

*pdf April 17, 1998. ** NOTE: EPA and the states participating in ECOS have approved this document, and signature by the approving parties is expected in April 1998. The signed agreement is expected to be published in the Federal Register and will be provided on this website (<http://www.epa.gov/reinvent>).*

Part 1

Joint EPA/State Agreement to Pursue Regulatory Innovation

"...We must encourage innovation by providing flexibility with an industry-by-industry, place-by-place approach to achieving standards,.... But we will require accountability that such standards be met. Rather than focusing on pollutant-by-pollutant approaches, attention must shift to integrated strategies for whole facilities, whole economic sectors, and whole communities." [Excerpt from President Clinton's "Reinventing Environmental Regulation," March 16, 1995]

The U.S. Environmental Protection Agency and senior State environmental officials (hereafter referred to as "States") agree on the need to experiment with new approaches to improve our nation's environment. These new approaches can help us identify cleaner, cheaper, smarter ways to ensure that all Americans enjoy a clean environment and healthy ecosystems. Through this joint commitment, EPA and the States agree to encourage, evaluate, implement, and disseminate ideas that seek better ways of achieving our environmental goals. This agreement presumes that EPA and the States will find ways to help good ideas succeed, and that joint EPA and State efforts to promote and test new ideas will result in the maximum benefit to the American people and their environment.

Two years ago, EPA and the States entered into an historic agreement to establish the National Environmental Performance Partnership System (NEPPS). That agreement recognized that we have achieved significant progress since environmental protection programs were created more than 25 years ago. Yet to meet today's new challenges, we agreed that States and EPA must manage for environmental results, increase public involvement, and use environmental indicators to track our progress. We agreed that States and EPA must become true partners in implementing federal programs, and that different State programs need different levels of federal involvement.

This new partnership creates an environment in which state and local regulatory innovations can, and should, flourish. As the primary, front-line delivery agent for environmental programs, States are a natural laboratory for testing new ideas. State and local environmental professionals are closest to environmental problems and communities, and can often develop the most practical solutions. These professionals should be encouraged to seek innovative solutions that may not fit within the traditional approaches. We agree that our efforts to promote innovation must, in the end, be directed toward achieving our public health and environmental goals in a more efficient or effective way.

EPA also seeks to promote regulatory innovations at all levels. This agreement complements, but does not supplant, other national or state efforts to develop regulatory innovations. Its purposes are to: improve environmental protection in the United States; to improve EPA/State environmental management practices; and to provide timely decision-making on good ideas.

States and EPA agree that the following principles should guide us as we develop, test and implement regulatory innovations:

Experimentation: Innovation involves change, new ideas, experimentation and some risk of failure. Experiments that will help us achieve environmental goals in better ways are worth pursuing when success is clearly defined, costs are reasonable, and environmental and public health protections are maintained.

Environmental Performance: Innovations must seek more efficient and/or effective ways to achieve our environmental and programmatic goals, with the objective of achieving a cleaner, healthier environment and promoting sustainable ecosystems.

Smarter Approaches: To reinvent environmental regulation, regulators should seek creative ways to remedy environmental problems and improve the environmental protection system, and be receptive to innovative, common sense approaches.

Stakeholder Involvement: Effective stakeholder involvement produces better innovation projects and catalyzes public support for new approaches. Stakeholders must have an opportunity for meaningful involvement in the design and evaluation of innovations. Stakeholders may include other state/local government agencies, the regulated community, citizen organizations, environmental groups, and individual members of the public. Stakeholder involvement should be appropriate to the type and complexity of the innovation proposal.

Measuring and Verifying Results: Innovations must be based on agreed-upon goals and objectives with results that can be reliably measured in order to enable regulators and stakeholders to monitor progress, analyze results, and respond appropriately.

Accountability/Enforcement: For innovations that can be implemented within the current regulatory framework, current systems of accountability and mechanisms of enforcement remain in place. For innovations that involve some degree of regulatory flexibility, innovators must be accountable to the public, both for alternative regulatory requirements that replace existing regulations and for meeting commitments that go beyond compliance with current requirements. Regulators will reserve full authority to enforce alternative regulatory requirements to ensure that public health and environmental protections are maintained, and must be willing to explore new approaches to establish accountability for beyond-compliance commitments.

State-EPA Partnership: The States and EPA will promote innovations at all levels to increase the efficiency and effectiveness of environmental programs. We must work together in the design, testing, evaluation and implementation of innovative ideas and programs, utilizing each other's strengths to full advantage.

EPA agrees to establish a process that ensures timely review and decision-making on state innovation proposals based on implementation of the above seven principles. The States agree to consult early with EPA, to develop proposals consistent with the above principles, and to involve stakeholders. EPA and the States agree on the need for a clearinghouse of regulatory innovations so that promising ideas can be shared across state lines and within EPA.

We agree that the principles and process described in this agreement should be open to continual improvement. As part of ongoing review and evaluation, EPA and the States agree to evaluate the need to further institutionalize the broad principles and process to help future innovations succeed.

Through this agreement, as detailed in Part 2, States and EPA are committed to work together and with all stakeholders to apply the lessons learned from successful innovations in creating the best possible system to achieve greater environmental protection at a reasonable cost. We agree to encourage innovation that will prepare us for meeting our environmental challenges well into the 21st century.

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Part 2

I. Overview of This Agreement

This agreement embodies a set of general principles and a process for EPA/state innovation activities. This agreement includes:

- statements of purpose and scope of the agreement;
- over-arching principles that will govern joint EPA/state regulatory innovation activities;
- the process EPA and the States will use to identify good ideas, including both the continuation of existing state/EPA interactions to start innovation projects, and the establishment of a new mechanism for making decisions on innovative proposals that do not fit into ongoing reinvention programs; and
- guidelines for how EPA and the States will evaluate the success of innovation activities carried out under this agreement.

This agreement builds on the many reinvention efforts that are underway in the States and EPA. It is intended to ensure joint decision-making, timely review, broad public involvement, and continued progress in fostering and implementing ideas that are good for our environment and the people we serve.

II. Purpose and Scope of the Agreement

A. Purpose

The Administrator of the U.S. Environmental Protection Agency (EPA) and senior state environmental officials agree to three purposes for this effort: to improve environmental protection in the United States; to improve EPA/state environmental management practices; and to provide timely decision-making on good ideas. These purposes will be achieved through state proposals for innovation, with the intent that many successful innovations will lead to system-wide improvements in environmental protection.

1. Improved environmental protection

The Administrator of the U.S. Environmental Protection Agency (EPA) and senior state environmental officials agree that the States and EPA need to encourage, seek out, and try innovative approaches to improve our nation's environment. These innovative approaches can offer mechanisms that are more cost-effective, less adversarial and contentious, and have a better environmental impact. While we have made significant progress in environmental protection, much remains to be done and no backsliding can be permitted. Innovative approaches offer us

tools to improve current environmental protection programs and to tackle the environmental problems of the future.

Innovation can support sustainable development and continuous environmental improvement by offering new approaches that harmonize our progress toward environmental, economic, and societal goals. Some innovations may address only one of these goals. Innovation proposals that address more than one of these goals are desirable. For example, innovations which facilitate a transition to pollution prevention and product stewardship as primary methods of achieving environmental goals can also have significant economic or societal benefits. To support sustainable development and continuous environmental improvement, innovations should utilize pollution prevention methods rather than pollution control whenever possible.

2. Improved EPA/State environmental management practices

Through this agreement, EPA and the States will test and implement innovative approaches that lead to improved environmental programs. This agreement is consistent with the concepts embodied in the National Environmental Performance Partnership System (NEPPS). In fact, NEPPS was established, in part, to encourage innovative approaches by States, consistent with agreed-upon environmental goals and indicators. The agreement recognizes that states and local governments are natural laboratories for testing new ideas and that EPA has an important role in promoting innovation at all levels, while continuing to ensure that the States provide fundamental public health and environmental protection. This agreement identifies how we will work together to identify and promote innovative ideas and better ways of doing business. It is intended to help us communicate and evaluate such ideas and to encourage joint decision-making on how such innovations can be fostered, designed and implemented.

3. Timely decision-making on good ideas

Finding better ways to accomplish our environmental goals is part of the everyday practice of good government. Current processes through which many successful state innovations have been carried out should continue. We recognize that the most challenging regulatory innovation proposals have been difficult to address. This agreement establishes an optional avenue for prompt consideration and evaluation of innovation proposals.

EPA and States may conclude that some successful regulatory innovation projects demonstrate that changes in EPA regulations, policies, guidance, or interpretations are needed to improve the nation's environmental protection system. Where such changes can be made under existing law, EPA will initiate the process for making the changes -- following applicable procedures. EPA and States may also initiate policy discussions on potential statutory changes that may be needed to enable nation-wide adoption of innovative approaches.

B. Scope of the Agreement

As used in this agreement, "regulatory innovation" is a broad concept. It encompasses the process of proposing, testing, evaluating, refining and sharing innovative approaches to environmental regulation in order to achieve national, regional, state, tribal, and local environmental objectives. Regulatory innovations should be more efficient and/or provide greater environmental protection than current approaches, foster cooperation, and include opportunities for strong stakeholder involvement.

Many types of innovations are possible, and potential innovations will vary in scope, complexity, ease of implementation, environmental benefits, and other characteristics. At this point in time, it is difficult to design a single system or process that is appropriate for all potential innovations. Innovations should be accomplished through the normal course of business whenever possible. This agreement provides a clear pathway for innovative proposals that need extra attention or are too complex to be handled through normal channels. Proposals that are less complex can be implemented more quickly, leading to early success, while more difficult projects will likely need more analysis and stakeholder participation. This agreement builds on and complements other innovation activities, but is not intended to replace them.

This agreement signals the commitment of EPA and state environmental agencies to work together on innovations. It does not create any legal obligations for EPA or the States, and does not alter EPA's or States' statutory responsibilities or the nature of authorized or delegated state programs. Any innovations under this agreement will be implemented within our existing legal authorities using appropriate procedures.

III. Principles for EPA/State Regulatory Innovation

EPA and the States agree to a set of basic overarching principles that will guide our joint regulatory innovation activities. There are seven overarching principles relating to regulatory innovation activities--Experimentation, Environmental Performance, Smarter Approaches, Stakeholder Involvement, Measuring and Verifying Results, and Accountability/Enforcement, and State-EPA Partnership.

A. Experimentation: Innovation involves change, new ideas, experimentation, and some risk of failure. Experiments that will help us achieve environmental goals in better ways are worth pursuing when success is clearly defined, costs are reasonable, and environmental and public health protections are maintained.

1. The States and EPA should recognize the value of prudent risk-taking through experiments designed to achieve improved results.
2. The States and EPA should seek ways to make good ideas work, presuming that innovations to help meet environmental goals are worth our investment.

3. The States and EPA should carefully monitor and manage innovations to ensure that problems are immediately identified and remedied. Experimentation should be based on sound judgment, reasoning and common sense.
4. If a promising experiment encounters difficulties that likely can be corrected and that do not jeopardize environmental protection, project sponsors should be allowed to fix problems before the experiment is abandoned in favor of the traditional approach.
5. Experimentation does not include relaxing health or environmental standards or reducing protection of public health or the environment.
6. Experiments should be designed to test new approaches and as appropriate lessons learned should be used to improve the current system of environmental protection.

B. Environmental Performance: Innovations must seek more efficient and/or effective ways to achieve our environmental and programmatic goals, with the objective of achieving a cleaner, healthier environment and promoting sustainable ecosystems.

1. Protecting public health and the environment are the primary goals of both EPA and state environmental agencies, and we agree that innovations can help us find cleaner, cheaper, smarter ways of improving our nation's environment. Innovations that facilitate a transition to pollution prevention and product stewardship as primary methods of achieving environmental goals are highly desirable and can have significant economic or societal benefits to support sustainable development.
2. Many opportunities exist to improve environmental protection through innovations that have the clear potential to provide environmental and ecosystem benefits. In addition, innovations may be designed primarily to improve the cost effectiveness of achieving environmental goals; these projects must ensure that there is no adverse impact on: environmental protection, public access to information, and public access to the decision-making process.
3. For projects that have a greater uncertainty of the environmental outcome, or that involve experimental technologies or approaches, innovations should be expected to have the clear potential to provide increased environmental protection, promote ecosystem sustainability, or both. EPA and the state agency, in their best judgment and in consultation with stakeholders, will determine whether such proposals have the clear potential to produce appropriate gains in environmental protection, improved sustainability of the ecosystem, or both.
4. Innovations may be designed to fit local and regional conditions, as long as local solutions do not create environmental problems for other localities, such as undesired downwind and downstream effects, or undermine national standards.
5. No population group should be subjected to disproportionately high and adverse human health or environmental impacts as a result of the innovation.

C. Smarter Approaches: To reinvent environmental regulation, regulators should seek creative ways to remedy environmental problems and improve environmental protection, and be receptive to innovative, common sense approaches.

1. Regulators should work with industry and communities to solve environmental problems by identifying ways to remove barriers that prevent prudent, common sense solutions.
2. Regulators should be professional, accountable and deserving of the public's trust.
3. Regulators should seek to understand all perspectives, and help stakeholders find common ground.
4. Regulators should act promptly to evaluate, and implement, proposals that are straightforward, technically achievable, and have clear advantages, while ensuring adequate opportunities for public involvement and review.

D. Stakeholder Involvement: Effective stakeholder involvement produces better innovation projects and catalyzes public support for new approaches. Stakeholders must have an opportunity for meaningful involvement in the design and evaluation of innovations. Stakeholders may include other state/local government agencies, the regulated community, citizen organizations, environmental groups, and individual members of the public. Stakeholder involvement should be appropriate to the type and complexity of the innovation proposal.

1. Innovations should include opportunities for early, open, and inclusive stakeholder involvement in project development, specifically including those who may be affected by the decisions. Stakeholders should be provided adequate time to review proposals and participate in the process. When an innovation has the potential to result in significant policy changes, additional efforts, that could include incentives and assistance, should be made to provide additional opportunities so that affected and interested stakeholders can be meaningfully involved.
2. Consistent with the principle of providing meaningful opportunity for stakeholder involvement, each State should have the flexibility to use its own stakeholder participation process, as long as applicable federal and state procedural requirements are met or exceeded. EPA and States will identify national program issues and ensure opportunities for active involvement from national and regional stakeholder groups, especially where decisions on regional, state, or local issues have broader impacts.
3. Project proposals and the process for their consideration should be made transparent to stakeholders so that the benefits of the proposed change can be fully evaluated. Information needed to understand the proposed innovation and to verify compliance and environmental performance should be publicly available in an understandable form. EPA and States commit to provide regular analysis of the types of innovations implemented and their environmental impacts.
4. Because some stakeholder groups (e.g., small businesses, public interest groups) often have a limited capacity to participate in innovation projects, EPA and States will explore different approaches to facilitating stakeholder involvement.
5. In circumstances where local governments share regulatory responsibility, they should participate as partners with the State in developing and implementing the innovation.

E. Measuring and Verifying Results: Innovations must be based on agreed-upon goals and objectives with results that can be reliably measured in order to enable regulators and stakeholders to monitor progress, analyze results and respond appropriately.

1. The success of innovations should be judged by the results they achieve. Goals and objectives should be: established in advance, measurable, and based on the desired results.
2. Results should be verifiable by reliable measurements and both process and results should be understandable to regulators and the public.
3. Regulators should have access to high quality information sufficient to verify the environmental performance of an innovation.
4. Regulators and the public should have a full understanding of the differences between the innovation and traditional approaches, including expectations for the project, accountability for performance, and any potential risks.

F. Accountability/Enforcement: For innovations that can be implemented within the current regulatory framework, current systems of accountability and mechanisms of enforcement remain in place. For innovations that involve some degree of regulatory flexibility, innovators must be accountable to the public, both for alternative regulatory requirements that replace existing regulations and for meeting commitments that go beyond compliance with current requirements. Regulators will reserve full authority to enforce alternative regulatory requirements to ensure that public health and environmental protections are maintained, and must be willing to explore new approaches to establish accountability for beyond-compliance commitments.

1. For persons or activities not covered by the innovation project, applicable statutory and regulatory requirements remain in effect and fully enforceable .
2. If a promising innovation project encounters difficulties that likely can be corrected and that do not jeopardize environmental protection, regulatory agencies should evaluate the circumstances and use judgment in allowing project sponsors to correct problems before a project is abandoned in favor of the traditional approach.
3. Regulators must have authority to address such circumstances as imminent and substantial endangerment, actual harm, or criminal conduct.
4. Innovations may include both: a) enforceable "alternative regulatory requirements" that provide protection equivalent to that provided by otherwise applicable environmental standards or requirements, and b) other "beyond-compliance commitments" that seek to exceed otherwise applicable standards or requirements. Alternative regulatory requirements and beyond-compliance commitments should be clearly distinguished in advance.

Alternative Regulatory Requirements:

- Alternative regulatory requirements should be enforceable with all the remedies available under current law.
- Regulators should consider the circumstances and use their judgment in choosing remedies when a facility fails to meet alternative regulatory requirements.

- Potential responses for failure to meet such alternative regulatory requirements should be identified in advance.

Beyond-Compliance Commitments:

- As part of an innovation, facilities may agree to beyond-compliance commitments in exchange for regulatory flexibility or some other incentive.
- Potential responses for failure to meet such beyond-compliance commitments should be defined in advance.
- Responses for failure to meet beyond-compliance commitments should fit the circumstances. They may include: a series of interim accountability measures short of project termination, trying a different approach, modifying the innovative approach, or reverting to the traditional approach.

5. Innovations should not undermine the state's, federal government's, or citizens' authority or capacity to enforce delegated or authorized state programs.

G. State-EPA Partnership: The States and EPA will promote innovations at all levels to increase the efficiency and effectiveness of environmental programs. We must work together in the design, testing, evaluation and implementation of innovative ideas and programs, utilizing each other's strengths to full advantage.

1. As the primary front-line managers of many environmental protection programs, the States and local governments are natural laboratories for innovations. The States should manage their own programs, adapt to local conditions, and test new approaches for delivering more environmental protection for less.
2. The federal government should ensure good science, strong national health and environmental standards, and should work in partnership with the States by providing analysis, expertise, and facilitating learning among the States. EPA should promote innovation at all levels (national, regional, state, tribal, place-based, community, and in the private sector). EPA retains its role to set national standards and measures, implement programs not delegated to states or tribes, address interstate issues, apply and interpret national statutes and regulations, and ensure fair and effective enforcement, thus ensuring that all states provide fundamental public health and environmental protection and a level playing field.
3. EPA and state roles in innovations must be clearly designed to utilize each party's unique strengths and avoid duplication. Decision makers should be clearly identified.
4. Assigned roles and responsibilities should be honored and respected, and joint problem-solving should be encouraged.
5. Communication must be open, honest, frank and frequent. The States and EPA should work to understand each other's perspectives, achieve consensus on major issues, make decisions in a timely manner, and resolve conflicts quickly and efficiently.

IV. Process for Considering State Innovations Proposals

EPA and the States are engaged in many successful efforts to reinvent environmental regulation. These efforts should continue unimpeded. EPA and the States agree that, where procedures currently exist, innovation proposals should be handled through normal EPA/state program activities or other ongoing reinvention activities. Proposals that do not fit into an existing pathway can be handled via the new process established under this agreement.

The process of developing Performance Partnership Agreements (PPAs) under National Environmental Performance Partnership System offers one opportunity for states and EPA, working with stakeholders, to agree on innovative approaches to pursue. However, participation in a PPA is not the only avenue for states and EPA to work on innovative approaches. Memorandum of Agreements and/or Work Plans can serve the same function as a PPA. Inclusion of anticipated innovative approaches in the PPAs or other agreements will allow the states and EPA to allocate staff resources and establish priorities for innovative projects. For example, individual states may choose to place higher priority on innovation projects which promote clear cost or environmental benefits for the public. It is envisioned that states will include in the PPAs or other agreements a discussion of potential innovative activities, indicating how the innovations link to environmental goals and providing a picture of proposed changes.

A. Use Existing Pathways

This agreement is designed to supplement, rather than replace, ongoing innovation activities underway in EPA and the States. Such innovation activities should continue. State innovations that do not require a change to Federal guidance, regulations or statutes can proceed without EPA review. EPA's role will consist of support and advice, if requested. EPA and States should continue to work together on innovations that may involve using existing flexibilities in current law and regulation, and on existing innovation programs such as Project XL.

B. New Process Established Under this Agreement

The States and EPA agree to establish an optional process, which states may use to get timely decisions on innovation proposals. This process includes senior-level management attention and specific time frames to ensure prompt decisions by EPA. The following process establishes a management framework so that actions and next steps, along with interested participants and decision-makers, can be clearly identified and taken into account. EPA's Regional Administrators are responsible for ensuring that the process moves forward; individual states are expected to establish similar senior-level points of contact to manage the state's role in the innovation process.

This process is intended to be flexible. For example, EPA Regional Offices, EPA Headquarters Offices, and the States are encouraged to maintain open lines of communication at both staff and management levels beyond the formal process described below, and states are

encouraged to invite EPA into the early discussion stages of any project. Early consultation between EPA and the States is important in identifying obstacles early and in determining who needs to be involved so that the project can move forward expeditiously.

EPA will also work with individual states as needed to establish priorities in the review of proposals based on guidance developed in the Performance Partnership Agreement or other EPA/state agreed mechanism. EPA and the States recognize that the success of this process will be affected by the quality and clarity of proposals and the effectiveness of communication between EPA, the state, and stakeholders. The States and EPA are committed to working together to ensure that communications are frequent, open, honest, and directed to finding means to allow innovations to succeed.

While one of the objectives of the innovation proposals is efficiency, the very act of designing an experiment, testing the hypothesis, and evaluating the results may be resource intensive for all parties. The optimum management of resources by EPA and the State will help ensure the success of the review process, the implementation of the projects, and adherence to time lines.

1. Stage One -- Developing Quality Proposals

States and EPA recognize that clear, well-developed proposals will facilitate review and speed decision-making. States are encouraged to consult with EPA as early as possible in the development of a proposal. The States should be able to use this early consultation process to develop a clear understanding of their proposals with EPA and key stakeholders.

During the early consultation, the State and EPA will identify issues that need attention, possible barriers to implementation, uncertainties regarding risks, and value added to all parties. These discussions will be open and candid and will provide the State with information that will be important and useful for the development of the proposal. While early consultation is encouraged, not all proposals will require the same degree of discussion and/or consultation.

EPA and States will bring a positive, constructive approach to consideration of proposals and seek ways to help good ideas to succeed.

States will prepare proposals that: a) are consistent with the principles described in this agreement, and b) clearly present the objective of the proposal, the expected benefits, a description of the activities, and a determination as to whether the proposal: may require a change to Federal guidance, policy, past practices or rule interpretation, but not regulations or statutes; may require a change to or waiver from Federal regulations, but not statutes; or, may require a change to a Federal statute.

EPA will: a) provide clear statements of its position, along with timely and authoritative answers to questions about what changes, variances, or associated approvals a particular proposal

may require; and b) work with the State to identify the most efficient path by which a particular proposal could be implemented.

In addition, States will provide meaningful opportunities for stakeholder involvement in the design and development of regulatory innovation proposals. The degree of stakeholder involvement depends on the nature of the proposal. Where a proposal would involve a change in or variance from existing national guidance, regulations, or statutes, early consultation among EPA, states, and national stakeholder groups can help identify critical issues that need to be addressed. If EPA believes that broader stakeholder involvement is warranted, in accordance with the Stakeholder Involvement Principle, EPA will contact the State and identify, in partnership with the State, an approach to obtain such involvement as early in the process as possible.

The Senior State Environmental Official or their designee then submits a written description of the regulatory innovation proposal to the EPA Regional Administrator, who then initiates the review process described below. The State will designate a high-level official as the single point of contact for each project.

2. Stage Two -- Review of Proposal and Decision

a. EPA Review

The EPA Regional Office will have primary responsibility for review of the innovation proposal. This responsibility includes proposal distribution within the Region and to the affected EPA National Program Managers and the Office of Reinvention; review and response to the State; and appropriate stakeholder involvement. In cases where national policy or regulatory issues are involved, the Regional Administrator must ensure complete review by relevant national program offices.

EPA will consider several factors in the review of the innovative proposals, including:

- (1) Consistency with the principles in this agreement;
- (2) Comments from stakeholders;
- (3) Type of flexibility from federal guidance or regulation needed to implement the proposal;
- (4) Clear presentation and analysis of issues;
- (5) Expected benefits of the innovation (including net improvements in environmental, ecosystem, and efficiency results);
- (6) Potential benefits of the innovation as compared to the investment of time and resources required for implementation, and impact on agencies' resources and workloads.

The review process is intended to be flexible. EPA and the State should maintain open lines of communication at all levels - staff and management - to ensure that questions and concerns are raised and discussed. During the review process, EPA may seek input from other

states and stakeholders, including environmental groups and the regulated community, to fully identify the strengths and weaknesses of the proposal.

b. EPA Decision

Upon completion of the consultation and review period, the Regional Administrator will make a decision to accept or reject a proposal. If a proposal involves a national policy or regulatory issue, the decision will be made jointly with relevant National Program Managers and the Office of Reinvention. This decision will be communicated verbally and in a written form to the designated Senior State Environmental Official. The written decision will include the rationale for the determination.

EPA and the State will determine the category into which the proposal falls. The type of proposal will have an impact on the time frame for implementation. The categories are:

Category 1: Straight-forward, transparent proposal with clear advantages, few obstacles, technically achievable, and minimum environmental risk.

Category 2: Experimental proposal that has a greater uncertainty of environmental outcome; requires more attention to design, implementation, and evaluation; and may involve some risk of failure. The unpredictability of the experiment means that it will be more resource intensive and may require more time.

Category 3: Strategic proposal that involves broad-based, new approaches (e.g., statutory changes) and requires policy discussion to further develop concepts. Proposals may be assigned to an existing policy forum for discussion or a new forum could be established.

If the proposal requires changes of interpretation or substance regarding national statutes, regulations or policies before proceeding with an innovation project, both EPA and the State will reach agreement on all proposed changes. These projects will be accomplished through mechanisms available under Federal law and regulation, which may include variances, site-specific rules, legal interpretations, or other means.

c. Appeals

In the event that a dispute arises during this process or a State disagrees with a Region's decision, the State may appeal in writing to the EPA Deputy Administrator. The State may also request a review by a panel consisting of EPA Senior Managers and State Commissioners. The panel will review the proposal, the issues, and merits of the dispute, and submit recommendations to the EPA Deputy Administrator for a final decision.

d. Time frames for decision

EPA and the States are committed to working together to ensure timely responses to state proposals.

Initial response to proposal: EPA will respond to the State with follow-up questions, clarifications, and initial reactions including an initial identification of obstacles to approval within four weeks of its receipt of a written innovation proposal from the State.

Decision to proceed with proposal: EPA will make a preliminary decision to accept or reject a proposal within 3 months of the receipt of a proposal from the State. If, during the review, EPA determines that additional information is needed from the State, EPA will promptly notify the State, and EPA and the State will agree on an appropriate schedule for completing the review.

Decisions on proposals may be reached more quickly for proposals that are straightforward, with clear advantages, widely supported, technically achievable, and implementable in the short-term. A preliminary decision to accept a proposal will be accompanied by an explanation of subsequent actions needed before a final decision can be made or implementation can begin. For example, a proposal that involves amending an EPA regulation would require a notice and comment process in accordance with the Administrative Procedures Act.

V. Measuring and Evaluating Success

Before an approved proposal is implemented, we must define success and how we will measure it. This can help eliminate misunderstandings about whether or not the process and innovation as a whole is progressing effectively, and if it is not, what steps need to be taken to correct any problems.

Therefore, EPA and the States agree on the importance of evaluating the success of regulatory innovation activities that flow through the process outlined in Section IV. The challenge is to develop useful measures without choking the very creativity we seek to stimulate. We want to ensure that a variety of ideas are being proposed, that robust stakeholder participation processes are utilized, that decisions are made in a timely fashion, and that the most promising innovations are being implemented successfully. To accomplish this, we must measure both the success of the innovations and the success of our decision-making process. Performance measures that emphasize environmental results, including pollution prevention, are most desirable, although we may have to rely more on process measures in the near term.

A. Measuring the Innovation's Impact

The success of the innovation project's impact will depend on how well it was designed and the results achieved. Successful innovation project designs should be clearly described so successful projects can be used to improve the entire system, and/or adapted to other site specific

situations. The quality of the projects implemented can be measured by: 1) environmental impact, 2) efficiency, and 3) other relevant indicators. In addition to providing information about the success of an individual innovation project, these measurements also provide guidance on improving future innovation projects. States and EPA should agree in advance who is responsible for collecting and disseminating this information.

The proposed measures in Appendix A provide a starting point for discussion in terms of a framework and some common criteria for innovations. Common criteria allow the States and EPA to evaluate the progress in innovations state-wide and nationally.

B. Measuring the Process

We must ensure that the decision making process is effective, or the process will not be used. The success of the process depends on the effectiveness of the communications between EPA and the States and the timeliness of decisions. Measurements include: 1) the number and quality of innovation projects proposed, 2) the number and quality of innovations implemented, 3) the timeliness of the actions taken in the process, 4) the number of proposals appealed, and 5) the speed with which information about successful innovations are disseminated to other states. The success of the process is enhanced by the development of effective partnerships across all interested and affected stakeholder groups to design innovations which will meet multiple objectives and to build broad support for their implementation. EPA and States will evaluate factors that are difficult to measure but are critically important to successful outcomes, including the degree of EPA-state cooperation and stakeholder participation. EPA should collect this information and make it available at a central location so it can be used by the States, EPA, and stakeholders. Within 60 days of signing this agreement, EPA and the Environmental Council of the States (ECOS) will designate a central location.

VI. Information Sharing

Accepted state innovation proposals and completed projects are most valuable when widely available to state and local regulators, the regulated community, environmental organizations and the public at large. We agree on the need to share information, track commonalities and analyze barriers to promising state innovations. Knowledge of both successes and failures will help the States, EPA and stakeholders develop better approaches for achieving our environmental goals. Because sharing information and innovative ideas among the States is key to the success of this agreement, the States, through ECOS, will set up a regulatory innovation clearinghouse that serves to notify potentially affected states of innovation proposals and highlights the results of this agreement and other state/EPA innovations that EPA Reinvention Ombudsmen or State Commissioners deem appropriate.

VII. Next Steps

EPA and the States agree on the following steps to ensure prompt implementation of the agreement:

A. Joint evaluation.

By October 1999, States, EPA and other interested parties will begin to evaluate the success of regulatory activities that have been reviewed under the new process. The evaluation will consider both the environmental and efficiency benefits derived from each innovation, and the efficiency of the new review process. The results of the evaluation will be shared with EPA, the States and stakeholders.

B. Modifications to the agreement.

If the evaluation indicates a need to modify or amend this agreement, EPA and the States agree to discuss such modifications or amendments and make needed changes by January 2000.

Attachments:

- A. Proposed Core Performance Measures
- B. Examples of Regulatory Innovations

Attachment A

EPA/STATE ENVIRONMENTAL REGULATORY INNOVATIONS

PROPOSED CORE PERFORMANCE MEASURES

Environmental Goal

A sustainable environment with healthy communities and ecosystems

Environmental Objectives

- Air quality improvements
- Water quality improvements
- Land quality improvements

Program Objectives (Outcomes)

- More effective and efficient environmental regulatory systems
 - reductions in releases to the environment
 - reductions in resources expended to implement the regulatory process, by regulators, regulated entities, other stakeholders: time, work years, money
 - increased stakeholder participation in the regulatory process
- Large majority of high priority, high quality innovation projects are successfully implemented
- Successful results of innovation projects are: clearly described, widely disseminated, adopted in other site specific situations, used to improve entire systems

Program Activities (Outputs)

- Number of innovation projects proposed
- Number of innovation projects implemented
- Quality of projects implemented: environmental, efficiency, other indicators
- Stakeholder participation
- Timeliness of actions taken in process

Attachment B

EXAMPLES OF REGULATORY INNOVATIONS

To encourage creative thinking and the development of good regulatory innovation proposals, EPA and the States have developed the attached examples of regulatory innovation projects. Four examples of potential regulatory innovations are provided. Examples 1, 2 and 3 are suggestions of innovative ideas that States have developed -- they are intended to illustrate the kinds of proposals that may be developed. These examples have not been reviewed or accepted by EPA as projects for this process. Example 4 describes an innovative proposal that was recently implemented in North Carolina.

Example 1: Mercury in Wastewater Effluent

Objective: Substitute sludge testing and limit requirements for mercury in place of effluent limits and monitoring requirements in NPDES permits for municipalities.

Description and expected benefits: Mercury cannot be detected accurately in municipal wastewater effluent. Dilution of mercury in effluent leads to non-detectable monitoring results. In addition, mercury test methods at the low levels seen in municipal effluent can easily pick up contamination of sampling and analysis and lead to false positives. As a result, most municipalities can show compliance with mercury effluent limits and need take no steps to reduce mercury in their effluent.

This proposal would eliminate effluent limits from NPDES permits for municipalities, and instead substitute sludge monitoring (where mercury concentrates in the wastewater treatment process). If mercury in sludge exceeds federal clean sludge levels, municipalities would be required to develop mercury source reduction programs. Since mercury can be more accurately detected in sludge, this would lead to better targeting of the municipalities that need to develop mercury source reduction programs.

Federal obstacle halting or hindering progress: Requires changes in either federal statute or variance/change in federal regulations. Attorneys state that sludge requirements as proposed cannot be tied to surface water standards.

Additional background information: This proposal was strongly supported by municipalities, environmental groups, Wisconsin DNR staff, and EPA staff. All saw that this proposal would lead to greater environmental benefits than the current NPDES system.

State: Wisconsin Department of Natural Resources, Bureau of Watershed Management.

Example 2: Continuous Emissions Monitoring for Air Pollutants

Objective: Create a flexible approach to compliance demonstration for air emission limits that have been consistently achieved. In exchange, install continuous emissions monitoring for other toxic pollutants for which more data is needed. This approach would reward facilities which have demonstrated superior environmental performance with simplified compliance demonstration requirements.

Description and expected benefits:

- Federal guidance on practical enforceability requires that compliance demonstration schemes use available technology which produces verification of compliance data as frequently as practically possible.
- A facility is required to use continuous emission monitors (CEMs) to show compliance with an air emission limit. Data has been gathered for several years and it shows consistent emission levels at or lower than 50% of the limit. In addition, other surrogate process parameters are continuously monitored.
- The permittee wishes to show compliance by an alternative compliance method which requires periodic testing to assure continued compliance. The surrogate parameters will continue to be monitored and will be used to ensure that the operating conditions remain within the range under which compliance has been demonstrated by periodic testing.
- In exchange, the facility agrees to install CEM for certain toxic organics from certain processes. The nature and levels of these toxics are not very well defined based on mass balance approaches. The information generated by these CEMs will be useful for an air toxics analysis being conducted in the area.

Federal obstacle halting or hindering progress: Requires change or deviation from established EPA policies regarding federal enforceability as a practical matter on emission limits. However, the demonstrated level of confidence on compliance warrants a less rigorous approach, particularly because it includes a periodic verification process.

Additional background information: The permittees believe that it is important to build a trust relationship with regulators to be able to re-direct resources to areas where the need is greater to realize further improvements or to generate new information on environmental matters.

State: Minnesota Pollution Control Agency, Air Quality Division, Permits Section.

Example 3: Tiered Permitting System for Hazardous Waste Facilities

Objective: Create a permitting system for hazardous waste (HW) management facilities that are presently exempt from the existing RCRA Part B permitting system but still pose a potential threat to human health and the environment if improperly designed and operated.

Description and expected benefits:

- Current RCRA regulations exempt recycling facilities from any permitting requirements, but require a Part B permit if HW is stored prior to recycling.
- Environmentally safe recycling is preferable to disposal and should be encouraged.
- Recycling facilities can be as complicated as treatment and disposal facilities and require some oversight to ensure that they are protective of human health and the environment.
- Requiring the standard Part B permit for recycling facilities creates a disincentive and may greatly limit the number of recycling facilities.
- A less onerous tiered permit provides regulatory oversight and does not pose the same disincentive as a Part B permit for recycling facilities.
- The tiered permit incorporates performance standards and financial assurance as appropriate and is custom tailored to the facility without requiring all of the elaborate features of a Part B permit.

Federal obstacle halting or hindering progress: May require a variance from federal statutes and regulations that prescribe standards and require a Part B permit for storage of HW depending on what type of storage activities are covered under the tiered permit.

Additional background information: State legislation required fluorescent lamp recyclers to be permitted. Rules are in the development stage with extensive regulated community involvement. The tiered permitting system will be extended to all types of HW facilities for which a Part B permit is not required or not appropriate, including recyclers and some types of storage facilities.

State: Minnesota Pollution Control Agency, Hazardous Waste Division, Regulatory Compliance Section.

Example 4: River Basin-Based Planning and Permitting

Objective: To coordinate stream modeling and permitting on a river-basin or sub-basin scale instead of in a piecemeal fashion.

Description and expected benefits:

River-basin based planning and permitting would:

- Enable better planning and resource allocation
 - Increase consistency between permits
 - Increase consideration of basin-wide pollutant inputs (point and nonpoint) for better decision-making and planning
 - Improve efficiency of modeling, data collection for modeling, and permitting activities
 - Provide opportunity for greater stakeholder involvement in the planning process
- Federal statutes prohibit permits with a term greater than five years

To synchronize NPDES permit renewal for an entire river basin, the State had to issue five year permits followed by an additional short-term permit. The burden on permitting and modeling staff was further increased because EPA Region IV was also pressing NC to address its permit backlog. The State lacked sufficient modeling resources to address the existing backlog and also issue short term permits in selected basins. The State proposed to reissue the short-term permits with existing limits without modeling and to refocus its permitting staff away from the permit backlog and toward the basin-wide permitting approach. Region IV was hesitant to endorse the basin-wide concept.

Contact with EPA Headquarters (Office of Water) convinced EPA to hire a facilitator to help the State develop an implementation strategy for the basin-wide planning and permitting approach. EPA Headquarters also sponsored a workshop to obtain input from surrounding states. This involvement allowed the State to develop a convincing strategy, and subsequently, Region IV agreed to the proposal. EPA also provided a 104(b)(3) grant to increase monitoring and modeling in the Tar-Pamlico River Basin to help pilot the approach.

Federal obstacle halting or hindering progress: Required change in EPA past practice.

Additional background information: At first, permittees reacted to the short-term permits due to the extra burden of completing permit applications and paying application fees. However, the concerns of permittees were quelled by pointing out the long-term improvements in consistency among permits in the river basin and in efficiency of issuing these permits. Environmental stakeholders were supportive of the approach from the start due to a greater opportunity for involvement in the planning process.

State: North Carolina