The CSI subcommittee for automobile manufacturing set out initially to investigate how communities and the auto industry can interact better, look for alternatives to the existing regulatory system, and identify ways that industry could gain flexibility while reducing cost and maintaining environmental standards. Notwithstanding these goals, others have generally considered the automobile sector to be CSI's biggest failure. This sector had a large number of meetings, worked on three projects, but achieved the least results of any sector, only addressing at best two of the eight CSI program goals.

The projects completed by the automotive subcommittee were little more than inventories and reports, database development, and a meager rule change recommendation. The proposed rule change addressed the mass-per-unit-area approach for total vehicle coating, basically seeking to provide information in a way that is both more understandable and consistent with international regulations. The automobile sector subcommittee concluded its efforts in 1997, a year before the other CSI subcommittees.

Computers and Electronics. The computers and electronics industry is a comparatively "clean" industry when measured against traditional manufacturing. Nevertheless, it does have some significant environmental and occupational health and safety impacts. The subcommittee worked on 12 projects to develop improved strategies for reporting and public access to environmental information; overcome barriers to pollution prevention; encourage product stewardship and recycling; create alternative strategies for environmental management; and coordinate between environmental and workplace health policies.

The one project directed at environmental technology was structured to promote the creation of zero wastewater discharge systems, but was hindered by lack of clarity about how these systems could be incorporated into the current legal framework. Direct environmental results can probably be attained from the subcommittee's cathode ray tube (CRT) recycling and sulfuric acid-recycling projects, but preexisting regulations required recycled CRT glass and used acid to be treated as hazardous waste. The subcommittee's work did result in rule revisions to RCRA provisions for hazardous waste for CRT recycling to address this problem. The remaining projects from this sector addressed reporting, information availability, and record keeping.

Iron and Steel. The iron and steel industry consists of more than 1,000 facilities making and processing steel, with firms concentrated primarily in the Great Lakes region. This subcommittee addressed six of CSI's goals and pursued 12 projects. One of the subcommittee's projects involved the creation of a website designed to make iron and steel firms aware of technologies to improve environmental performance. Another involved the convening of a workshop on ways to reduce spent pickle liquor wastes. Several other projects sought improvements in permitting and reporting requirements, resulting in contributions to the EPA's Permit Reform Action Plan, which EPA approved in early 1999. The iron and steel subcommittee recommendations were included in the "Cross Media Tasks" matrix (EPA 1999).

The sector's biggest project, brownfields redevelopment, was designed to stimulate communities to bring polluted sites back into productive use, but it organized only two pilot projects, one in Alabama and one in Indiana. Only one project resulted in a regulation change and this was a minor rule revision related to monitoring furnace pressure. Although this sector's

subcommittee held over 100 meetings over the course of four years, its resulting projects were quite limited in scope and impact.

Metal Finishing. The metal finishing industry provides parts that are used in almost every manufacturing process. It is composed of more than 3000 small job shops and small businesses with limited capital and personnel, and with industry operations that affect the environment across air, land, and water. In addition, the sector includes more than 8000 metal finishing operations that are part of larger manufacturing firms.

Metal finishing has sometimes been characterized as the most successful of CSI's sectors. Unlike the other CSI sectors, the metal finishing industry began working closely with EPA in 1990, developing projects through the Sustainable Industries Initiative (Kerr et al. 1999). The technical studies conducted during this earlier project, as well as the experience in collaborating together, may have enabled the metal finishing sector to work more quickly and effectively in the Common Sense Initiative.

The metal finishing subcommittee pursued 13 projects that addressed each of the dimensions of CSI's main goals. Projects were designed to provide incentives for firms to go beyond compliance, but attention was also given to dealing with shops that are habitually out of compliance. Recognizing that in many cases no alternatives exist to substances used in metal finishing, one project focused on reducing waste through improved operations or recycling techniques. The subcommittee developed strategies for testing innovative technologies, such as composite mesh pads and chemical fume suppressants to reduce chromium pollution. Other projects included information and outreach activities; the creation of a regulatory team that addressed permitting and compliance issues; and an incentives program that would reward top performing companies with pollution prevention assistance and enforcement relief.

The Strategic Goals Program (SGP) that emerged from the metal finishing subcommittee in 1998 is cited as one of the most successful CSI projects (Kerr et al. 1999; EPA 1999). This voluntary program set clear national performance targets for facilities that, if met, would eventually result in performance by participating firms that exceeded compliance. Participating firms were to commit voluntarily to reducing the amount of metal disposed of as waste by 98 percent, the amount of water used by 50 percent, and the amount of energy used by 25 percent, compared to a 1992 baseline (or six years prior to the launch of SGP). In addition, firms were expected to commit to making a 90 percent reduction in emissions of organic chemicals and a 50 percent reduction in the land disposal of hazardous sludges, again compared with 1992 levels.

The overall goal of the SGP was to have 80 percent of the metal finishing facilities in the country achieve these reductions by 2002. By the end of the program, about 510 firms, or only about 15 percent of the independent shops in the industry, had agreed to participate in this program (EPA 2003a), although even fewer have remained active.<sup>3</sup> Nevertheless, EPA claims that the program has resulted in significant reductions in pollution levels compared with levels reported by SGP firms for 1992, including a reduction of about two billion gallons of wastewater, five million pounds of organic chemical emissions, and 250,000 pounds of metals released into water (EPA 2003a).

While these absolute numbers sound impressive, in relative terms the overall environmental improvements attributable to SGP were probably less so. According to the latest SGP progress report available on the metal finishing industry's website, SGP firms nearly achieved the program's goals for their reductions in organics emissions, but they only came about half way to achieving other of the program's goals (SGP 2001a). Of the approximately 300 SGP companies included in the progress report, about 130 were reported to be making no

progress at all on reducing energy use or reducing the generation and shipment of sludge. Moreover, other data available on the industry's website indicate that when overall environmental impacts are normalized by sales, participating firms showed little progress since 1998 in all areas, and even increased their impacts modestly in terms of energy use and shipments of sludge (SGP 2001b, 2001c). The most progress reported by the participating firms occurred prior to the launch of SGP in 1998. At least with the data that the industry has made publicly available, it is difficult to conclude that the Strategic Goals Program has led to substantial environmental improvements, whatever else it may have achieved.

Petroleum Refining. The petroleum refining industry consists of over 160 operating large and small petroleum refineries, concentrated principally along the Gulf Coast and in heavy industrialized areas on the east and west coasts. The petroleum refining subcommittee's goals were broad and ambitious, focusing on regulation, permits, compliance, reporting, pollution prevention, and environmental technology. Yet, considering the large number of meetings of this subcommittee and its workgroups, progress by this committee over the four years turned out to be rather limited.

The petroleum-refining sector subcommittee worked on only three projects. One project studied the air pollution reporting requirements imposed on the sector. This project involved analysis of the impacts on a single refiner in Texas. Contrary to expectations, this study found, according to EPA (1999), that "the reporting requirements did not contain as much duplication as originally anticipated." Nevertheless, the subcommittee still worked to develop an alternative refinery air reporting system. Another project aimed to reduce the pollution associated with leaks from refinery equipment and resulted in the planning of a voluntary program to encourage firms to prioritize their monitoring of equipment for leaks. This led to a third project that developed laser leak-detection technology that, according to EPA's latest reports, is still being tested.

Printing. The printing industry consists of more than 70,000 small business print shops diffused throughout the country and employing different printing processes. CSI's printing sector subcommittee pursued two projects during the four years of the Initiative. The first project provided educational outreach to printers in New York City, informing them of pollution prevention measures they could use in their businesses and developing a technical assistance directory for printers in the city. The second project aimed to develop a more flexible, integrated system of issuing environmental permits, with incentives built into the permitting process to encourage firms to achieve a high level of environmental performance. This alternative permitting process has so far been piloted in only a few states.

## *B. Summarizing Overall Results*

As this review of CSI subcommittees suggests, the Initiative involved many meetings that resulted in a number of projects. In most sectors, however, these projects failed to achieve results commensurate with EPA's ambitious goals. The Initiative has been reviewed twice by outside consultants commissioned by EPA. As noted above, the Scientific Consulting Group conducted a two-year review (SCG 1997) while CSI was still in progress. The US Government Accounting Office completed a review of CSI (GAO 1997) while the Initiative was in progress. After CSI had ended, the firm of Kerr, Greiner, Andersen, and April, Inc. conducted a review (Kerr et al. 1999). Taken together, these reviews suggest that CSI was generally tall on ambition but short on meaningful and measurable accomplishment. One subcommittee--metal finishing--composed of smaller businesses made some progress on most of the CSI goals, but most of the other

subcommittees achieved much less. As one commenter observed about CSI and other EPA attempts at innovation, “despite the labor and resource-intensive nature of reinvention activity over the past several years, the tangible results of these experimental efforts have been widely viewed as disappointing” (Case 2001).

As Table 1 shows, the number and magnitude of projects coming out of four years of subcommittee work were rather small, considering the time and resources devoted by the individuals involved in the subcommittees. According to an estimate given to us by an EPA staff member involved in CSI, the agency devoted approximately 50-60 FTEs to CSI, while participants from outside the agency undoubtedly devoted still more time and resources. Table 1 indicates that most of CSI’s projects were primarily intended to address the goals of regulatory reform and pollution prevention (51 percent combined), but this does not mean that CSI actually achieved this level of results.<sup>4</sup> Kerr et al. (1999) reported that only five projects were complete at the end of CSI and found only eight projects that, if implemented, would be expected to have some level of direct environmental effects.

In order to make our own assessment of CSI, we coded the 45 CSI projects according to the modalities by which the subcommittee worked to achieve the project goals. These modalities, or project types, included: (1) education (e.g., directories, reports, websites); (2) research and information collection (e.g., databases, technical analyses, reports for data collection); (3) recommended policy change (e.g., regulations, new permit process); (4) development of new technology; (5) voluntary industry action; and (6) discussion/airing of views.

As Table 2 shows, 47 percent of the projects consisted only of information and data collection and an additional 24 percent resulted in educational products, few of which were used to implement any innovative programs with direct environmental results.<sup>5</sup> Nearly three quarters of CSI’s projects aimed only to conduct research or provide some form of educational outreach. Moreover, no more than about one-tenth of the total projects were completed by the end of CSI.

In addition, only two CSI projects promote innovations in environmental technology, neither of which was completed by the end of CSI. By that time, the handful of subcommittee recommendations endorsed by the council and submitted to EPA had resulted in the agency taking steps to propose or issue only four new rules or revisions to existing regulations: (1) amendments to permit requirements for the iron and steel sector; (2) a rulemaking on a mass-per-unit area approach for automobile coating; (3) a rule change to extend the accumulation requirement for metal finishing waste to promote on-site recovery; and (4) a proposed rulemaking to streamline requirements for CRT recycling.

### *C. Post-CSI Sector Projects*

Although CSI came to an end in 1998, three out of six CSI subcommittees (metal finishing, printing, and petroleum refining) were incorporated for a time as part of a new sector committee under the agency’s larger National Advisory Committee on Environmental Policy (NACEPT). Meeting for the first time in April, 1999, NACEPT’s sectors committee sought to provide EPA a way to continue to receive stakeholder input toward a sector-based approach to environmental problems and incorporate the information into EPA’s core functions (EPA 2000).

In addition, before disbanding, the CSI Council prepared a “Sector Action Plan” that would serve as a basis for further work. The 2000 Sector Action Plan proposed continuing projects in six categories that were similar to CSI goals: (1) permitting, (2) enforcement and compliance assurance, (3) rule making, (4) solving regional problems, (5) building voluntary partnerships with the private sector to improve environmental performance, and (6) research and applications of science. Table 3 provides a summary of projects in the FY 2000 Sector Action Plan for CSI projects that continued (EPA 2000). None of these projects were new, but some had moved from the discussion stage to pilot projects. One additional regulatory proposal, on zero wastewater discharge systems for the computer and electronics sector, was initiated in 2000. As of two years after the end of CSI, as many as 30 uncompleted CSI projects were apparently still in progress through the NACEPT Sector Program or through internal EPA development (Table 3).<sup>6</sup>

During the Bush Administration, the EPA continued to pursue sector-focused efforts. The agency’s goals shifted away from the kind of dramatic changes that CSI had been intended to achieve toward a more limited set of objectives. Proposed in September 2002 and launched in May 2003, EPA’s new Sector Strategies Program (SSP) aimed: (1) to increase the use of environmental management systems, (2) reduce “government-imposed” barriers to environmental improvement, and (3) measure performance outcomes (EPA 2003b). As of mid-2003, SSP involved a total of twelve sectors, including such industries as agribusiness, higher education, and seaports (EPA 2003c). The only CSI sectors to be associated with SSP were the metal finishing and iron and steel manufacturing sectors.

### **III. Assessing the CSI Experience**

Administrator Browner envisioned CSI as a means for creating a “fundamentally different system...[through] a pathfinding forum for breaking through some of the biggest constraints associated with the current environmental regulatory system--the use of single media approach to environmental protection and the adversarial relationships that have built up among stakeholders” (EPA 1998; 2001). As an innovative approach to dealing with the complexities of environmental regulation and management, CSI’s sector-based, consensus-driven concept may have held some intuitive appeal, but the changes it produced have been far from significant (Kerr et al., 1999).

#### *A. Measuring Success*

Although EPA described the Common Sense Initiative as an experiment, it was not established in a way that would enable the agency to assess the impact of the program with rigor. Evaluating the impact of the Initiative calls for more than simply listing the various projects of each sector subcommittee. To assess its impact on environmental policy it should be appropriately compared with other efforts.

Some CSI projects presumably affected the behavior of industrial actors and perhaps even resulted in cost savings and environmental improvements. The key question for evaluation is whether CSI stimulated changes that were more significant than would have or could have

been achieved without it. In other words, what difference did CSI make? The answer to this question depends in part on the counterfactual, or what would have happened in the absence of the program (Coglianese 2002). If one were to assume that nothing at all would have been accomplished in the absence of CSI's consensus-based, sectoral approach, then its impact would presumably be viewed as positive. Such an assumption would, however, be unrealistic for two reasons.

First, EPA had pursued other, less prominent sector-based initiatives in the past, such as the Design for the Environment project, Sustainable Industries project, and the Cluster Program. These other initiatives had goals similar to CSI's and they too resulted in some limited projects. These earlier efforts tended to involve only the affected industry and EPA, and seem to have encountered some resistance from environmental groups. Had EPA continued these programs for four additional years, perhaps expanding them to other sectors, it might have achieved the same kind of results that followed CSI. In fact, the one CSI sector that appeared to others to have accomplished the most, metal finishing, had been one of three sectors included in EPA's Sustainable Industries Project. It is reasonable to consider how much of this sector's productivity should be attributed to CSI and how much to the head start it made during the Sustainable Industries project. The Kerr Report (1999) indicates that many participants in the metal finishing subcommittee credit the Sustainable Industries project for providing the foundation on which the CSI subcommittee achieved its successes. With a comparable amount of effort over four additional years, the metal finishing group within the Sustainable Industries project might well have achieved as much as, if not perhaps more than, the CSI metal finishing subcommittee accomplished.

Second, not only might EPA have achieved similar accomplishments had it continued its pre-CSI sector-based programs, but it also might have brought about more environmental improvement had it devoted a comparable amount of staff effort to exercising its traditional regulatory authority. CSI demanded many hours of EPA staff time in managing the subcommittees and working on projects. Compared with the nearly 300 final regulations the EPA issues each year, CSI stimulated only four proposed regulatory changes over the course of four years time—one half of one percent of all the rules issued during that time. This is not a significant accomplishment. EPA may well have generated more environmental improvement by devoting the same resources it invested in CSI to the development of even a single regulation, if that rule forced firms to develop promising new technologies or achieve substantial new milestones in environmental protection.

EPA did not develop a way to measure the environmental impacts associated with the Common Sense Initiative that could be used to compare its outcomes with those of other regulatory efforts. It would be quite difficult to develop such measures, if only because most of the CSI projects were educational or research efforts only indirectly connected with environmental improvement (Table 2). However, even in the absence of such measures, the counterfactual scenario--what would have happened in the absence of CSI--was probably not an empty set. In other words, had EPA not pursued CSI, the agency would undoubtedly have taken other actions to seek environmental improvement. One cannot reasonably conclude that CSI had an impact merely because it successfully completed some projects.

Even if CSI had an impact that went beyond what alternative courses of action would have achieved, the objective of CSI was not simply to have such a greater impact. Instead, CSI was conceived as a ground-breaking program, one that sought to overcome the limitations of the current media-specific system of environmental regulation and to chart a new course for the

future (EPA 1998). The hope among EPA staff was to craft new approaches that would achieve integrated environmental management and better environmental results, all at a lower cost. When evaluated against these original aspirations that the program would bring about fundamental change, CSI clearly was not a successful initiative. The Kerr (1999) report indicates that few participants “felt that they had succeeded in addressing issues of the scope they had anticipated at the outset of CSI. CSI made very little progress in addressing broad regulatory changes.”

For example, the flagship program of the metal finishing subcommittee was its Strategic Goals Program (SGP), hailed by some as the most significant of all the CSI projects (Kerr et al., 1999). As discussed earlier, this was a voluntary program encouraging metal finishing firms to reduce disposal of metals, water and energy usage, and toxic releases by specific targets by 2002 (as a percentage of 1992 levels). Even though the program had the lofty goal of getting 80 percent of the firms in the sector to make significant environmental improvements, by the program’s end no more than about 15 percent of the independent metal finishing shops had chosen to participate. As a result, even if SGP achieved some results that might not otherwise have occurred, its overall impact falls far short of achieving the kind of regulatory transformation EPA anticipated at the outset of CSI. Moreover, while participating companies and their improvements in environmental performance can be applauded, some in the metal finishing sector probably viewed the SGP as a means of staving off impending regulation (Kerr et al. 1999).<sup>7</sup> If the limited voluntary efforts associated with SGP are compared with the likely impact of a new environmental regulation that would have covered all 3,000 firms, instead of just the small fraction who participated in SGP, the environmental impacts of SGP can hardly seem all that significant.

The most cited accomplishment of CSI overall has been its positive impact on relationships between government, industry, environmental groups, and the other organizations involved in CSI discussions (Davies and Mazurek, 1996; SCG 1997; Kerr 1999). While this may well be a noteworthy accomplishment, it could be considered little more than a post-hoc justification for four intensive years of meetings. In themselves, improved organizational relationships do not translate into direct effects in terms of improvements in environmental regulation, economic efficiency, or improved environmental conditions, the original goals of the Initiative. Moreover, almost any intensive group process involving several years of deliberation could claim some credit for helping people learn more about each other and about how to work with each other. In some cases CSI clearly did not even achieve this goal. The automobile sector had a history of adversarial relationships with stakeholders and the CSI consensus process did little to improve them.

### *B. Lessons of CSI*

CSI faced fundamental limitations on the degree of change it could produce, limitations which resulted on the one hand from the parameters specified in current environmental legislation and on the other hand from the kind of consensus-based, “multi-stakeholder” process EPA employed in an effort to overcome problems in the existing system. The key lesson to be gleaned from the Common Sense Initiative is that consensus-based processes are ineffective means of overcoming perceived limitations in existing statutory law. Overcoming any such limitations will require more than just consensus-building in the administrative process. They will require statutory change, however difficult this may be to secure from the legislature.

CSI was designed to overcome the media-specific biases in existing law that inhibit firms from managing their overall environmental impacts in an integrated fashion. The current system of environmental regulation in the United States, as noted earlier, is usually criticized for failing to confront tradeoffs and spillover environmental effects across air, water, and groundwater (The Aspen Institute 1996; Enterprise for the Environment, 1998; Davies and Mazurek 1996; Esty and Chertow 1997). The EPA hoped that CSI would provide more focused improvements to environmental policy based on the specific needs of the industrial sectors included in the Initiative, rather than appearing to take the “one size fits all” approach for which EPA has often been criticized (Fiorino, 1996).

Unfortunately, because the problems CSI was designed to address were embedded in underlying environmental statutes, EPA came up against some significant limitations in what it could accomplish through administrative actions. EPA cannot change these statutes; in fact, they are written to constrain and direct the kinds of actions EPA takes. Statutes not only direct EPA’s priorities (Landy, Roberts, and Thomas, 1994), but also stipulate numerous judicially enforceable deadlines that the agency must meet and often specify the regulatory strategies EPA must use in great detail.

Existing environmental statutes limit EPA's opportunities to waive statutory requirements and they provide no catchall provision granting EPA authority to develop alternative regulatory systems. Moreover, most environmental statutes authorize citizen suits against firms that fail to comply with the letter of the law, meaning that even if EPA did grant firms exemptions or waivers from existing requirements these same firms might still be pursued in court by environmental organizations.

Faced with these kinds of legal limitations, EPA tried to use sector-based consensus building to develop innovative new approaches through the Common Sense Initiative. By forging agreement across varied interest groups, the agency hoped to create a degree of legitimacy around the projects that emerged from CSI. Legitimacy, after all, is sometimes thought to be enhanced by consensus processes (Freeman and Langbein 2001). EPA officials hoped that consensus would ensure that the innovations adopted by CSI would unify political support, thus increasing the likelihood that a wide range of actors would view its outcomes as sensible and implement them without much challenge.

Although consensus-building has long been viewed as having this kind of strategic advantage, in practice consensus building faces significant limitations (Coglianese 2001a). In fact, CSI’s relatively tepid outcomes can be largely attributed to the limitations of consensus as strategy for making policy decisions. There was simply no way that EPA could have accomplished through consensus-building anything remotely as dramatic as what it originally set out to accomplish.

Consensus building relies on agreement, usually unanimous agreement, among participants in a policy-making process. As defined in CSI’s original statement of operating principles, consensus would be “reached when all Council members at the table can accept or support a particular position, even though the position may not be their first choice” (EPA 1997). By February of 1997, an evaluation showed that subcommittees were often implementing the consensus standard in a way that required unanimity and that, as a result, CSI participants expressed dissatisfaction with the resulting delays (SCG 1997). As Davies and Mazurek (1996) reported toward the midpoint of CSI, “trying to persuade all parties to come to an agreement has proven so problematic that the agency has considered moving away from a strict interpretation of the term consensus.” While EPA continued to support consensus as the preferred approach

throughout the duration of CSI, urging subcommittees to “attempt to reach full agreement on as many substantive and procedural issues as possible,” the agency did subsequently relax its decision rule to permit projects to go forward even in the absence of full agreement (EPA 1997).

As is evident in international relations where consensus operates as a decision-making norm, building consensus is not easy. It is difficult to find any broad group of individuals with divergent interests who can come to agreement on major policy issues, especially when they arrive at the table with different opinions, assumptions, and value commitments. For this reason, the process of building consensus over policy innovations can take more time and demand more resources than processes not based on consensus (Thompson 1996; Coglianese 1997; 2001b). In addition, the outcomes of consensus processes tend to focus on the most tractable, and often least important, policy problems; to rely on agreement over imprecise or general principles rather than on concrete operational results; and to reflect what amounts to a lowest common denominator of all the participating interests (Coglianese 2001a).

The results of EPA’s Common Sense Initiative reflect these limitations. For example, CSI resulted in a number of narrow, relatively tractable projects, instead of the ambitious redesign of the regulatory system announced by EPA at the outset of the Initiative or as reflected in EPA’s goals for the Initiative. The Kerr Report (1999) indicates that, as time went on, participants in CSI reduced their expectations about what CSI could achieve, choosing to work on areas in which agreement was possible, such as training manuals, case studies and public outreach, not necessarily on those areas most in need of fixing (Table 2). These informational and administrative projects had narrow impacts that failed to generate the kind of conflicts that might have arisen over more ambitious policy efforts.

Nothing dramatic resulted from CSI because the agency chose to pursue its agenda through consensus. In consensus-building, as negotiations wear on agreements can drift toward the lowest common denominator of the players. In the case of environmental protection, which requires firms to internalize the social costs of their activities, industry players from each sector are unlikely to agree to changes that would require costly new technologies, at least not without some impending threat of government regulation (Caldart and Ashford 1999). After all, innovation usually comes with risks—both to the firm and to the government. As a result, it should not be surprising that CSI achieved very little in the way of promoting new environmental technologies.

Furthermore, because the EPA needed to seek consensus in the absence of clear regulatory authority, most of the projects that emerged from CSI were strictly voluntary. The metal finishing sector’s Strategic Goals Program, for example, was designed to encourage firms to make environmental improvements that exceeded existing regulatory requirements. SGP may well have led some firms to achieve environmental improvements that they would not otherwise have achieved, but it seems likely that the SGP was more attractive to firms that were already committed to maintaining a solid environmental record and perhaps had already achieved results that went beyond compliance with existing requirements. Any policy program that relies on attracting volunteers runs the risk of attracting mainly the kind of participants that the program least needs to address (Coglianese and Nash 2001).

## **Conclusion**

CSI's focus on fine-tuning environmental regulation to the specific circumstances of different industrial sectors may hold the potential for developing more sensible and effective methods of environmental protection. However, CSI's objectives were pursued under the constraints of consensus as a decision rule, and consequently the Initiative struggled to achieve much of significance. CSI's ultimate failure to transform the existing regulatory system, or even to result in significant innovations, stems from the limitations of consensus-building, especially in the face of statutory constraints on regulatory change.

The chief lesson to be learned from CSI appears to be that fundamental change in a regulatory system that is governed by a highly detailed set of statutes will come about neither without changing those statutes nor through consensus. As Vicki Norberg-Bohm (1998) observed about similar kinds of initiatives aimed at so-called green design and manufacturing, "expecting these initiatives alone to lead to extensive private sector efforts in environmentally conscious design and manufacturing is truly asking the tail to wag the dog. Legislation which provides stronger incentives over an appropriate time frame will be needed." Deliberative, sector-based efforts such as CSI may well serve a useful purpose of generating some new ideas, making incremental changes, or providing feedback to those involved in the regular policy process, but we should not expect that consensus-building will provide the route to a fundamentally "cleaner, cheaper, and smarter" regulatory system.

## Notes

\* Cary Coglianese is the Chair of the Regulatory Policy Program and Associate Professor of Public Policy at Harvard University's John F. Kennedy School of Government. His interdisciplinary research focuses on issues of regulation and administrative law, with a particular emphasis on analysis of alternative regulatory strategies. An affiliated scholar at the Harvard Law School and the director of the Kennedy School's Politics Research Group, Coglianese will also be the Irvine Visiting Professor of Law at Stanford Law School during the 2003-04 academic year.

\*\* Laurie Allen is the Director of the Office of Protected Resources for the National Oceanic and Atmospheric Administration. Her work focuses on U. S. marine conservation policy under the Endangered Species Act and the Marine Mammal Protection Act (MMPA), as well as on related issues of international policy. She played an integral role in implementing the 1994 amendments to the MMPA that required an ongoing constituent-based, consensus-driven negotiation process for reducing the impacts of fishing on marine mammals.

<sup>1</sup> When originally conceived, CSI was called the "Green Sectors Project" but was renamed to fit the government reform rhetoric of common sense. For a further example of this rhetoric, see Gore (1995).

<sup>2</sup> See Federal Advisory Committee Act (FACA), Pub. L. 92-463, Oct. 6, 1972; 86 Stat 770 as amended by Pub. L. 94-409, Sec 5(c) Sept. 13, 19763.

<sup>3</sup> Although more than 500 firms were "part of" SGP, apparently about 115 of these firms never submitted any data on their environmental progress (<http://www.strategicgoals.org/reports2/review.cfm?state=all&requesttimeout=200>, accessed September 2, 2003). Strikingly, the National Metal Finishing Strategic Goals Program's website provides facility reports for the year 2002 from only about 130 facilities (<http://www.strategicgoals.org/02cards/card.cfm>, accessed September 2, 2003).

<sup>4</sup> Some projects addressed more than one goal, but adding the secondary project goals does not dramatically affect the distribution of projects reflected in Table 1. With secondary goals added, the distribution of projects by goal is as follows: 19 percent regulation, 22 percent pollution prevention, eight percent record-keeping/reporting, 11 percent compliance and enforcement, 12 percent environmental technology, 14 percent involving communities, and five percent future issues.

<sup>5</sup> As with the CSI project goals, adding in the secondary modalities or project types does not appreciably affect the distribution of projects among the different modalities (46 percent research/information; 30 percent education; 15 percent policy change; four percent discussion; three percent new technology; and one percent voluntary industry action).

<sup>6</sup> The projects in the three subcommittee columns that are not continuing as FACA committees under NACEPT (automobiles, computers and electronics, and iron and steel) were in progress at the end of CSI even though formal meetings no longer continued to occur.

<sup>7</sup> Metal finishing firms were facing brownfields issues and effluent guidelines that, in combination with the general need for flexibility for small business, may have helped provide the impetus for industry involvement in SGP.

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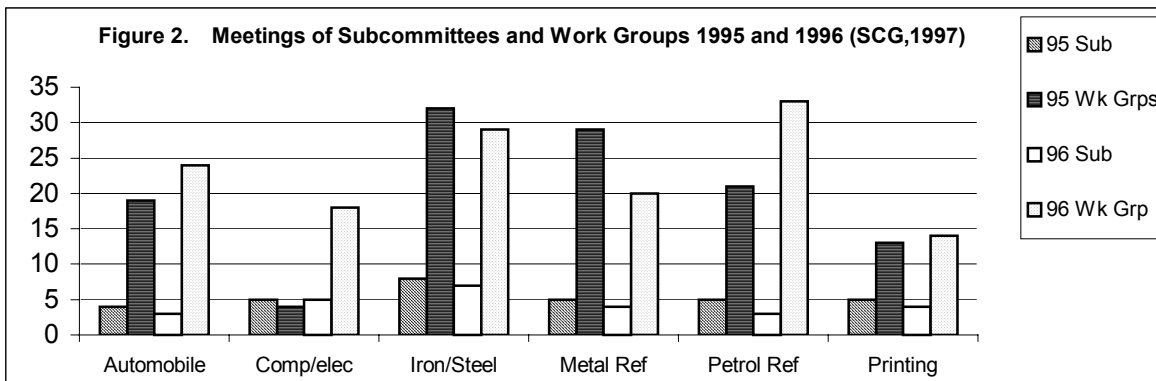
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## Acknowledgments

The authors acknowledge helpful comments from Darryl Banks, Theo de Bruijn, Daniel Fiorino, Shelley Metzenbaum, Vicki Norberg-Bohm, and Christian Richter. The views expressed in this paper are those of the authors and not necessarily those of the commentators or of the institutions with which the authors are affiliated.

## Figures and Tables

<b>Figure 1. Timeline of CSI Subcommittees</b>	
	1994    1995    1996    1997    1998
Metal Refinishing	CSI-----Dec
Printing	CSI-----Dec
Iron and Steel	CSI-----May
Petroleum Refining	CSI-----Dec
Automobile Manufacturing	CSI-----Mar
Computers and Electronics	CSI-----Dec



<b>Sectors</b>	Regulation	Pollution Prevention	Records/ Reports	Compliance/ Enforcement	Permits	Environmental Technology	Involving Communities	Future Issues	<b>Total</b>
Auto	2	1	0	0	0	0	0	0	3
Comp/Elect	5	3	3	0	0	0	1	0	12
Iron/Steel	1	0	1	4	2	1	3	0	12
Metal Fin	1	7	1	1	0	1	1	1	13
Petrol	0	1	1	0	0	0	1	0	3
Printing	0	2	0	0	0	0	0	0	2
<b>Total</b>	9	14	6	5	2	2	6	1	45
<i>Percent of Projects</i>	20.0	31.1	13.3	11.1	4.4	4.4	13.3	2.2	

	<b>% of All Projects</b>
Research/information collection	47
Education	24
Recommended policy change	20
Discussion/airing of views	4
Development of new technology	2
Voluntary industry action	2

<b>Program Goal</b>	Automobile	Computers/ Electronics	Iron & Steel	Metal Finishing	Petroleum	Printing	<b>Total</b>
Permitting	0	0	2	0	0	1	3
Rulemaking	1	3	1	1	0	0	6
Enforcement/ Compliance Assurance	0	1	2	3	1	0	7
Solving Regional Problems	0	0	1	0	0	0	1
Building Voluntary Partnerships	1	2	2	3	0	0	8
Research & Science (e.g., P2, technology)	0	0	0	4	1	0	5
<b>Total</b>	2	6	8	11	2	1	30