

US EPA ARCHIVE DOCUMENT

# Office of the Governor

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-0001

February 7, 1996



LAWTON CHILES  
GOVERNOR

Honorable Carol M. Browner  
Administrator  
United States Environmental Protection Agency  
401 M Street, Southwest  
Mail Code 1101  
Washington, D.C. 20460

Dear Carol:

Enclosed is Florida's proposal to conduct a "State of Florida" project under the Project XL Initiative described in President Clinton's March 16, 1995 report *Reinventing Environmental Regulation* and described in the May 23, 1995 Federal Register. The State of Florida and the Florida Department of Environmental Protection request approval to initiate a statewide program, following closely the federal model, which will solicit, review and approve proposals from the regulated community in exchange for greater environmental good. In other words, the State of Florida would operate its own Project XL program, with appropriate federal oversight.

Florida currently has several Project XL's either in the application or negotiation phase. We feel strongly that operating our own program would multiply that number several times. A state-run program will also open opportunities for participation by smaller public and private entities and demonstrate the viability of the concept of working "better, smarter, faster, cheaper" to a broader audience.

Florida is excited about this proposal. We are prepared to present the proposal in person if you feel this will lead to expedited handling of the request. Please do not hesitate to contact Mr. Michael Phillips, Assistant to the Secretary, Florida Department of Environmental Protection at (904)921-9717 should there be any questions.

With kind regards, I am

Sincerely,

A handwritten signature in black ink, appearing to read "Lawton Chiles", written over a horizontal line.

LAWTON CHILES

LC/kmp  
enclosure

## FLORIDA PROJECT XL PROPOSAL

### Background

Florida is currently host to three approved Project XL's, and one more in the review process in EPA in Washington. Interest has been expressed by a number of other possible project sponsors. This request is in line with President Clinton's overall message in the March 1995 report "Reinventing Environmental Regulation" which pledges to

"Support initiatives by facility managers to demonstrate excellence and leadership by reducing costs of environmental management and achieving environmental performance beyond that required by existing regulations."

Just as the delegation of air, water, and waste programs to states has multiplied the resources available to protect those aspects of the natural and built environments, delegation of Project XL will be multiplying the opportunities to increase flexibility, foster design of cost-effective solutions to environmental problems, and improve the relationship between regulators and the regulated community. Delegation to willing states has many historical precedents.

### Proposal

The State of Florida and the Florida Department of Environmental Protection (FDEP) request that the Environmental Protection Agency (EPA) delegate to FDEP the authority to solicit, review and approve proposals from the regulated community for flexibility in exchange for greater environmental good. FDEP would, upon approval, initiate a program for soliciting, reviewing, approving and tracking XL projects throughout the state. The design and operation of the program would be modeled after the national Project XL program currently being run by EPA.

FDEP proposes to develop approximately 1-5 projects per Department of Environmental Protection District Office during the next two years. We feel this is a manageable number, however, we would like to reserve the right to develop more per district if resources allow or if a particularly interesting project presents itself. We intend to entertain a wide variety of proposals from both public and private sponsors. At the two-year mark, FDEP and EPA would evaluate the effectiveness of the XL Program and negotiate an extension if the intended environmental results are being achieved.

### Florida Department of Environmental Protection

FDEP is an ideal candidate for a delegation of Project XL. The state is in the midst of preparing a comprehensive proposal to EPA

which would go a long way toward reinventing environmental regulation within the confines of Florida. The concept of this proposal was presented to the Administrator of EPA, Ms. Carol Browner in October of 1995. Her enthusiasm for the concept led us to begin the process of preparing this proposal. Our request for delegation of Project XL is a part of our overall planning effort, spun off from the main effort so that it could begin the approval process now rather than later.

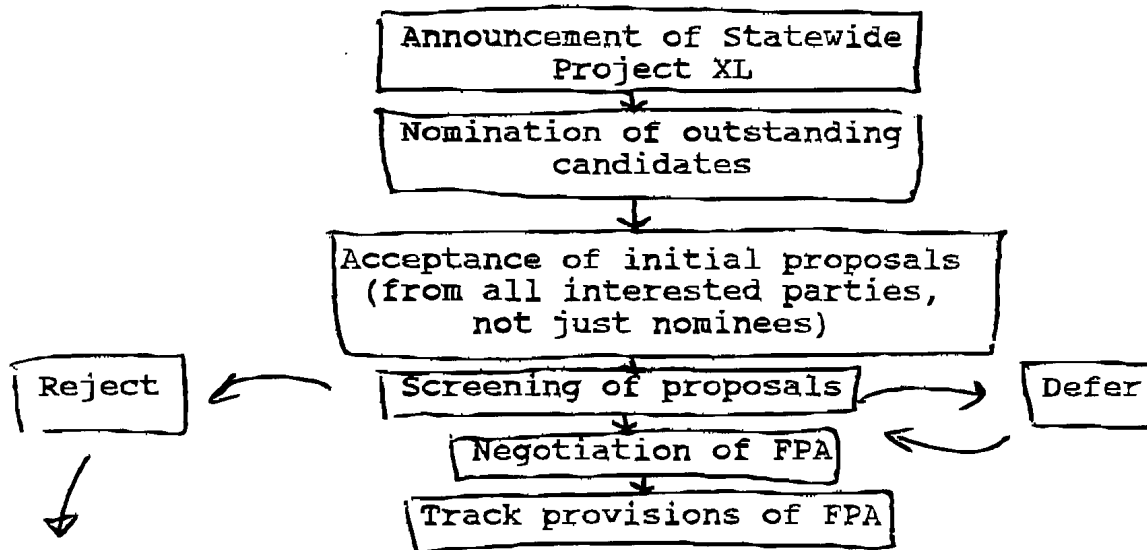
EPA has recognized Florida in the past as an innovative state with funding for environmental protection resources averaging well above the national mean. Florida matches EPA dollars in the ratio of 4-to-1, a tremendous overmatch, one not equaled by many other states.

Management

Under this proposal, FDEP would identify prospective public and private project sponsors which have demonstrated environmental leadership in the past. We intend to be proactive, soliciting proposals, not just waiting for sponsors to develop interest. The nomination process will involve FDEP managers, stakeholders, and EPA officials. This will insure a steady stream of high-quality applicants for consideration. FDEP employees at the headquarters and district offices will be named as Project XL coordinators to assist in the processing of applications. Upon approval, a project officer will be named to track the progress of the agreement throughout its term.

FDEP will work with the Region 4 office of EPA to develop a project review and approval process. The flowchart of such a process is included below. The final process will include factors considered important to FDEP and EPA. FDEP envisions no less rigorous a selection process than is currently being operated at the national level by EPA, however, the process may be telescoped somewhat to shorten its overall length.

Project XL Flowchart  
State of Florida



## Project XLC Proposals

FDEP anticipates development of Project XLC as well as Project XLF proposals and ultimately their agreements. Proposals combining aspects of both may also be considered in the future. The resources available to public entities are often dwarfed by those available to private companies, so an outreach and assistance effort will be initiated by FDEP. The Department will assist any community or geographic cluster of public entities as they develop their Project XLC proposal. Resources will be made available in the following areas:

- Research of technical feasibility
- Identification of relevant stakeholders
- Facilitation of community-stakeholder meetings
- Other services as requested (resources allowing)

We recognize the need to make the advantages of participation in Project XL accessible to public entities, and our intention is to actively pursue potential sponsors as soon as this request is approved.

## Stakeholder Involvement

An important part of FDEP's role will be to ensure the involvement of all relevant stakeholders, both for the delegated Project XL and any XLF and XLC projects in the state. We have begun this process by contacting the Environmental and Law Use Section of the Florida Bar. We invited their participation in our overall reinvention effort and this Project XL proposal as well. Ms. Mary Smallwood, Chairperson of the above-referenced Bar Section, has organized an ad hoc committee to work with FDEP on this matter. The Legal Environmental Assistance Fund (LEAF), one of the most active environmental non-governmental organizations (NGO) in the state, is a member of the ad hoc committee as are other interests including local government, state government and industry.

Additional efforts will center around identification of local stakeholders or groups neighboring or affected by the various future XLF or XLC proposals. FDEP is committed to ensuring the active participation of all affected groups and individuals through the review and approval authority for Project XL. No project will reach final agreement without first implementing a well-designed Stakeholder Involvement Plan (SIP).

Stakeholder support will be a key factor in the final approval of all agreements to be developed under this request. All workers, communities, businesses, neighborhood groups, governmental entities and NGO's who will be affected by the project will have

an opportunity to comment on and influence the final agreement in a more direct way if they care to, by serving on advisory committees and working groups drafting and reviewing the Final Project Agreement.

## Project Criteria

FDEP will utilize the same project selection criteria presently in use by EPA. The importance of a sponsor's strong showing in each criterion cannot be overemphasized. Applications with significant deficiencies in any area will be returned for modification and resubmittal.

Environmental Results - Sponsors will commit to environmental performance superior to that which could be achieved through compliance with current regulation. Some project of anticipated future regulation will also be a part of the calculation of this criterion.

Stakeholder Support - No project will be approved in final agreement form without a detailed plan to involve stakeholders and the concomitant pledge from the sponsor that the plan will be fully implemented.

Monitoring, Reporting, and Evaluation - Information concerning the project should be made available to all parties and stakeholders in a form which is easily understood, and is timely.

Cost Savings and Paperwork Reduction - This is important not only to the project sponsor, but to participating regulatory agencies as well. The final agreement will compare estimated savings to the overall compliance budget of the sponsor.

Transferability - Project XL is a pilot program, so this criterion is very important. Sponsors will commit to case studies, workshops, newsletters, and other vehicles for transferring the knowledge gained to others in the regulated community.

Feasibility - Each sponsor will describe the resources available to implement the proposed project. Commitment of these resources will be spelled out in the final agreement.

Shifting of Risk Burden - Each agreement will certify compliance with Executive Order 12898 on Environmental Justice. No one will be subjected to unjust or disproportionate environmental impacts as a result of any project in the state.

Careful adherence to the criteria above will ensure a successful program of XL projects in the state.

## **Relationship of Regulatory Agencies**

As the lead regulatory agency, FDEP will have primary responsibility for the review and approval of XL projects, however a variety of other regulatory agencies will be actively involved, invited to participate in review, and in some cases invited to sign the FPA. Their interconnectedness to this process and proposal is discussed below.

Region 4's initial involvement with the state will be significant as the State will rely on Region 4 for early guidance and assistance. As the State XL Project matures, Region 4's oversight will lessen, however, Region 4 will continue to participate in the Final Project Agreement negotiations and will continue to sign each agreement. The State and Region 4 will work together to reduce and eliminate duplication of effort.

## **Environmental Protection Agency**

The Environmental Protection Agency's Region 4 office will be involved with each applicant in much the same way that EPA Headquarters is currently involved with the applicants in the national Project XL initiative. Region 4 will assist in the applicant review process, participate in the negotiation of each Final Project Agreement, and sign each agreement.

It is hoped that this will lead to a shorter procedure timewise. However important steps in the approval process are retained; no application will be "rushed" to approval without making its way fully through the process.

## **Other Federal Agencies**

All federal agencies which have a stake in the project will be brought into the process and invited to participate fully. For instance, the Tampa Bay XLC is requesting regulatory flexibility from the United States Corps of Engineers (COE). FDEP will either work directly with COE or through EPA, as the opportunity presents itself during negotiation.

## **Other State Agencies**

In dealing with other state agencies with a stake in the outcome of a proposal, FDEP will retain the lead. Entities which are creatures of the State constitution, such as the Water Management Districts will also be invited to participate by FDEP when appropriate.

## **Local Regulatory Agencies**

Agencies with local regulatory powers, such as city or county environmental or health departments will be contacted by FDEP as necessary and invited to participate. In many cases, they will be signatories to the FPA.

## Final Project Agreements

FDEP will include in each Final Project Agreement all obligations of the parties to the FPA. At a minimum, FDEP will follow EPA's "Draft Principles for Development of Project XL Final Project Agreement" dated December 1, 1995. The following elements will appear in each agreement:

Description of the project. Description of important environmental objectives and any conditions and obligations of the FPA participants.

Variances sought. Specific statutory or regulatory requirements potentially or actually affected by the project. Listing of relief sought. The legal mechanism for variances to federal requirements will have to be determined by the EPA.

Performance commitments. The goals of the project. An explanation of how these will be accomplished.

Establishment of environmental baseline. Comparison of the before and after, estimated as precisely as possible.

Verification of results. Specific milestones and indicators should be discussed.

Consequences of non-compliance. This details the federal and state response to non-compliance with the FPA, or environmental violations detected as a result of the sponsor's participation in the project.

Stakeholder participation. The Stakeholder Involvement Plan is an integral part of each FPA.

Changes/Amendments to the FPA. Dispute resolution, reopener, and any other procedures for modifying the FPA.

Termination of FPAs. Conditions under which the FPA may be terminated, either mutually or unilaterally. The FPA may be extended if the pilot is producing the expected environmental results.

## FDEP Commitment

Project XL provides a unique opportunity for Florida and EPA to expedite the innovative concepts discussed as a part of President Clinton's "Reinventing Environmental Regulation". Project XL is a cornerstone of that concept. Florida would like to take XL and expand it to a full-fledged pilot within the next two years. Our commitment is to allocate sufficient resources to this effort to make it a resounding success.



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FDEP is looking forward to the negotiation of its "FPA", which will probably take the form of a Memorandum of Understanding (MOU) as soon as possible.

Mr. Michael Phillips will be the lead FDEP contact on this effort. Please contact him at 904/921-9717, Fax to 488-7093. He will be happy to answer any questions you may have on this request.