

US EPA ARCHIVE DOCUMENT

**Chicago Regional Air Quality
and Economic Development Strategy**

Final Project XL Agreement

Table of Contents

I. Introduction

- A. Project Description and Purpose
- B. Description of Geographic Area
- C. Purpose of the Agreement
- D. Parties to the Agreement
- E. Project Contacts

II. Detailed Description of the Project

- A. Specific Project Elements
- B. Criteria for Establishing Development Zones
- C. Process for New or Modified Sources to use Growth Allowance

III. How the Project Will Meet the Project XL Acceptance Criteria

- A. Anticipated Superior Environmental Performance
- B. Anticipated Benefits (such as cost savings, paperwork reduction and operational flexibility)
- C. Stakeholder Involvement and Support
- D. Innovative Approach and Multi-media Pollution Prevention
- E. Transferability of the Approach to Other Entities or Sectors
- F. Feasibility of the Project
- G. Monitoring, Reporting, Accountability, and Evaluation Methods to be Used
- H. Avoidance of Shifting the Risk Burden to Other Areas or Media

IV. Description of the Requested Flexibility and the Implementing Mechanisms

- A. Requested Flexibility
- B. Legal Implementing Mechanisms

V. Discussion of Intentions and Commitments for Implementing the Project

- A. Chicago DOE Intentions and Commitments
- B. U.S. EPA and Illinois EPA Intentions and Commitments
- C. Project XL Performance Targets
- D. Proposed Schedule and Milestones
- E. Project Tracking, Reporting, and Evaluation
- F. Periodic Review by the Parties to the Agreement
- G. Duration of the Project

VI. Legal Basis for the Project

- A. Authority to Enter Into an Agreement
- B. Legal Effect of the Agreement
- C. Other Laws or Regulations That May Apply
- D. Retention of Rights to Other Legal Remedies

VII. Amendments or Modifications to the Agreement

VIII. Process for Resolving Disputes

IX. Withdrawal From or Termination of the Agreement

A. Expectations

B. Procedures

X. Compliance After the Project is Over

A. Orderly Return to Compliance if the Project Term is Completed and Not Extended

B. Orderly Return to Compliance in the Event of Early Withdrawal or Termination

XI. Signatories and Effective Date

I. Introduction

The U.S. Environmental Protection Agency (U.S. EPA), in cooperation with State and local authorities, has initiated Project XL to work with interested companies and communities to develop innovative approaches to environmental protection. Project XL is a pilot project program which encourages potential sponsors to come forward with new approaches that can advance our nation's environmental goals more effectively and efficiently than current regulatory and policy tools or procedures. In the development of this XL project, the City of Chicago and the U.S. EPA have worked closely with the Illinois Environmental Protection Agency (Illinois EPA), and local stakeholders, as well as regional and national public interest groups.

This project is about simultaneously promoting clean air improvements and economic growth in an existing urbanized area – the Chicago metropolitan region. This area, like many urban areas in the United States, has been classified as an ozone “nonattainment” area under the Clean Air Act.

The U.S. EPA, the Illinois EPA and the City of Chicago believe that clean air and a healthy economy can and must coexist. Accordingly, this project establishes an innovative approach to allow and encourage targeted growth and development to occur in a large metropolitan area. This project integrates clean air and economic goals and is intended to encourage infill development, brownfield reuse, transit-oriented development, and other measures to advance economic development in existing communities.

A. Project Description and Purpose

In this project, Section 173(a)(1)(B) of the Clean Air Act will be used to promote cleaner air and economic development in the Chicago metropolitan area. As discussed further below, Section 173(a)(1)(B) allows the U.S. EPA Administrator, in consultation with the Secretary of Housing and Urban Development (HUD) to identify zones in which economic development should be targeted. For the purposes of this project, such areas are referred to as “development zones” and the criteria for identifying the zones have been established in consultation with the City of Chicago and stakeholders.

Under this project, a new or modified major stationary source which locates in a development zone (within the Chicago ozone nonattainment area) would draw VOC emission reductions from a growth allowance available from the State's emission inventory in lieu of obtaining traditional VOC emission offsets. The growth allowance would be created using emissions reduction activities of Chicago and other municipalities in the metropolitan area.

Clean air and compliance with federal requirements are critical goals for the Chicago nonattainment region. Not only does the region's current nonattainment status impact regional health; it also impacts regional economic development. The traditional approach to emissions reduction has focused on larger point sources. However, mobile and area sources now account for more than 80% of the region's volatile organic compound (VOC) emissions.

Although the Chicago metropolitan area is currently designated severe ozone nonattainment for the one-hour ozone standard, the Illinois EPA has submitted a modeled

attainment demonstration including control measures that have reduced emissions of VOCs from 1216 tons per day in 1990 to 770 tons per day in 1996 (based on Illinois EPA emission inventories approved by U.S. EPA). Reductions in ozone precursors (emissions which lead to the formation of ozone) have continued with additional reductions in VOCs in the Chicago area and reductions in oxides of nitrogen (NOx) upwind of Chicago. These reductions have had substantial impacts on the ozone concentrations measured in the Chicago metropolitan area. Monitored ozone concentrations have been reduced from the design value of 0.190 ppm (which was used to classify the area as severe nonattainment for ozone) to the most recent 1999 design value of 0.127 ppm ozone. Monitoring shows that the Chicago area is close to attaining the one-hour ozone standard of 0.12 ppm, not to be exceeded more than once per year.

The USEPA proposed on December 16, 1999, (64 FR 70496) to conditionally approve the Chicago one-hour ozone attainment demonstration submitted by the Illinois EPA. The conditions imposed on the approval include the submission of: 1) a final revised modeling analysis that fully assesses the impacts of regional NOx reductions; 2) control measures necessary to meet the Rate of Progress requirement from 1999 until the attainment year; and 3) VOC and regional emissions control measures sufficient to support the final ozone attainment demonstration. These additional requirements must be submitted by December 31, 2000. The State has already submitted motor vehicle emissions transportation conformity budgets, as required by the Clean Air Act and identified in the notice, that have been found adequate by the USEPA (see USEPA web site www.epa.gov/oms/transp/conform/adequacy.htm).

The City of Chicago and other regional municipalities are voluntarily focusing on area and mobile source reductions of VOCs and NOx – ozone precursors. Reduction activities include small incinerator bans, expanded alternative fuel use, lawn mower buybacks, commuter options, energy efficiency, urban heat islands, use of low VOC paints and coatings, architectural coatings and consumer products reductions, and other measures. Some of these activities have been completed. Others are under development or are prioritized for future implementation. Chicago and other municipalities in the nonattainment area wish to use these reductions to not only move the region toward attainment, but also to advance economic growth by making it easier for businesses to locate in existing communities within the nonattainment area.

Currently, under the Clean Air Act, a new major facility or a major modification to an existing facility would be required under New Source Review (NSR) to meet Lowest Achievable Emissions Rate (LAER) requirements and to obtain emission offsets. In the case of “severe” nonattainment areas such as the Chicago metropolitan region, the offset requirement is at a ratio of 1.3 tons reduced per 1 ton emitted. Under this XL project, the source would still be required to meet LAER requirements as well as all other applicable requirements under major NSR, but would not be required to obtain traditional offsets as described under 173(a)(1)(A) of the Clean Air Act. Instead, Chicago and other regional municipalities will create emissions reductions from their local activities. The emissions reductions will be generated by communities and then quantified, tracked and submitted to the Illinois EPA and U.S. EPA (see page 9, specific project elements). The reductions will be used to create a growth allowance which, in turn, will be used in lieu of traditional NSR offsets at the same 1.3 to 1 ratio. The majority of the emissions generated by a municipality will be available for use within that municipality. Companies

utilizing the growth allowance under this program will have more specific requirements. Specifically, this project will require businesses to implement measures that will reduce emissions from their industrial processes, placing a special emphasis on hazardous air pollutants and other air toxics.

The emissions reductions used in the growth allowance will be surplus to the reductions currently required in the Illinois State Implementation Plan (SIP) to demonstrate attainment of the one-hour ozone standard. Under this project, 40% of the emission reductions which go into the growth allowance will be retired. The remaining 60% will be made available to sources which locate in development zones. The percentage of the growth allowance retired will be reassessed every 2 years. This reassessment may not allow for less than 40% of the emissions reductions to be retired. Further, once retired, the 40% emission reductions will not be eligible to fulfill other current or future emission reduction requirements. The combination of the percentage retired before source use and the 1.3 to 1 ratio will show a greater overall emission reduction than the currently required 1.3 to 1 ratio alone.

Emissions reductions to be used in the growth allowance will be generated by the City of Chicago, other municipalities and other private and public partners. Much of this work is being done as part of a regional clean air initiative known as the Campaigns for Clean Air and Development – a partnership of municipalities, regulatory agencies, and other non-governmental organizations formed to identify clean air strategies for the Chicago metropolitan region that incorporate economic development benefits.

In the absence of this XL Project, the emissions reductions would likely occur in smaller quantities or may not occur at all. A major topic for discussion in the Campaigns has been the need for incentives for municipalities and businesses to implement these common sense yet voluntary measures to reduce air pollution. The measures are targeted at small area and mobile sources which are difficult to regulate or not normally regulated and, taken individually, yield small reductions in emissions. This project creates an incentive to put time and money into these initiatives. Emissions reductions from one program may be small, but aggregation of many programs may lead to significant emission reductions. Without the incentive provided by this project, it is less likely that municipalities will dedicate the resources to implement these programs.

A portion of the growth allowance (60%) will be available to companies or facilities which locate or modify operations within development zones. Criteria for development zones are defined in detail in Section II.B., below. In general, these zones are areas to which economic development should be targeted and which meet criteria designed to advance both clean air and economic goals. Under this Agreement, the criteria for the development of the zones have been identified by the Administrator of the U.S. EPA, in consultation with the Secretary of Housing and Urban Development under Section 173(a)(1)(B) of the Clean Air Act.

This project is innovative because it creates a framework for addressing mobile and area sources of pollution and provides an incentive for communities to seek reductions from these activities. As a further innovation, this project creates an opportunity for the Chicago

metropolitan area to use the emissions reductions from the mobile and area sources of pollution in lieu of traditional offsets for economic development. In addition, this XL project will encourage brownfield redevelopment and is intended to protect habitat and green space.

B. Description of the Geographic Area

The Chicago metropolitan ozone nonattainment region comprises six counties and parts of two additional counties in the northeastern section of the State of Illinois. At more than 9,000,000 inhabitants, the six-county area contains approximately two thirds of Illinois' residents. The City of Chicago is the region's largest municipality with a 1998 population of 2,802,079. The older inner-ring suburbs and the city are urban in nature with the region's outlying areas having a larger proportion of open and rural space.

As discussed above, under NSR requirements, a new or modified major stationary source in the Chicago metropolitan nonattainment area is required to achieve LAER and obtain emission offsets if the potential VOC emission increase at the facility is greater than 25 tons/year. The U.S. EPA has granted a NOx waiver to Illinois for the Chicago nonattainment area under Section 182(f) of the Clean Air Act, based on ozone modeling. This means that the area is not currently required to achieve additional localized reductions for NOx emissions, including LAER and offsets. However, the entire state should see decreases in NOx as a result of the recent NOx SIP call. The NOx SIP call is a final rule requiring 22 States and the District of Columbia to submit State Implementation Plans that address the regional transport of ground-level ozone through reductions in NOx.

C. Purpose of the Agreement

This Final Project Agreement (the Agreement) is a joint statement of the plans, intentions and commitments of the U.S. EPA, the Illinois EPA and the Chicago Department of Environment (Chicago DOE) on behalf of the City of Chicago to carry out this pilot Project. The Project will be part of the U.S. EPA's Project XL program to develop innovative approaches to environmental protection.

The Agreement does not create legal rights or obligations and is not an enforceable contract or a regulatory action such as a permit or a rule. This applies to both the substantive and the procedural provisions of this Agreement. While the parties to the Agreement fully intend to follow these procedures and commitments, they are not legally obligated to do so. For more detail, please refer to Section VI. (Legal Basis for the Agreement), below.

All parties to this Agreement will strive for a high level of cooperation, communication, and coordination to assure successful, effective, and efficient implementation of the Agreement and the Project.

D. List of the Parties that Will Sign the Agreement

The initial parties to this Final Project XL Agreement are the U. S. EPA, the Illinois EPA and the City of Chicago Department of Environment. Additional municipalities in the Chicago metropolitan area may subsequently become parties to the Agreement.

Although this project was initiated by the City of Chicago, the development zone criteria in Section II.B. (below) allow use of the growth allowance in municipalities other than Chicago. There are 269 municipalities in the Metropolitan Mayors Caucus, many of which are engaging in voluntary emissions reduction activities and many of which may be eligible to use the growth allowance created under this project. However, at the time this Agreement is being written, it is impossible to know how many (or which) municipalities will wish to use the growth allowance. To ensure that stakeholder involvement in these additional municipalities is consistent with the stakeholder involvement required in Project XL, municipalities seeking to use the growth allowance must submit a stakeholder involvement plan concurrently with a request to the U.S. EPA to utilize the growth allowance. Presence of an adequate stakeholder plan will be a pre-condition for the approval of the municipality's use of the growth allowance. To qualify for use of the growth allowance, the municipalities must also agree to the additional commitments made by Chicago in this Agreement – specifically the retirement of 40% of the allowance, use of the 1.3 to 1 offset ratio, committee review of applications for use of the growth allowance, and pollution prevention commitments described in Section II.C. below.

E. List of the Project Contacts

City of Chicago Department of Environment:

Alexandra Holt
30 N. LaSalle, Suite 2500
Chicago, IL 60602
Phone: 312/744-3172
Fax: 312/744-6451
Email: aholt@ci.chi.il.us

U.S. EPA Headquarters:

Tim Torma
United States Environmental Protection Agency (2127)
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Phone: 202/260-5180
Fax: 202/260-0147
Email: torma.tim@epa.gov

U.S. EPA Region 5:

Steve Marquardt
United States Environmental Protection Agency (AR-18J)
77 West Jackson Boulevard
Chicago, IL 60604
Phone: 312/353-3214
Fax: 312/886-5824
Email: marquardt.steve@epa.gov

II. Detailed Description of the Project

A. Specific Project Elements

As outlined in Section I.A. above, this XL project will implement Section 173(a)(1)(B) of the Clean Air Act, which provides for the issuance of:

...permits to construct and operate a new or modified source if – “...in the case of a new or modified major stationary source which is located in a zone (within the nonattainment area) identified by the Administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted, that emissions of such pollutant resulting from the proposed new or modified major stationary source will not cause or contribute to emissions levels which exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources under section 172(c);...”

Regulations in Illinois address this provision as part of the U.S. EPA-approved Illinois SIP at 35 Ill. Adm. Code Part 203.302, “Maintenance or Reasonable Further Progress and Emission Offsets,” which states:

“(a) The owner or operator of a new major source or major modification shall provide emission offsets equal to or greater than the allowable emissions from the source or the net increase in emissions from the modification sufficient to allow the Agency to determine that the source or modification will not interfere with reasonable further progress as set forth in Section 173 of the Clean Air Act (42 U.S.C. 7401 et seq.)1.3 to 1 in areas classified as severe....

(B) The Agency shall allow the use of all or some portion of the available growth margin to satisfy subsection (a) above if the owner or operator can present evidence that the possible sources of emission offsets were investigated, none were available at that time and the new or modified major stationary source is located in a zone (within the nonattainment area) identified by the U.S. EPA, in consultation with the Secretary of HUD, as a zone to which economic development should be targeted.”

The Parties to this Agreement recognize that the Illinois SIP provision 35 Ill. Adm. Code Part 203.302 (B), contains requirements not established in CAA Section 173(a)(1)(B). The additional requirements of Illinois SIP provision 35 Ill. Adm. Code Part 203.302 (B) should be complied with unless Illinois submits a revision to their SIP and EPA approves that revision.

Using the provisions above, the parties expect that the following specific activities will occur under this XL project:

- 1) The U.S. EPA, in consultation with HUD, Chicago DOE, and stakeholders have developed criteria to identify “development zones.”
- 2) The Illinois EPA will submit a SIP which demonstrates attainment of the one-hour ozone standard (expected to occur by December 2000). In addition, the state will establish accounting mechanisms for tracking emissions reductions above and beyond the

attainment plan. These excess reductions, created by municipal clean air initiatives will make up a growth allowance. 40% of the emission reduction credits in the growth allowance account will be retired immediately for regional clean air benefit. The remaining percentage (60%) will be eligible for use only by a new or modified source in a development zone identified as part of this project.

- 3) Chicago DOE and other members of the Campaigns for Clean Air and Development are currently working to generate, quantify and track emission reductions in the nonattainment area. The City of Chicago will notify stakeholders before beginning any quantification of potential clean air projects. These emission reduction projects are a key component of the project, and as such stakeholders and the public will be provided an opportunity to comment on the programs before the U.S. EPA and the Illinois EPA approve them into the SIP for use. The emission reduction activities must be tracked properly to assure that no double counting of emission reductions occurs. The reductions should be permanent, quantifiable, enforceable and surplus. Review of the activities performed for the generation of emissions credits will be subject to public review and comment.
- 4) New major sources or major modifications to existing sources within areas identified as development zones may apply to qualifying municipalities to use the growth allowance to meet the 1.3 to 1 offset ratio.
- 5) Pollution prevention measures will be required which reduce overall emissions at the facility using the growth allowance. Specifically, this project will require businesses to implement measures that will reduce emissions from their industrial processes, placing a special emphasis on hazardous air pollutants and other air toxics.
- 6) Sources using the growth allowance must comply with all applicable local, state and federal requirements. This project only affects the requirement to obtain offset emissions under the NSR program by providing an alternative to the traditional offsetting of emissions. Sources moving from the inner city to outlying areas may not use this process.
- 7) Because VOC offset requirements in the Chicago area are currently implemented via the Emission Reduction Market System (ERMS), this project is designed to satisfy offset requirements via the ERMS mechanism. ERMS program credits generated by approved emission reduction programs implemented pursuant to this XL project will only be used to satisfy the VOC offset requirement of a source located in a development zone.
- 8) Sources using the growth allowance will work with the City of Chicago to develop a plan which gives preference for job interviews to residents of the community in which the business is located.

B. Criteria for Development Zones

In order to meet the goals of this project (cleaner air and economic development), the U.S. EPA in consultation with HUD, the Chicago DOE, the Illinois EPA, and stakeholders have developed a list of criteria which will determine whether an area may be identified as a development zone. The criteria described below are intended to create incentives for businesses to choose locations which are not only within the existing urbanized area, but also have other characteristics which qualify them as zones where economic development should be targeted. The criteria identify zones which promote environmentally sound development, the preservation of regionally or locally designated open space, and sites which have adequate, existing infrastructure. Any source using the growth allowance must act consistently with all existing local, state and/or federal requirements and regulations including those regarding natural areas, wetlands and other environmentally sensitive areas.

As discussed above, section 173(a)(1)(B) of the Clean Air Act states that the U.S. EPA Administrator may identify an area to which economic development should be targeted. EPA's interpretation of section 173(a)(1)(B) is that "an area to which economic development should be targeted" should apply to those areas within the larger metropolitan area that need revitalization, redevelopment, creation of jobs, and other similar factors. The U.S. EPA, the Chicago DOE and HUD believe the factors listed below are those that should be used when identifying economic development zones under section 173(a)(1)(B).

This project and the criteria used to identify development zones represent a pilot project to assess this innovative approach. If another state or community were to request use of Section 173(a)(1)(B), the U.S. EPA may not allow use of the criteria described below. The U.S. EPA believes the superior environmental performance of this project including the improved air quality and job opportunities expected in low income and minority communities (created primarily by retiring 40% of the emissions reductions) warrants the flexibility being exercised by using innovative criteria to identify development zones in this geographic area. Consistent with the transferability goal of Project XL, EPA will evaluate the success of this project and determine whether the use of Section 173(a)(1)(B) outlined in this Agreement should be applied in other locations.

Criteria:

A development zone must be within the Metropolitan Chicago ozone nonattainment area, must be within an "urbanized area" as defined by the US Census¹, must be zoned for industrial use, and must meet at least one of the following criteria:

1) Is designated as or eligible for designation as a Federal Empowerment Zone or Enterprise Community.

The Empowerment Zone and Enterprise Community (EZ/EC) Initiative is a federal program which provides tax incentives and performance grants and loans to create jobs and expand

¹ Urbanized area - an area consisting of a central place (s) and adjacent urban fringe that together have a minimum residential population of at least 50000 and generally an overall population density of at least 1000 people per square mile of land area. www.census.gov/geo/www.tiger/glossary.html

business opportunities in economically distressed areas of inner cities. The selection criteria for EZ/EC designation are the same. To be eligible for EZ/EC designation, an area:

- cannot be larger than 20 square miles, unless expanded to include 2,000 acres of developable sites;
- can consist of no more than three contiguous areas;
- cannot be located in more than two contiguous States;
- cannot include census tracts that are part of a central business district, unless the poverty rate is at least 35 percent;
- must have a minimum population of 50,000 and a maximum population of 200,000;
- must have poverty rate of 20 percent within each of the census tracts;
- must have a 25% poverty rate in at least 90 percent of the area's census tracts.

The City of Chicago currently contains areas designated as Federal Empowerment Zones. There are currently no designated Federal Enterprise Communities in the nonattainment area. For more information on Federal Empowerment Zones or Enterprise Communities, see: <http://www.hud.gov/progdesc/ezec.html>. The evaluation of the area shall be based upon the most current U.S. Census information.

2) Is designated as or eligible for designation as a State Enterprise Zone Community.

The Illinois Enterprise Zone Program was created to stimulate economic growth and neighborhood revitalization at the local level. This is accomplished through state and local tax incentives, regulatory relief, and improved governmental services. State and local governments have designated Enterprise Zone Communities throughout the state. Communities can no longer receive this designation, but existing zones can be expanded if they fall under one of the following scenarios:

- Addition of new territory
 - The proposed addition must provide an immediate substantial utility or benefit to the established zone and/or its residents or businesses by: creating or retaining specific jobs, or removing or correcting an impediment to economic development which exists in the established zone; or, stimulating neighborhood residential or commercial revitalization. Specific commitments, plans and timetables must be provided to show a high degree of likelihood that inclusion of the area will cause, or be an essential ingredient in achieving, the intended utility or beneficial result.
- Addition of a New Unit of Government. An area proposed for addition to an enterprise zone must find that the proposed zone and new unit of government:
 - Is contiguous.
 - Results in a zone which is not more than 12 square miles in total area. If the enterprise zone is a joint effort of three or more units of government and the certification has been in effect at least one year, the total area shall comprise not more than thirteen square miles. If the enterprise zone is a joint effort of four or more units of government the total area shall comprise not more than fifteen square miles.
 - Is consistent with the character, purposes and objectives of the established zone, and not detrimental to the public and private interests served by the established zone.
- In addition, the proposed addition to the zone and new unit of government must qualify under at least one of the following criteria:

- The poverty rate for each census tract, minor civil division or county civil division which contains any part of the proposed new unit of government was at least 20 percent as of the 2000 census.
- At least 70 percent of the households in the proposed new unit of government have incomes equal to or less than 80 percent of the mean household income of the larger geography² in which the zone is located.
- The proposed new unit of government has an estimated annual average unemployment rate at least 120 percent of the state's average unemployment rate for the most recent annual twelve month period.
- The population loss criterion is met if the proposed new unit of government suffered less than a 20 percent population decrease between 1990 and 2000 as determined from the 2000 census.

The Metropolitan Chicago ozone nonattainment area contains 18 enterprise zones. There are 16 in Cook County, 6 of which are in the City of Chicago, as well as 1 in Will County and 1 in Kane County. For more information on state enterprise zones, see: <http://www.legis.state.il.us/ilcs/ch20/ch20act655.htm>. The evaluation of the area shall be based upon the most current U.S. Census information.

3) Meets criteria described in the Community Renewal and New Markets Act of 2000, H.R. 4923, as passed by the United States House of Representatives.

This Act has been passed by the United States House of Representatives and is under consideration by the United States Senate at the time this agreement is being written. The Act is intended to provide tax incentives for the renewal of distressed communities and to encourage investments in new markets. Eligible areas for this proposed Federal program include those census tracts in which 20% or more of the population was in poverty as of the latest census or in which the median family income for the tract was less than 80 percent of the greater of either: median family income for the surrounding metropolitan area or median family income for the state (as of the latest census). For additional information on HR 4923, see: <http://thomas.loc.gov/cgi-bin/bdquery/z?d106:h.r.04923>:

4) Is Enrolled in the Illinois EPA Site Remediation Program (Brownfields).

The intent of this criteria is to encourage redevelopment of brownfield sites. The remediation program provides remediation applicants (i.e., the persons seeking to voluntarily perform investigation or remedial activities) the opportunity to receive review and evaluation services, technical assistance and "no further remediation" determinations from the Illinois EPA.

² "Larger geography" means the area to which the proposed new unit of government is being related or compared in order to calculate eligibility. In the case of an application from a single unit of government, such as a city, the larger geography is the city if the boundaries of the enterprise zone include less than the corporate limits of that city. If the boundaries of the enterprise zone are the corporate limits of the city, the larger geography is the county in which the city is located, or the aggregate of the counties if the city is located in more than one county. If a census geography has a mean household income of 125 percent or more of the mean household income of the larger geography, it shall not be included in either the calculation of the low income criterion or the proposed addition.

Within 30 days of the receipt of the application and service agreement and any initial project documents, the Illinois EPA will approve or deny a remediation program application based on completeness and eligibility. The Illinois EPA will issue an enrollment letter acknowledging receipt of the application and service agreement and advance partial payment and identifying the Illinois EPA project manager assigned to the project. Successful participation in the program results in the issuance of a “no further remediation” letter by the Illinois EPA. The U.S. EPA and Illinois EPA have entered into a Superfund Memorandum of Understanding through which the USEPA concurs that further response actions will not be required by the U.S. EPA at sites which have received a no further action letter. For more information on the Illinois Site Remediation Program, see:

(<http://www.epa.state.il.us/land/site-remediation/index.html>). The Site Remediation Program database identifies the status of all voluntary remediation projects administered through the Pre-Notice Site Cleanup Program (1989 to 1995) and the Site Remediation Program (1996 to the present). The SRP database can be found at: (<http://srp.epa.state.il.us/search.asp>).

5) Is a Chicago Designated Industrial Corridor. (If additional corridors are designated during this project, the U.S. EPA must agree that they fulfill the intent of 173(a)(1)(B) before they may be considered a development zone under this project.)

The City of Chicago has designated industrial development areas within the city. These geographically defined areas, known as Designated Industrial Corridors, are designed to:

- promote and preserve industrial development in these areas;
- buffer residential areas from industrial areas; and,
- focus industrial development in the most appropriate locations.

The Industrial Corridors are based on an extensive survey of industry done by the City in the 1980s and long term forecasts indicating areas likely to remain industrial. Analysis of this information identified areas with concentrations of industrial activity, contiguity of uses, access to transportation infrastructure, and opportunities for new development.

A set of working boundaries were developed for discussion with the community and the local alderman. Changes were made to the boundaries based on these discussions and the final boundaries were presented to the Chicago Plan Commission for review and approval. The Plan Commissioner officially adopted the industrial land use plan encompassed by these boundaries in 1994. The development corridors largely overlap the cities EZ/EC zones, which were designed to create jobs and expand economic opportunities in distressed areas of the city.

C. Process for New or Modified Sources to Use Growth Allowance

Under this project, the Administrator of the U.S. EPA will identify the criteria for development zones. This action will consist of a *Federal Register Notice* identifying the criteria in Section II.B. (above) as development zones. It is possible that an area which does not qualify at one point in time may later meet the requirements.

In order to use credits from the growth allowance, a new or modified source should act consistently with the terms in this Agreement and with all other relevant federal, state and/or

local permitting and other requirements. In addition, to apply for use of the growth allowance, a new source should select a site which meets the development zone criteria outlined in this Agreement (or in the case of a modified existing source, in an area which meets the development zone criteria). Once a business has identified (or in the case of a modified source, is located on) such a site, it will submit a request in writing to the Chicago DOE (or other municipality) to use the growth allowance. The request should specify the street address of the development zone in which it plans to locate, and describe how the site complies with the development zone criteria. The source will then follow the existing permitting procedures. This will include a description that the source is satisfying its offset requirement through the use of the growth allowance and written confirmation from the municipality that the source may use its section of the growth allowance. Upon the request of the Illinois EPA, the U.S. EPA will confirm whether the source is located in a development zone and is eligible to use the growth allowance.

The City of Chicago will allocate growth allowance credits to businesses through its existing Emissions Credit Banking and Trading (E.R.C.) Program as authorized in Section 11-4-575 of the Chicago Municipal Code. This Section establishes an E.R.C. committee to review applications for credits and the criteria for the receipt of credits. The E.R.C. committee will accept applications for the distribution of growth allowance credits obtained under this proposal according to the requirements of Section 11-4-575 of the Chicago Municipal Code. The E.R.C. Committee must consider the applicant's compliance with federal and state emissions regulations, employment numbers and composition, commitment to performance of a supplemental environmental project, and Hazardous Air Pollutant emissions, among other factors. Section 11-4-575 of the Chicago Municipal Code is available on the City's web site: www.cityofchicago.org.

In addition, the E.R.C. committee will assure that any recipient of growth allowance credits is located or will be located in an area which meets the development zone criteria outlined in Section II.B., above. The public will have an opportunity to comment during both the application and final approval phases for specific sources seeking to use the growth allowance. All applications for emissions credits will be reviewed by the Emissions Reduction Credit (ERC) Committee. After receiving an application, the Committee must decide within 90 days whether or not to approve the application. Within this 90 day period, the Committee must provide for a minimum of 30 days for public review and comment. Municipalities other than Chicago should use a committee process similar to that outlined above to review applications for use of growth allowance credits. Such a process should be described in the stakeholder participation plan a municipality must submit as part of their application for utilization of the growth allowance. Stakeholder participation in the E.R.C. process is further described in the stakeholder plan.

As part of the application process to use the growth allowance, the City of Chicago will require businesses to implement additional pollution prevention programs. The City currently requires such programs for businesses as part of its credit banking and trading program. Section 11-4-575 (e)(2)(J) of the Municipal Code of Chicago states that all applicants must provide information regarding their:

“commitment to the development of a supplemental environmental project that will benefit the environment. Examples include but are not limited to: planning and implementing pollution prevention measures; adopting an employee commute options program when not required or providing other alternative means of commuting; providing recycling or using recycled materials; and conducting beautification programs, such as planting trees or community gardens or refurbishing neighborhood parks...”

Companies utilizing the growth allowance under this program will have more specific requirements. Specifically, this project will require businesses to implement measures that will reduce emissions from their industrial processes, placing a special emphasis on hazardous air pollutants and other air toxics. This additional pollution prevention will be above and beyond any current regulations or permit requirements. Municipalities other than the City of Chicago which intend to use the growth allowance should require similar pollution prevention measures. The City of Chicago will also encourage any business using the growth allowance to participate in the Clean Air Business Campaign.

III. How the Project Will Meet the XL Acceptance Criteria

A. Superior Environmental Performance

This project is designed to deliver superior environmental protection while allowing flexibility in satisfying the offset requirement under the NSR program. The superior environmental benefits accrue in a number of ways.

- The proposed growth allowance will only count emissions reductions which are in excess of those necessary for the Chicago metropolitan region to demonstrate attainment with the one-hour ozone standard. In other words, before this project can be implemented, the Chicago region should submit a modeled attainment demonstration for the one-hour standard which does not rely on reductions from the growth allowance. The Chicago area is classified as a severe ozone nonattainment area for the one-hour standard and must show attainment of this standard by the year 2007. By creating an incentive for municipalities to implement emission reduction initiatives, this project should help reduce emissions and move the area toward attainment of the one-hour standard earlier than 2007.
- 40% of the emissions reductions generated for the growth allowance will be retired immediately. The remaining percentage (60%) will be available for new or modified sources locating or expanding in development zones, to use in lieu of obtaining traditional offsets at the same 1.3 to 1 ratio. Therefore, the emissions reduction under this proposal will be greater than the 1.3 to 1 ratio reduction currently required due to the 40% reduction off the top.
- By creating a concrete incentive (cost savings to new development in the zones) to implement programs, an increased number of the activities will likely be funded and carried out. This project will quantify the emission reductions created by the actions of people, communities, or businesses. Taking emissions reduction activities out of the realm of “intangible benefits” and placing them in the realm of real economic benefits should create

demand and have a positive effect on the environment. This shift should cause reductions in all parts of the emissions inventory (stationary, mobile, and area).

- Participating municipalities plan to achieve real reductions in stationary, mobile and area sources. Local governments, in particular, are in a unique position to reduce mobile and area sources through actions such as zoning decisions, purchasing preferences and municipal ordinances.
- Using development zone criteria which provide incentives for locating in areas where infrastructure such as utilities and transportation exist may result in preservation of open space.
- Additional air quality benefits may be realized by locating new facilities in regionally central sites and near public transportation, thus reducing the amount of driving required to reach the facilities.
- The City of Chicago will require businesses to implement additional environmental programs as described in Section II.C., above.

B. Anticipated Benefits, such as Cost Savings and Operational Flexibility

This proposal provides both flexibility and cost savings. Flexibility is achieved by giving sources an alternative method of compliance with the offset requirement as well as giving participating communities in the Chicago metropolitan area the opportunity to create value from emissions reductions and the ability to use the growth allowance to attract businesses to areas where development is most advantageous. Cost savings will be realized by the new source (because absent the project, they would be required to obtain offsetting emissions which would most likely be purchased from another source) and benefits will be realized by the communities through increased economic activity. Recent costs for sources purchasing VOC emissions offsets in the Midwest have ranged from \$2000-\$8000/ton.

C. Stakeholder Involvement and Support

Stakeholder involvement is considered essential by the Illinois EPA, the Chicago DOE and the U.S. EPA. It is important that all interested parties have a voice in decisions which impact the air quality and economic development in their communities. This project has been discussed in the Campaigns for Clean Air and Development, where representatives from communities, local governments, businesses and environmental groups have been given an opportunity to discuss and comment on the project. Meaningful stakeholder involvement has occurred in the project design, and will continue to occur in the modification, application and evaluation process.

A Stakeholder Participation Plan developed by the Chicago DOE is attached to this document as *Appendix A* and is available on the U.S. EPA web site at:
<http://www.epa.gov/projectxl/chicago/index.htm>.

1) Generation of Emission Reductions

Emission reduction credits requested by the City of Chicago and other municipalities under this project must be clearly documented and submitted for review and approval to the Illinois EPA and U.S. EPA for inclusion into the SIP. The programs implemented will be available for public review and comment on methods for quantifying reductions will be established. The credits that will be used under this project are not currently established in the SIP and will not be separated out from the current emission inventory as is the case with other "growth allowances." The SIP will be used as a reference to assure there is no double use of emission reductions and as a measure of the reduction potential that may be available. The Illinois SIP for Chicago already takes credit for certain measures that overlap with the potential programs for reductions. The current SIP takes credit for measures such as the Illinois Clean Fuel Fleet program, national rules for cleaner lawnmowers, car and van pool programs that are already established and for national rules on coatings and paints. All emission reduction programs credited in this XL program must be surplus and excess to what is already in the SIP and to what Illinois needs to reach attainment of the one hour ozone standard. The SIP will be used as a check to assure that these credits are excess to attainment.

The reduction programs performed by the City and other municipalities must be implemented and the reductions must occur and be thoroughly documented and have public input before any crediting can take place. The U.S. EPA and the Illinois EPA will request sufficient documentation on each reduction program to clearly show the amount of reductions achieved. The amount and type of documentation may vary by type of reduction program. Documentation may include as appropriate: copies of municipal ordinances, local enforcement procedures, detailed listings of types of sources eliminated or reduced, and assurances that the sources have been permanently eliminated or reduced.

A wide variety of project types have been proposed for implementation and credit. Some are new and may be difficult to quantify. Other projects have been implemented before and methodologies are established for quantification. The quantification methodologies will be established and agreed to by the U.S. EPA and the Illinois EPA before submission of documentation for credit. All parties to this agreement share the goal of constantly striving for improved and more accurate quantification measurements. Each program proposed for implementation must document actual reductions generated by the program. If reductions cannot be clearly documented, credit cannot be given.

Stakeholder input and community goals have been and will continue to be considered as this project is implemented. An annual stakeholder meeting for the purpose of keeping interested parties informed of the progress and status of the project and the growth allowance will be held by the Chicago DOE. Although many city-wide organizations and representatives of various interest and community groups have been consulted in the development of this Agreement, additional stakeholder involvement will be necessary when components of the project are implemented.

2) Use of Emission Reductions

Because the specific qualifying development zone sites and new sources which will take advantage of this project are not currently known, any municipality intending to use the growth

allowance must seek additional community input when specific new sources (or modifications for existing sources) and their locations are proposed. This additional involvement is intended to solicit the input of neighborhoods and communities adjacent to and nearby the proposed location of a new or modified source under this project. The venue for ongoing public involvement in the use of the emission reductions will be Chicago's existing Emissions Reduction Credit Banking and Trading Program, which will be the mechanism for disbursing credits from the growth allowance. The public will have an opportunity to comment during both the application and final approval phases for specific sources seeking to use the growth allowance. All applications for emissions credits will be reviewed by the Emissions Reduction Credit (ERC) Committee. After receiving an application, the Committee must decide within 90 days whether or not to approve the application. Within this 90 day period, the Committee must provide for a minimum of 30 days for public review and comment. Municipalities other than Chicago which intend to use the growth allowance must use a review process at least as rigorous as the Emissions Reduction Credit Banking and Trading Program process. This process is further described in the attached Stakeholder Plan.

3) Regulatory Processes

Existing permitting procedures for location or modification of a new source in the Chicago metropolitan area currently require the source to have a 30-day public comment period on the proposed construction permit. The community in which the project is proposed will receive notification of the project in a local newspaper of general circulation. These requirements apply to sources seeking to use the growth allowance. Notices will also be sent to persons/groups in the community that have notified the Illinois EPA that they wish to be aware of projects going to public notice in their community. There may also be a public hearing and/or public meetings for the proposed construction project based on the level of interest in the community. The City of Chicago and other municipalities will use existing public comment processes for site development and distribution of the growth allowance credits. These processes may include hearings before the City Council, the E.R.C. committee, the Community Development Commission and the Zoning Board of Appeals. These processes should be sufficient to ensure that the use and potential impact of the growth allowance is transparent to the public. For instance, the processes should ensure the public is informed in a timely manner when a facility will be using the growth allowance, how many credits will be used, where they will be used, and potential impacts of their use.

D. Innovative Approach and Multi-Media Pollution Prevention

This is an innovative strategy because:

- Section 173(a)(1)(B) of the Clean Air Act has not previously been implemented;
- The project will use innovative criteria, as described in section II.B. above, to designate the development zones;
- U.S. EPA, the Illinois EPA, the Chicago DOE and other municipalities will pursue a number of innovative emissions reduction activities.

The project encourages pollution prevention by providing an incentive for municipalities as well as individuals and businesses to generate emission reductions beyond what is required under existing rules. In addition, firms using the growth allowance in the City of Chicago will be

required to implement pollution prevention measures aimed at reducing overall emissions of any source using the growth allowance (see Section II.C. above). Specifically, this project will require businesses to implement measures that will reduce emissions from their industrial processes, placing a special emphasis on hazardous air pollutants and other air toxics.

E. Transferability of the Approach to Other Entities or Sectors

Although this project is designed to build on the activities being conducted specifically in the Chicago metropolitan nonattainment area, the basic concept of 173(a)(1)(B) may be employed in other nonattainment areas of the country.

F. Feasibility of the Project

The Illinois EPA, the Chicago DOE and U.S. EPA have the administrative and technical capability to implement this proposal. The parties have committed adequate staff resources to implement the project. Assistance will also be provided by stakeholders in the Campaigns for Clean Air and Development, including the U.S. EPA and Illinois EPA.

G. Monitoring, Reporting, Accountability, and Evaluation Methods to be Used

Emission reductions generated by municipal activities and used for this project must be approved by the Illinois EPA and U.S. EPA. In order to insure accurate accounting of the growth allowance, the methodology and structure of the tracking system must be agreed upon by both the U.S. EPA and Illinois EPA. This is important to assure the integrity of the growth allowance. The approval of the emission reductions will be publicly accessible and interested stakeholders will have an opportunity to comment on the programs before final approval and implementation. It is the commitment of the parties that the methodology and structure will be transparent to the public, and provide interested parties with timely and sufficient information to verify emission reductions made available through the growth allowance.

H. Avoidance of Shifting the Risk Burden to Other Areas or Media

This project is consistent with Executive Order 12898 on Environmental Justice. The project is intended to promote both cleaner air and economic development. When a new major source or major modification to an existing source occurs there may be concern over environmental justice in the surrounding community. The U.S. EPA believes that this project will not exacerbate any potential for unjust or disproportionate shifting of the risk burden relative to existing rules and regulations, and intends to ensure that this will be the case as the project is implemented (see Section V. E.). The XL program is designed to improve on existing regulations.

Under current NSR rules, a source may obtain offsets from another source anywhere within the nonattainment area. Under this project, the community in which the development zone is located will create net emissions reductions thereby leading to a region wide reduction, while also providing a closer geographic connection between the source of the new emissions and the source of emissions reductions. The majority of emission reductions that are used for a particular source in a community will be obtained from that municipality. This means reductions would occur in closer proximity to the new source than currently required under NSR. Any source using the growth allowance will still be required to meet existing control technology

requirements under major New Source Review regulations as well as any applicable rules regarding hazardous air pollutants. This project produces a superior environmental benefit across the region, and particularly in the municipality that generates the reduction. This is because 40% of the reductions will be retired, which is greater than required under current NSR.

Even so, some new sources which take advantage of this project may pose site-specific challenges depending on the nature of emissions and location of the development zones. For example, while emissions reductions would accrue throughout the entire municipality, it is possible that emissions in the immediate vicinity of a development zone may increase. In addition to the benefits described above, a business which uses the growth allowance to locate in a development zone in the City of Chicago will be required to implement additional environmental programs as described in Section II.C. above. Pollution prevention measures will be required which reduce overall emissions at the facility. The requirement for pollution prevention measures is a more stringent requirement on the source than current NSR requirements. Specifically, this project will require businesses to implement measures that will reduce emissions from their industrial processes, placing a special emphasis on hazardous air pollutants and other air toxics. Meaningful stakeholder involvement is also integrated into the development of emission reduction activities, allocation of emission reductions and permitting processes as described within the final project agreement. These actions will be evaluated pursuant to Section E, Project Tracking, Reporting, and Evaluation.

Nothing in this agreement limits any rights that are available to raise and address concerns about disparate impacts during the NSR process. When a new source is required to obtain a permit under NSR, the U.S. EPA believes that the NSR permit process also offers a venue for raising and addressing concerns about disparate impacts that may arise from the construction of, or modification of a particular source. An example of an applicable requirement, for sources receiving major NSR permits, that may act to address individual community concerns is Section 173(a)(5) of the Clean Air Act which requires “an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.”

IV. Description of the Requested Flexibility and Implementing Mechanisms

A. Requested Flexibility

The flexibility requested in this project is the use of section 173(a)(1)(B) and the generation of new types of emissions reductions that have not previously been pursued and count them towards a growth allowance in the SIP. Section 173(a)(1)(B) of the Clean Air Act has not previously been implemented. The emission reduction activities to be conducted as part of this project will be reflected in the Illinois SIP, but they are categories of emissions which have not historically been regulated or are difficult to regulate. Using XL for this project allows the Illinois EPA, the Chicago DOE and U.S. EPA to pilot and study the quantification and use of such reductions. Under this project, compliance with regulations will not be deferred as is often the case under Project XL.

B. Legal Implementing Mechanisms

Under this project no federal source-specific rule will be required. The official actions taken by U.S. EPA will be:

- 1) Identification of criteria for the development zones which are eligible for participation in this project. This action will consist of a *Federal Register Notice*; and,
- 2) Appropriate action to approve a method of quantifying and tracking emission reductions associated with the Campaigns for Clean Air and Development. Implementation of this project is contingent on U.S. EPA approval of acceptable tracking and quantification. The growth allowance cannot be used until the emissions reductions are generated and approved into the allowance.

V. Discussion of Intentions and Commitments for Implementing the Project

A. Intentions and Commitments of the Chicago Department of Environment

- 1) The Chicago DOE and other participating municipalities will continue to work with other participants and stakeholders in the Campaigns for Clean Air and Development to generate and keep data on emissions reductions.
- 2) The Chicago DOE will follow the processes described in the Stakeholder Participation Plan for the duration of the project.
- 3) The Chicago DOE and other participating municipalities will work with U.S. EPA, Illinois EPA and interested parties to implement emission reduction programs including the quantification and tracking of emission reductions. The tracking system must be approved by U.S. EPA prior to implementation of this project.
- 4) The Chicago DOE and other participating municipalities will permit use of the growth allowance only for sources located in a development zone identified under this project.

B. U.S. EPA Intentions and Commitments and Illinois EPA's Role

- 1) U.S. EPA will use Section 173(a)(1)(B) as the basis for identifying zones to which economic development should be targeted (development zones).
- 2) U.S. EPA and Illinois EPA will work with the Chicago DOE, other participating municipalities and interested parties to establish, track and enforce the growth allowance prior to implementation of this project.
- 3) Illinois EPA will review the terms of this project and their rules to ensure that the project is allowable under the Illinois SIP.
- 4) Illinois EPA and U.S. EPA will ensure that no emissions reductions used in the SIP to demonstrate attainment of the one-hour ozone standard will be used as credits in the growth allowance.
- 5) Illinois EPA and U.S. EPA will ensure that the system for verifying and tracking emissions reductions is made available to the public, that the public has sufficient information to independently verify the reductions, and that the public is provided timely and detailed information on the use of the growth allowance.

C. Project XL Performance Targets

Although it is extremely difficult to predict how many emissions reductions will be generated, it is estimated that 3 to 7 tons of emissions reductions per day of VOCs may be

realized under this project. 40% of those reductions will be retired while the other 60% will be available for use.

D. Proposed Schedule and Milestones

- Municipal emissions reduction activities. (Currently and ongoing during life of the project)
- The Illinois EPA and the U.S. EPA review and approve emission reduction programs which will make up the growth allowance. (Currently and ongoing during the life of the project)
- Growth allowance open for access by new and modified sources. (First Quarter, 2001)

E. Project Tracking, Reporting and Evaluation

For the duration of this Agreement, the Chicago DOE will provide an annual summary report to U.S. EPA and, upon request, to stakeholders. The Chicago DOE will make all project-related data and reports available to stakeholders on request. The Chicago DOE will also post the annual reports on its Internet web site at <http://www.cityofchicago.org>. The first annual report will be due December 31, 2001. Succeeding annual reports will be due December 31 of each year during the life of this Agreement.

In each annual report the Chicago DOE will provide:

- 1) The name and location of all new or modified sources which have used the growth allowance to locate in development zones under this project;
- 2) The amount and nature of emissions generated by the new or modified sources as well as the amount of offsetting emissions drawn from the growth allowance and the activities performed to create the growth allowance.
- 3) A summary of stakeholder involvement and activities undertaken as part of the project;
- 4) Information regarding the status of emission reduction activities pursued by the City of Chicago pursuant to this project including quantification of the emissions reductions generated and the total amount used and remaining; and,
- 5) Other reports or information produced as part of the project which address these subjects.

Sources that use the growth allowance will be major sources of VOC emissions under the Clean Air Act. Current recordkeeping requirements exist to supplement the reporting requirements listed above. Existing recordkeeping requirements include Title V permits, annual emission reports, and the toxic release inventory. Moreover, the State is in the process of adopting regulations to require additional reporting of emissions of hazardous air pollutants, so that the State can fulfill its mandate to assess potential emission redistributions under the ERMS program. Sources that use the growth allowance will continue to report their emissions as required by applicable rules and regulations.

F. Periodic Review by the Parties to the Agreement

The parties to this Agreement will hold periodic performance review conferences to assess their progress in implementing this Project. Unless they agree otherwise, the date for those conferences will be concurrent with annual stakeholder meetings. No later than thirty (30) days following a periodic performance review conference, Chicago DOE will provide a summary of the minutes of that conference to all Direct Stakeholders (a list of Stakeholders is available on

the EPA web site for this project at: <http://www.epa.gov/projectxl/chicago/index.htm>). Any additional comments of participating Stakeholders will be reported to U.S. EPA.

G. Duration

This XL project is intended to set up a new and innovative process which is allowable under existing statutory and regulatory requirements. The parties to the Agreement believe that it will be appropriate to continue the project until December 31, 2007 unless the project is modified or ended by withdrawal of one of the parties as provided under Section VIII., or Section X., below. If all parties agree that the project has been successful, then the duration of the project may be extended by mutual agreement using the processes outlined in Section VIII., below.

VI. Legal Basis for the Project

A. Authority to Enter Into the Agreement

By signing this Agreement, the U.S. EPA, the Chicago DOE and any subsequent signatories acknowledge and agree that they have the respective authorities, discretion, and resources to enter into this Agreement and to implement all applicable provisions of this Project, as described in this Agreement.

B. Legal Effect of the Agreement

This Agreement states the intentions and commitments of the Parties with respect to the project. The Parties have stated their intentions and commitments seriously and in good faith, and expect to carry them out.

This Agreement in itself does not create or modify legal rights or obligations, is not a contract or a regulatory action, such as a permit or a rule, and is not legally binding or enforceable against any party. Rather, it expresses the plans, commitments and intentions of the parties without making those plans and intentions binding requirements. This applies to the provisions of this Agreement that concern procedural as well as substantive matters. Thus, for example, the Agreement establishes procedures that the parties intend to follow with respect to dispute resolution and termination (see Sections IX. and X.). However, while the parties fully intend to adhere to these procedures, they are not legally obligated to do so.

This Agreement is not a “final agency action” by U.S. EPA, because it does not create or modify legal rights or obligations and is not legally enforceable. This Agreement itself is not subject to judicial review or enforcement. Nothing any party does or fails to do that deviates from a provision of this Agreement, or that is alleged to deviate from a provision of this Agreement, can serve as a basis for any claim for damages, compensation or other relief against any party.

C. Other Laws or Regulations That May Apply

The parties do not intend that this Project will modify any existing or future laws or regulations.

D. Retention of Rights to Other Legal Remedies

Nothing in this Agreement affects or limits the Chicago DOE's, U.S. EPA's, or Illinois EPA's legal rights. These rights may include legal, equitable, civil, criminal or administrative claims or other relief regarding the enforcement of present or future applicable federal and state laws, rules, regulations or permits.

Although the Chicago DOE does not intend to challenge agency actions implementing the Project (including any rule amendments or adoptions, permit actions, or other action) that are consistent with this Agreement, the Chicago DOE reserves any right it may have to appeal or otherwise challenge any U.S. EPA, or Illinois EPA action to implement the project. With regard to the legal implementing mechanisms, nothing in this Agreement is intended to limit the Chicago DOE's right to administrative or judicial appeal or review of those legal mechanisms, in accordance with the applicable procedures for such review.

VII. Amendments or Modifications to the Agreement

This project is an experiment designed to test new approaches to environmental protection and there is a degree of uncertainty regarding the environmental benefits and costs associated with activities to be undertaken in this project. Therefore, it may be appropriate to amend this Agreement at some point during its duration. The City of Chicago will notify the stakeholders of any pending amendments to the agreement.

This Final Project Agreement may be amended by mutual agreement of all parties at any time during the duration of the project. The parties recognize that amendments to this agreement may also necessitate modification of legal implementation mechanisms or may require development of new implementation mechanisms.

In determining whether to amend the Agreement, the parties will evaluate whether the proposed amendment meets Project XL acceptance criteria and any other relevant considerations agreed on by the parties. All parties to the Agreement will meet within ninety (90) days following submission of any amendment proposal (or within a shorter or longer period if all parties agree) to discuss evaluation of the proposed amendment. If all parties support the proposed amendment, the parties will (after appropriate stakeholder involvement) amend the Agreement.

If the Agreement is amended, the U.S. EPA and the Chicago DOE expect to work together with the Illinois EPA other regulatory bodies and stakeholders to identify and pursue any necessary modifications or additions to the implementation mechanisms in accordance with applicable procedures. If, after appropriate stakeholder involvement, all parties support the proposed amendment, the parties will (after appropriate public notice and comment) amend the Agreement.

VIII. Process for Resolving Disputes

Any dispute that arises with respect to the meaning, application, implementation, interpretation, amendment, termination or modification of the FPA will, in the first instance, be the subject of informal discussions. To initiate informal discussions, any Party that believes it has a dispute with any other party will identify and explain the matter(s) in dispute in writing to all parties. This initial contact should involve staff at the appropriate level for the nature of the dispute.

If the parties cannot resolve a dispute within 30 days of the initial contact (or such longer time as agreed to by the disputants) through informal negotiations, the parties may invoke non-binding mediation by describing the dispute with a proposal for resolution in a letter to the respective chief administrative officials (signatories to this Agreement). The Regional Administrator for the U.S. EPA Region 5 will serve as the non-binding mediator and may request an informal mediation meeting to attempt to resolve the dispute. He or she will then issue a written opinion that will be non-binding and does not constitute a final EPA action. If this effort is not successful, the parties still have the option to terminate or withdraw from the Agreement, as set forth in Section IX, below.

Nothing in this section will be construed to alter the parties' expectations regarding the ability to terminate or withdraw from the FPA, as set forth in the provision of Section IX, Withdrawal From or Termination of the Agreement.

IX. Withdrawal From or Termination of the Agreement

A. Expectations

Although this Agreement is not legally binding and any party may withdraw from the Agreement at any time, it is the desire of the parties that it should remain in effect through December 31, 2007, and be implemented as fully as possible unless one of the conditions below occurs:

- 1) Failure by any party to (a) comply with the provisions of the enforceable implementing mechanisms for this project (Illinois SIP), or (b) act in accordance with the provisions of this Agreement. The assessment of the failure will take its nature and duration into account.
- 2) Failure of any party to disclose material facts during development of the Agreement.
- 3) Failure of the project to provide superior environmental performance consistent with the provisions of this Agreement.
- 4) Enactment or promulgation of any environmental, health or safety law or regulation after execution of the Agreement, which renders the project legally, technically or economically impracticable.

In addition, the U.S. EPA does not intend to withdraw from the Agreement if the Chicago DOE does not act in accordance with this Agreement or its implementation mechanisms, unless the actions constitute a substantial failure to act consistently with intentions expressed in this Agreement and its implementing mechanisms. A decision to withdraw will take the failure's nature and duration into account. The Chicago DOE will be notified by the U.S. EPA that they

are considered to have “substantially failed” in some aspect of implementing the FPA, and the U.S. EPA at its discretion, may offer Chicago DOE an opportunity to remedy the “substantial failure” before the U.S. EPA’s withdrawal. If there is a disagreement between the parties over whether a “substantial failure” exists, the parties will use the dispute resolution mechanism identified in Section VIII. of this Agreement. The U.S. EPA retains its discretion to use existing enforcement authorities, including withdrawal or termination of this project, as appropriate. The Chicago DOE retains any existing rights or abilities to defend itself against any enforcement actions, in accordance with applicable procedures.

B. Withdrawal Procedures

The parties agree that the following procedures will be used to withdraw from or terminate the Project before expiration of the project term. In addition to the following procedures, stakeholders shall be notified as to any pending withdrawal.

- 1) A party wishing to terminate or withdraw from the project will provide written notice to the other parties at least sixty (60) days before the withdrawal or termination.
- 2) If requested by any party during the sixty (60) day period noted above, the dispute resolution proceedings described in this Agreement may be initiated to resolve any dispute relating to the intended withdrawal or termination. If, following any dispute resolution or informal discussion, a party still desires to withdraw or terminate, that party will provide written notice of final withdrawal or termination to the other parties.
- 3) The procedures described in this Section apply only to the decision to withdraw or terminate participation in this Agreement. Procedures to be used in modifying or rescinding any legal implementing mechanisms will be governed by the terms of those legal mechanisms and applicable law. It may be necessary to invoke the implementing mechanism’s provisions that end authorization for the project (called “sunset provisions”) in the event of withdrawal or termination.

X. Compliance After the Project is Over

In most XL projects, provisions are made for an orderly return to compliance with the regulations which would be in effect absent the XL project. In the case of this project, it is not anticipated that any entity would be out of compliance with existing regulations if the project ends – either prematurely due to withdrawal of a party or by completion of the project term. For example, if a source takes advantage of the growth allowance created by this project and locates in a development zone, the requirement that it obtain offsetting emissions reductions will be fulfilled by the growth allowance. Under this project, the source would be required to comply with all other applicable regulations – local, state and federal. Therefore, if the project should end any time after a new source has obtained offsets from the growth allowance, the source would have fulfilled its obligation to obtain the offsets.

A. Orderly Return to Compliance with Otherwise Applicable Regulations, if the Project Term is Completed.

If the Project is terminated because the term has ended, the Chicago DOE or other municipalities using the growth allowance will take actions to come into compliance with all otherwise applicable regulations unless the Project is amended or modified in accordance with Section VIII. of this Agreement (Amendments or Modifications). Although this will include ending the use of the growth allowance as a vehicle for credit generation, EPA also recognizes that new major sources and major modifications, prompted in part by this project, will continue to need to satisfy section 173 of the Clean Air Act. EPA intends during this project to explore alternatives for addressing this requirement to the extent this project's emission reductions continue. The Chicago DOE or other municipalities using the growth allowance are expected to anticipate and plan for all activities to return to compliance sufficiently in advance of the end of the Project term. The Chicago DOE and other municipalities using the growth allowance may request a meeting with the U.S. EPA and the Illinois EPA to discuss the timing and nature of any actions that the Chicago DOE and other municipalities using the growth allowance will be required to take. The parties should meet within thirty days of receipt of the Chicago DOE's written request for such a discussion. At and following such a meeting, the parties should discuss in reasonable, good faith, which of the requirements deferred under this project will apply after termination of the project.

B. Orderly Return to Compliance with Otherwise Applicable Regulations in the Event of Early Withdrawal or Termination.

In the event of a withdrawal or termination not based on the end of the project term, the parties to the Agreement will determine an interim period to provide sufficient time for participating municipalities to return to compliance with all otherwise applicable regulations. The interim period will extend from the date on which a party to the Agreement provides written notice of final withdrawal or termination of the project, in accordance with Section IX, above. During the interim period, the U.S. EPA or the Illinois EPA may issue an order, permit, or other legally enforceable mechanism establishing a schedule for ending use of the growth allowance and return to compliance with otherwise applicable regulations. Although this will include ending the use of the growth allowance as a vehicle for credit generation, EPA also recognizes that new major sources and major modifications, prompted in part by this project, will continue to need to satisfy section 173 of the Clean Air Act. EPA intends during this project to explore alternatives for addressing this requirement to the extent this project's emission reductions continue. This schedule cannot extend beyond 6 months from the date of withdrawal or termination. Participating municipalities must be in compliance with all applicable Federal, State, and local requirements as soon as is practicable, as will be set forth in the new schedule.

XI. Signatories and Effective Date

We, the undersigned, pledge our support for the continued success of the Chicago Regional Air Quality and Economic Development Strategy XL Project and the furtherance of an effective partnership between EPA and the City of Chicago Department of Environment.



United States Environmental Protection Agency



City of Chicago Department of Environment



Illinois Environmental Protection Agency

Appendix A

Stakeholder Participation Plan

The City of Chicago's Project XL Stakeholder Participation Plan addresses public involvement both in the development of the FPA and on an ongoing basis. This plan outlines the specific activities undertaken by the City to involve stakeholders in the Project XL development and approval process. It also describes how interested citizens can stay involved after the program is in place. Specifically, the plan describes how the City will accommodate stakeholder concerns throughout the application and review process for use of the growth allowance.

Stakeholder outreach for Chicago's Project XL proposal utilizes the existing participants in the ongoing regional clean air efforts. In the Chicago non-attainment region, the public and private sector have teamed up to address the issue of air quality and economic development. These partners have created the Campaign for Clean Air and Development, the goal of which is to reduce emissions from households, developments, industry and institutions, local government, and federal and state government. The campaign is developing specific emissions reduction targets and the strategies and incentives necessary to reach these targets. A steering committee, with representatives of the region's businesses, government agencies, institutions, non-profits and advocacy groups and chaired by the Metropolitan Mayors Caucus, is overseeing the implementation of the campaign.

Because of its broad organizational and regional composition, the steering committee will be the main mechanism for seeking stakeholder input on the proposal. In addition, the Metropolitan Mayors Caucus Clean Air Task Force, and the Clean Air Communities Campaign Committee have been asked to participate in the stakeholder process. With the Campaign for Clean Air and Development Steering Committee, this combination of groups will allow Chicago DOE to reach the widest range possible of stakeholders. Many of the committees within the Campaign for Clean Air and Development are open to any interested party, composed of the public and private sector, and have ties to many other organizations.

The City began the stakeholder process on July 13, 2000 when Chicago DOE presented the Project XL proposal to a Clean Air Communities Campaign Committee meeting. Attendees were provided with an overview of the process and the proposal itself. The proposal was discussed among the committee members. See attachment A1 for a complete list of people who attended the meeting. Clean Air Communities Campaign Committee meetings are open to all interested parties.

The second stakeholder meeting was held on July 24, 2000. Chicago DOE notified the Metropolitan Mayors Caucus Clean Air Task Force, the Campaign for Clean Air and Development Steering Committee, and the Clean Air Communities Campaign Committee. At the July 24 meeting, USEPA presented an overview of the Project XL program in general. This was followed by a presentation of the City of Chicago's proposal by Chicago DOE. After

the presentations, USEPA and Chicago DOE answered questions about the process and the City's proposal.

At the August 7, 2000 meeting the primary focus was to discuss the criteria for selecting development zones. USEPA and Chicago DOE presented the thinking behind the proposed criteria. The goal of development zone designation is to give a broad range of communities an incentive to reduce their emissions and to encourage environmentally sound location decisions within their municipality. Other FPA questions were addressed at the close of the meeting.

The third stakeholder meeting was held on August 28, 2000. The draft final project agreement was provided to the stakeholders prior to this meeting. This was an opportunity to provide input into the development of the final project agreement. The Primary purpose of the meeting was to discuss the specific elements of the Proposed Final Project Agreement.

The proposed Final Project Agreement was made available for public comment in a *Federal Register* Notice of Availability on August 25, 2000. Four sets of comments were received. A meeting was then held on August 21, 2000 where stakeholders and project sponsors had the opportunity to discuss the comments that were received as well as options for reconciliation of remaining concerns.

Stakeholder involvement will continue after the Final Project Agreement has been signed. Meaningful stakeholder involvement has occurred in the project design and will continue to occur in the modification, application and evaluation process. In particular, there will be opportunities for stakeholders to comment with respect to the distribution of the emissions credits generated under this agreement. Chicago currently has a multi-step process for the redevelopment of a site and the distribution of credits and intends to use public hearings and comment periods. The City of Chicago will use its existing public comment processes for site development and distribution of the growth allowance credits. These processes may include hearings before the Community Development Commission, City Council, the Emissions Reduction Credit (E.R.C.) Committee, and the Zoning Board of Appeals.

The venue for ongoing public involvement will be the City's existing Emissions Reduction Credit Banking and Trading Program, which will be the mechanism for disbursing credits from the growth allowance. The public will have an opportunity to comment during both the application and final approval phases for specific sources seeking to use the growth allowance.

All applications for emissions credits will be reviewed by the Emissions Reduction Credit (ERC) Committee. After receiving an application, the Committee must decide within 90 days whether or not to approve the application. Of this 90 days, the Committee must provide for a minimum of 30 days for public review and comment.

This requirement is codified in Section 11-4-575 (g)(3)(F) of the City of Chicago Municipal Code. This section of the Code requires the ERC Committee to maintain a management plan that will specify at a minimum:

“A process that provides citizens who may be affected by a proposed facility with reasonable notice and opportunity to provide comments to the E.R.C. committee at least 30 days before the committee makes a recommendation to the City Council that credits be awarded to a qualified applicant.”

It has been the practice of the ERC Committee to include a public hearing, along with the comment period, in the community where the new business seeks to locate.

After the ERC committee makes its recommendation, the matter then goes before the City Council for final approval. The Council must approve any transactions involving emissions reduction credits in the City. This process involves a required public hearing and comment period. Thus, stakeholders will have a second opportunity for involvement before final approval.

The Emissions Reduction Credit Management Plan requires that businesses applying for credits show proof of notification of all property owners within 500 feet of the facility or proposed facility where the credits will be used. In addition to this notification, DOE will continue to utilize the Clean Air Counts campaigns to alert people of activity with regard to this program. In addition, the DOE web site will contain information about applications to use the growth allowance as well as information about comment periods and public hearings for applicants.

In addition to the hearings and public comment periods provided for under the ERC Committee process, all redevelopments of a significant size in Chicago are required to go before the Community Development Commission (CDC) for review and approval. The CDC process includes a public hearing format. After approval by the CDC, redevelopment applications are forwarded to the City Council for hearing, review and approval. As with the distribution of credit, the City Council holds a hearing before its relevant subcommittee prior to the final vote of the Council. In addition, a site may require approval and hearing before other agencies such as the Zoning Board of Appeals and the Department of Environment which have public hearing and comment procedures.

Finally, existing permitting procedures for location or modification of a new source in the Chicago metropolitan area currently require the source to have a 30-day public comment period on the proposed construction permit. The community in which the project is proposed will receive notification of the project in a local newspaper of general circulation. This same procedure will apply here. Notices will also be sent to persons/groups in the community that have notified the Illinois EPA that they wish to be aware of projects going to public notice in their community. There may also be a public hearing and/or public meetings for the proposed construction project based on the level of interest in the community.

Many opportunities will be provided on a continuing basis for community members and other interested stakeholders to comment on the distribution of credits generated under the guidelines of this agreement. These opportunities are described further in the final project agreement.

Attachment A1

**Clean Air Communities Campaign Meeting
July 13, 2000**

Attendee List

<u>Name</u>	<u>Affiliation</u>
G. E. Beckstead	Illinois EPA
Megan Swanson	West Central Municipal Conference
Mindy Barrett	South Suburban Mayors and Managers Association
Leslie Hawkes	DuPage Mayors and Managers
Beth Helgeson	Dukane Valley Council
Dave Bennett	Northwestern Municipal Conference
Beth Penesis	The Delta Institute
Maya Culbertson	The Delta Institute
Tim Brown	The Delta Institute
Steve Schlickman	Schlickman and Associates
Steve Rosenthal	U.S. EPA
Joe Deal	City of Chicago Department of Environment
Bethany Wezeman	City of Chicago Department of Environment
Carla Clemons	U.S. DOE
John Novinson	Village of Northbrook
Alexandra Holt	City of Chicago Department of Environment
Rita Athas	City of Chicago Mayor's Office
Noelle Gaffney	Chicago Transit Authority
Steve Call	FHWA-USDOT
Doug Gerleman	Federal Transit

Attachment A2

Project XL: Metropolitan Chicago Regional Air Quality and Economic Development

Notification List

<u>Name</u>	<u>Affiliation</u>
William Abolt	City of Chicago Department of Environment
Alan Anderson	Will County Governmental League
Amy Anderson	Chicagoland Chamber of Commerce
Rita Athas	City of Chicago Mayor's Office
Mary Sue Barrett	Metropolitan Planning Council
Mindy Barrett	South Suburban Mayors and Managers Association
Mitch Beaver	Illinois Dept. of Commerce and Community Affairs
Dave Bennett	Northwest Municipal Conference
Scott Bernstein	Center for Neighborhood Technology
James Bower	Divine Interventures
Tim Brown	The Delta Institute
Peter Burchard	City of Naperville
Ron Burke	American Lung Association of Metropolitan Chicago
Steven Call	FHWA-U.S. DOT
James Cavallo	Argonne National Laboratories
Carla Clemons	U.S. DOE
Jane Clougherty	Center for Neighborhood Technology
Keary Cragan	U.S. EPA
Maya Culbertson	The Delta Institute
Michael Dierickx	Richard Oliver International
Donna Ducharme	The Delta Institute
Nancy Firfer	City of Glenview
Tim Fluck	DuPage Mayors and Managers Conference
Dick Forbes	Illinois EPA
Jim Ford	Northeastern Illinois Planning Commission
Douglas Gerleman	Federal Transit
Leslie Hawkes	DuPage Mayors and Managers Conference
Beth Helgeson	DuKane Valley Council
Henry Henderson	RCF Consulting
Erik Herzog	U.S. EPA
Alexandra Holt	City of Chicago Department of Environment
Norine Hughes	Office of Honorable Virginia Rugai, 19 th Ward Alderman
Robert Irvin	Village of Barrington
Alex Johnson	The Delta Institute
Judy Johnson	South Suburban Mayors and Managers Association
Marta Keane	City of Naperville

Al Kennedy
Hon. Dean Koldenhoven
David Kramer
Jolie Krasinski
Frank Kruesi
Henry Kurth
Bob Lahey
Dennis Lawler
Vince Long
Tara LoPresti
Steve Marquardt
Bharat Mathur
L. Ann McCabe
Jen McGraw
Patricia Morris
Kay Nelson
John Novinson
Ed Paesel
Ellen Partridge
Al Patterson
Matthew Payne
Donald Peloquin
Beth Penesis
Albert Rigoni
Jerry Roper
Dan Rosenblum
Steve Rosenthal
Steve Rothblatt
Eugene Ryan
Steve Schlickman
Craig Sieben
Thomas Skinner
Art Smith
Vicki Smith
Kevin Staniel
Megan Swanson
David Ullrich
Jim Van der Kloot
Tom Weisner
Ken Westlake
Chris Wilson
Shane Winn
Deanna Zalas

City of Aurora
Mayor, Palos Heights
Illinois Dept. of Commerce and Community Affairs
Openlands
Chicago Transit Authority
Illinois Dept. of Commerce and Community Affairs
West Central Municipal Conference
Illinois EPA
City of Countryside
Northwest Municipal Conference
U.S. EPA
U.S. EPA
BP Amoco
Center for Neighborhood Technology
U.S. EPA
North Indiana Center for Land Reuse
Village of Northbrook
South Suburban Mayors and Managers Association
Chicago Transit Authority
City of Joliet
U.S. EPA
City of Blue Island
The Delta Institute
Village of Skokie
Chicagoland Chamber of Commerce
Environmental Law and Policy Center
U.S. EPA
U.S. EPA
Chicago Area Transportation Study
Schlickman and Associates
Sieben Energy Associates
Illinois EPA
NI Source
Southwest Conference of Local Governments
Chicago Transit Authority
West Central Municipal Conference
U.S. EPA
U.S. EPA
City of Aurora
U.S. EPA
Lake County Municipal League
Northwest Municipal Conference
Chicago Transit Authority