

US EPA ARCHIVE DOCUMENT

FINAL PROJECT AGREEMENT

International Paper XL Project: Effluent Improvements

June 29, 2000

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I. Introduction to the Agreement

A. Project Signatories

The Project Signatories to this Final Project Agreement (FPA or Agreement) are the International Paper Company, Androscoggin Mill (IP) located in Jay, Maine, the U.S. Environmental Protection Agency (EPA), the Maine Department of Environmental Protection (ME DEP), and the Town of Jay, Maine. All of those listed are referred to collectively as “Project Signatories;” the three regulatory agencies mentioned above are referred to collectively as “the Agencies.”

B. Purpose of the XL Program

This FPA states the intentions of the Project Signatories to carry out a pilot project as part of EPA’s “Project XL” which tests innovative approaches to environmental protection. Project XL is an EPA initiative to test the extent to which regulatory flexibility, and other innovative environmental approaches, can be implemented to achieve both superior environmental performance and reduced economic and administrative burdens. (See 60 Federal Register 27282).

C. Purpose of this FPA

This FPA is a joint statement of the Project Signatories’ plans and intentions with respect to the International Paper Effluent Improvement XL Project (“IP Effluent XL Project”). This FPA outlines the details of how this project will be implemented and measured and sets forth the requested regulatory flexibility needed to implement this project. Specifically, IP requests and EPA agrees to take final action on, a site-specific rule exempting IP from all Best Management Practices (BMP) requirements found at 40 Code of Federal Regulations (CFR) 430.03. If EPA and ME DEP promulgate the site-specific rules, IP agrees to accept revisions to its National Pollutant Discharge Elimination System (NPDES) permit or ME DEP discharge license¹ to reflect the performance gains resulting from such regulatory relief.

This FPA sets forth the plans of the Project Signatories and represents the firm commitment of each signatory to support the XL process, to implement the necessary regulatory flexibility in a timely fashion (subject to consideration of public comment) and to follow the terms of this FPA. This FPA does not create legal rights or obligations and is not a contract, a final agency action or a regulatory action such as a permit or rule. This FPA does not give anyone a right to sue the Project Signatories for any alleged failure to implement its terms, either to compel implementation or to recover damages. While the Project Signatories fully intend to fulfill the commitments set forth in this FPA, they are not legally obligated to do so. Nevertheless, the Project Signatories will strive for a high level of cooperation, communication and coordination to assure successful

¹At the time of the signing of this FPA, the ME DEP application for delegation of the water program is pending with EPA. Pending the outcome of the delegation decision, IP’s discharge permit will either be issued by the EPA which issues discharge permits, or issued by the ME DEP which issues discharge licenses. Both terms are used in this document.

effective and efficient implementation of the Agreement and the Project.

This FPA and materials relating to this project are available on the Project XL Web Site at www.epa.gov/projectxl.

D. Project Summary

International Paper (IP) seeks a regulatory exemption from the Best Management Practices (BMPs) required under the water portion of EPA's Pulp and Paper Cluster Rules (40 CFR 430.03) in order to reinvest resources to implement effluent improvement projects designed specifically to reduce final effluent discharge of chemical oxygen demand (COD) and color from the facility. The exact mix of projects will be identified through a collaborative process with IP, EPA, ME DEP, the Town of Jay and active stakeholders. EPA and IP anticipate that implementation of these effluent improvement projects will yield a greater environmental benefit for COD and color reduction than compliance with the Cluster Rule's BMPs. Important features of this XL project are that it will set goals for environmental performance, the facility will strive to achieve them with the assistance of the Collaborative Process Team, and the facility's effluent discharge permit will be modified to reflect the resulting performance gains. Specifically, IP agrees to accept limits for COD and more stringent limits for color (than required by state law) in Phase 1 of the project and more stringent limitations that reflect actual effluent improvements on those parameters in Phase 2 of the project.

The overall goal for this project is to use the regulatory relief described in this Final Project Agreement as an opportunity to reallocate resources to select and implement effluent improvement projects that maximize improvements in environmental performance at the Androscoggin Mill. The optimal combination of effluent improvement projects will be selected with the input and assistance of the Collaborative Process Team discussed in subsequent sections of this document.

E. IP Androscoggin Mill Background

International Paper's Androscoggin Mill is a large, integrated kraft pulp and paper mill and a major manufacturer of coated paper and specialty paper. The primary products produced by the mill include: machine coated lightweight free sheet, bond papers, tablet business forms, publication papers, envelope papers, specialty papers, and market pulp sold intra company. The facility includes a woodyard, two woodrooms, utilities, two continuous pulp digesters, two bleach plants, and five paper machines. The plant is located in Jay, Maine, adjacent to the Androscoggin River and has been in operation since 1965. It produces approximately 1,860 tons of paper per day.

The Town of Jay is a rural community with an area population of 5,000 located in western Maine, and the mill is the primary employer in the surrounding communities. It is one of the only small communities in the country with a local environmental protection and improvement ordinance that regulates air emissions, wastewater discharges and solid waste disposal. The ordinance was adopted to keep the community better informed about the condition of the local environment and the

environmental impact of local industries, to make local decisions about the acceptable types and levels of pollutants, and to assure, through local enforcement, that environmental standards are met. The ordinance was developed in 1988 and is administered by the Town of Jay through an Environmental Code Enforcement Officer and the Town Planning Board. In addition to its environmental permitting, compliance, and enforcement activities, the Town pursues opportunities to find additional ways to reduce environmental impacts. The Town has actively worked with IP, state and federal regulatory agencies as well as environmental stakeholders on several innovative programs including EPA's Region 1 StarTrack program, and an earlier XL Project with IP to develop new monitoring methods for their air emission sources.

Due to increased public attention to the types of pollution discharges by paper mills in the State of Maine, in the early 1990s, IP began a series of process changes that successfully reduced effluent concentrations of a number of pollutants including color, biological oxygen demand (BOD), COD, adsorbable organic halides (AOX), and chlorinated phenolics in the mill's final effluent. As an example, IP has reduced BOD effluent concentrations by more than 80 percent in the last ten years. The mill was the first in Maine to convert to 100% elemental chlorine-free bleaching to reduce dioxin to nondetect levels in its final effluent. The mill also installed and is operating a regenerative thermal oxidizer that eliminates a number of pulp mill air emissions before such action is required by regulation. The mill has been the recipient of Governor Angus King's award for excellence in pollution prevention and has been recognized by EPA's regional office for environmental leadership.

It is IP's intent to use the XL project as a means for implementing changes that continue to improve the quality of the mill's effluent. Specifically, as part of this project, IP is agreeing to accept COD and color limits in its permit now and more stringent limits once the effluent improvement projects are completed.

F. Project Contacts

Project Sponsor: Stephen Groves
Environmental Health and Safety
International Paper – Androscoggin Mill
Jay, ME 04239

EPA Headquarters: Nina Bonnelycke
U.S. Environmental Protection Agency
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Washington, D.C. 20460

EPA Regional Office: Chris Rascher
EPA –Region 1
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Boston, MA 02114-2023

State Agency: Sterling Pierce and Don Albert
Maine Department of Environmental Protection
Station 17
Augusta, Maine 04333

Local Agency: Shiloh Ring
Jay Planning Office
99 Main St,
Jay ME 04239

II. Project Description

Under the terms of this FPA, EPA intends to take final action on a site-specific rule that exempts IP's Androscoggin Mill from all BMP requirements (40 CFR 430.03) in the water portion of the Pulp and Paper Cluster Rules. EPA intends to promulgate the site-specific rule (unless public comment or other factors support a different decision), that would be in effect as long as IP continues to implement the provisions of the project outlined in this FPA. In exchange for this exemption, IP agrees to take a number of steps designed specifically to improve the mill's effluent quality for COD and color beyond levels likely to be attained through implementation of the BMP requirements. IP would agree to each of the following project elements:

- IP will accept Phase 1 limits for COD and color in its current license or upcoming permit reissuance at levels that reflect IP's past performance (July 1998 through December 1998). This will assure no backsliding in IP's current performance;
- IP will use the performance goals for COD and color to establish the magnitude of environmental improvement anticipated from the implementation of effluent improvement projects and, as discussed in subsequent sections of this FPA as the basis of the direction and objectives of the overall project;
- A Technical Assessment Subgroup comprised of EPA, ME DEP, University of Maine and IP staff will identify a list of potential effluent improvement projects at the IP facility, primarily in the pulping operations which when implemented will reduce COD and color discharges;
- The Collaborative Process Team involving EPA, IP, ME DEP, the Town of Jay and active stakeholders, will evaluate and recommend effluent improvement projects from the list generated by the Technical Assessment Subgroup and will assess their pollutant reduction potential as well as their overall cost. The selection of projects will be chosen by the Collaborative Process Team to best meet the performance goals established in this FPA;
- IP will implement the effluent improvement projects as determined through the collaborative process;
- IP will report regularly to EPA and stakeholders on performance improvements; and
- IP will accept new Phase 2 COD and color limits for the mill's future NPDES permit that reflects actual performance after all effluent improvement projects are fully implemented and

assessed by the Collaborative Process Team.

A. Collaborative Process Team and Technical Assessment Subgroup

Two groups will be formed to carry out this XL Project. One will be the Collaborative Process Team and the other will be the Technical Assessment Subgroup.

1. Collaborative Process Team

The Collaborative Process Team is comprised of decision-makers from International Paper, EPA, ME DEP, the Town of Jay, and active stakeholders who agree to work together in a collaborative process to:

- Determine the best mix of effluent improvement projects designed to yield maximum environmental benefit for a given cost;
- Map out a phased plan for implementing the projects, including early implementation of any projects clearly preferred by all parties;
- Project and evaluate environmental performance expected to result from the projects based on agreed-upon parameters and time frames; and
- Revise the project mix and the associated projections for future performance as needed to reflect progress and maximize environmental benefit under the XL project.

The Collaborative Process Team will use the information presented to it by the Technical Assessment Subgroup to develop recommendations on the list of potential effluent improvement projects.

The Collaborative Process Team will work with the Technical Assessment Subgroup to develop project milestones to assure that projects are implemented in a manner that, in the judgment of the Collaborative Process Team, provides the best attainable, cost-effective environmental performance.

In order to maintain the cooperative nature inherent in XL projects, IP agrees to show good faith progress towards meeting milestones.

IP will collect and analyze a minimum of 12 months of effluent COD and color data in order to determine the extent of effluent pollutant reduction achieved through the effluent reduction projects and compared with the XL project performance goals discussed in subsequent sections. This data will also be used by the permitting authority to calculate the Phase 2 limitations for IP's discharge permit (which will be based on IP's improved environmental performance) in order to ensure that IP maintains this level of performance. If such data is not available three years after the FPA is signed, EPA may use existing effluent data (or require additional data be collected) to develop appropriate Phase 2 limits for IP consistent with the goals of this project discussed further in this document.

Should any of the parties to the collaborative process withdraw from the collaboration, the project may continue depending on the terms of the withdrawal as described in Section IX.

2. Technical Assessment Subgroup

The Technical Assessment Subgroup will be comprised of staff from IP, ME DEP, University of Maine and EPA who will evaluate the existing pulping operation technologies at the facility to identify sources of COD and color discharges (with an emphasis on pulping operations) and available opportunities to reduce them by implementing potential effluent improvement projects. Their role is to identify projects and methods to reduce COD and color discharges using both pollution prevention and engineering solutions. In addition, they will identify potential effluent improvement projects for review and selection by the Collaborative Process Team.

The team will document these findings and prepare order of magnitude cost estimates for the various projects and present them to the Collaborative Process Team. For each effluent improvement project recommended by the Technical Assessment Subgroup, the Subgroup will develop criteria by which project success may be evaluated. The Technical Assessment Subgroup agrees to develop its technical assessment within one year of signing this FPA, to include a written report (or reports), and to make presentations to the Collaborative Process Team as discussed further in this FPA. Any subsequent findings and revisions to the original plans and projections will be presented by EPA and IP to the Collaborative Process Team jointly in a series of addenda to the original technical assessment.

As part of this project, a list of potential effluent improvement projects include:

- Knot liquor recovery system;
- Pulp screening liquor recovery system;
- Pulp digester heater drains recovery;
- Complete recycle of "A" pulp mill wash waters;
- Alternative knot and screening conveyance fluid;
- Power house sump drains collection system; and
- Computerized mill sewer conductivity display.

IP had proposed these projects in its XL application; the Project Signatories expect that additional (and potentially different) reduction projects will be identified through the technical assessment. The Project Signatories expect that the overall effluent improvement projects will cost up to \$780,000, which IP has committed to spend to support this project.

It is the responsibility of the Technical Assessment Subgroup to: 1) identify the potential effluent improvement projects, 2) estimate the potential reduction in COD and color (or other pollutants) from each project, 3) provide an order of magnitude cost of the project, and, 4) provide an anticipated time frame for project completion and when the effluent reductions would be achieved. This information will assist the Collaborative Process Team in making their decisions. It will be the responsibility of the Collaborative Process Team to select the correct mix of projects so that the performance goals and cost objectives will both be achieved at the same time.

It is the responsibility of the Technical Assessment Subgroup to identify a sufficient number of cost effective projects so that the performance goals of this project can be met. Presentations and discussions should occur with the Collaborative Process Team to review the potential projects and to identify those that could reduce COD and color while maintaining cost effectiveness. The Collaborative Process Team will reach agreement through consensus on which projects to implement.

IP may revise the projects if the cost of implementing such projects exceeds the \$780,000 budget that IP has set aside for this XL project or if IP identifies alternative projects, subject to approval of the Collaborative Process Team, that will achieve similar or better COD and color reductions and be more cost effective. The Technical Assessment Subgroup will also work to ensure that no cross-media transfers occur and that any new projects undertaken are not already required as part of compliance with other future state or local environmental statutes or regulatory requirements and to evaluate the success of each project run.

B. Judgment of Project Success

During the evaluation phase of the project, approximately three years after the signing of the FPA, the Collaborative Process Team will evaluate the entire project, and make recommendations regarding the project as a whole. Success will be determined using the technical and policy evaluation skills of the Collaborative Process Team, bearing in mind the achievements of the individual effluent improvement projects and the numerical goals for effluent improvement (COD and color) initially agreed upon by the project team. Generally, the criteria for determining the success of the overall project will be the attainment of environmental results superior to what might be reasonably expected to occur as the result of compliance with the BMP provisions.

C. Phase 1 COD and Color Limits for the Mill's Current Discharge Permit

International Paper has proposed in their XL application to accept effluent discharge limits for COD and color into the mill's current effluent discharge permit at levels that reflect IP's performance at the time of their application submittal (July 1998 through December 1998). This will assure no backsliding in IP's current performance as the XL project progresses. These limits will be referred to as the "Phase 1" limits. These new Phase 1 limits that IP agrees to accept are as follows:

- COD: 50.7 kg/ unbleached ADMT (air-dried metric ton) monthly average and 75 kg/kkg as a daily maximum, and
- Color: 120 lbs per ton of kraft pulp produced as a quarterly average limitation.

The permitting authority, expects to incorporate the Phase 1 limitations into IP's new effluent discharge permit most likely in 2001. Despite this expected delay, IP agrees to meet these limits once the FPA is signed and the site-specific rule for IP is promulgated. IP will report compliance with the Phase 1 limits to the Collaborative Process Team on a monthly basis even if the effluent discharge permit has not been reissued. Failure to report these values or meet these limits may be grounds for termination of this project as described in Section IX of this Final Project Agreement.

D. Performance Goals for COD and Color

EPA and IP have developed performance goals for COD and color at the Androscoggin Mill. They are based on an estimate of future performance after implementing the effluent improvement projects. IP pledges to make a good faith effort to achieve these goals with the assistance of the Collaborative Process Team.

While the technical assessment will address the effluent improvement projects in more detail, for purposes of this FPA, the initial goals, expressed as long term averages are:

- COD Goal: 26 kg/ of unbleached ADMT kraft pulp to be achieved after full implementation of the effluent improvement projects.
- Color Goal: 50 lbs per ton of kraft pulp produced, as a quarterly average to be achieved after full implementation of the effluent improvement projects.

These performance goals were derived to satisfy the XL criteria, focusing on maximizing the Androscoggin Mill's attainable reduction of pollutants beyond current discharges and maximizing the associated environmental benefit. The Project Signatories believe that these goals, if achieved, will result in environmental performance that reflects achievable pollution prevention for mills employing similar process technologies. EPA and IP agree that the goals are feasible, because they are based on the analysis of available historical pollutant discharge data for the Androscoggin Mill, and on evaluations of pollutant reductions attainable via the spent liquor reduction and related pollution prevention projects at similar mills in the industry. In addition, by employing numeric values, they provide a specific performance objective. Finally, the Project Signatories have reason to believe that they can be achieved (i.e., the performance goals have "credibility") because of the collective technical expertise regarding mill operations that was contributed by EPA and IP staff in developing the performance goals.

Subject to approval by the Collaborative Process Team, the Project Signatories may revise the goals at a later date to reflect new information on the effluent improvement projects chosen, information on new potential projects, and/or data gathered showing the environmental performance gained from projects already implemented.

E. Implementation of the Effluent Improvement Projects

As a requirement of this XL project, International Paper agrees to implement the effluent improvement projects selected by the Collaborative Process Team as discussed in previous sections. IP has committed up to \$780,000 to meet this requirement. The effluent improvement projects identified in Section A above may be changed or modified in accordance with the procedures discussed above.

International Paper will complete the effluent improvement projects chosen by the Collaborative Process Team within three years of signing this FPA. IP will begin implementation of the projects that the Collaborative Process Team determines are appropriate immediately following signing of the FPA. Any changes to this overall timeframe will be assessed and documented by the Collaborative Process Team.

F. Reporting on Performance Improvements

IP will use the collaborative process as a forum for regular reporting to EPA and stakeholders on progress in implementing the effluent improvement projects and achieving the associated milestones and performance goals. Reporting, in addition to regularly scheduled meetings, will allow EPA to evaluate fully IP's commitment to good faith efforts towards implementing the effluent improvement projects and maximizing available environmental improvement.

At a minimum, IP will provide biannual updates (once every 6 months) to the Collaborative Process Team on progress towards implementation and completion of the effluent improvement projects reductions in COD and Color effluent concentrations and any problems that occur. Additionally IP will perform sampling of:

- wastewater treatment plant (WWTP) effluent,
- WWTP influent, and , if possible,
- wastewater discharges from the individual operations impacted by the effluent improvement projects.

IP agrees to perform such sampling in accordance with recommendations from the Technical Assessment Subgroup and Collaborative Process Team regarding the exact locations and frequency for the sampling. At a minimum, IP agrees to perform sampling such that success of the individual effluent improvement projects can be evaluated. This will require sampling before, during, and after the individual projects are implemented. To this end, IP agrees to provide regular summaries of these results to the Collaborative Process Team so they can evaluate continued progress in meeting the overall objective in reducing effluent pollutant discharges. International Paper will prepare a general sampling schedule with locations and pollutants to be sampled for consideration by the Collaborative Process Team.

IP also agrees to make biannual summaries of progress on effluent improvement projects and performance improvements available to other interested parties via mail at the request of the interested parties. EPA may post the updates at web site so any interested parties can track the progress of this project.

G. Phase 2 COD and Color Limits for the Mill's Future NPDES Permit

Once the effluent improvement projects are fully implemented, IP agrees to monitor resulting performance at the mill for twelve months. The Collaborative Process Team will then use the results to recommend new, more stringent permit limits to the permitting authority consistent with Sections D and F above that appropriately reflect effluent variability based on the actual data generated and

received. IP agrees to accept the Phase 2 limits in its discharge permit. Limits for COD will be presented in the permit as production-based monthly average and daily maximum values. Limits for color will also be production-based but on a quarterly average value to be consistent with the ME DEP reporting requirements. IP agrees to supply production data for use in establishing the Phase 2 permit limits and in evaluating progress under Project XL.

III. How the Project Will Meet the XL Criteria

A. Superior Environmental Performance

The superior environmental performance in this project derives from:

- the effluent improvement projects described in this FPA (that IP plans to implement at their facility);
- the Phase 1 COD and color limits that IP will accept into their discharge permit representing the baseline from which superior environmental performance will be measured;
- the performance goals (in place of the more flexible BMPs otherwise required by EPA's applicable regulations); and
- the more stringent Phase 2 COD and color limits IP will accept once the effluent improvement projects have been implemented and monitored.

The XL Project assumes that IP is already undertaking activities at the Androscoggin Mill that cause current environmental performance to be at least equivalent to performance expected to result from compliance with the BMPs required under the Pulp and Paper Cluster Rules. The Project Signatories base this assumption on an evaluation of IP's Project XL application, facility information and site visits. This baseline level of performance measured by examining COD and color is shown in Table 1 (Column A).

EPA and IP determined baseline performance by examining effluent data for the 6-month data set from July 1998 to December 1998. This time frame coincided with the 6 months leading up to receipt of IP's XL application. As discussed above, IP agrees to accept limits in their current NPDES permit for these two parameters at the levels specified in Table 1 (Column B). These limits (Column B) mirror the mill's current performance, and will ensure that performance does not degrade below current levels.

TABLE 1
Baseline Performance, New Permit Limits and Performance Goals Under XL
At IP's Androscoggin Mill

| | A | B | C | D |
|-----------|------------------------------------------------------|-----------------------------------------------------|----------------------------------------------------------|----------------------------------------------------------------------------|
| Pollutant | Baseline Performance July-Dec 98 (six month average) | New Discharge Permit Limits Under XL | Performance Goals ² (3 yrs after FPA signing) | Potential Future Discharge Limits ⁵ (4 years after FPA signing) |
| COD | 46.7 kg/kkg ¹ | 75 kg/kkg ³ and 50.7 kg/kkg ⁴ | 26 kg/kkg | 26 kg/kkg |
| color | 106 lbs/ton paper | 120 lbs/ton ^{2, 6} | 50 lbs/ton ⁷ | 50 lbs/ton |

- 1 kkg denotes air-dried metric tons of unbleached pulp production
- 2 Long-term average (LTA)
- 3 Daily maximum
- 4 Maximum monthly averages
- 5 Actual limits will be based on performance (determined through 12 months of sampling) once effluent improvement projects have been completed.
- 6 60 kg/kkg
- 7 25 kg/kkg

The performance goals (Column C) were determined jointly by EPA and IP as part of FPA negotiations. The goals reflect expectations that the implementation of the effluent improvement projects will result in a significant improvement in both COD and color. Should any of the effluent improvement projects prove infeasible, or if the future performance projections are inaccurate, the Collaborative Process Team will re-examine the project mix and refine the associated performance projections. The intent of the performance goals is to identify a benchmark for superior environmental performance.

The future discharge limits (column D) may be similar to the performance goals (Column C) but will be modified based on 12 months of sampling IP will perform once the effluent improvement projects have been completed. The intent of these future limits are to maintain environmental improvements and to prevent backsliding once the effluent improvement projects have been fully implemented.

B. Cost Savings, Paperwork Reduction and Operational Flexibility

IP estimates savings of approximately \$780,000 in capital and operating costs through regulatory relief from compliance with the Cluster Rules' full set of BMP regulations (40 CFR 430.03). However, these savings will be offset entirely by a corresponding increase in capital, operating and

monitoring costs incurred from implementing the effluent improvement projects, and associated reporting, and evaluation requirements. IP agrees to spend up to \$780,000 on total costs associated with expenditures for the effluent improvement projects.

C. Stakeholder Involvement and Support

IP's stakeholder process is essential to the potential success of this XL Project and its appropriate evaluation, including the model validation process. Significant state and local support have been instrumental in the development of this project. The State of Maine and Town of Jay are both Project Signatories to this Agreement. As such, several of their offices have been involved with the development and implementation of this project including: the Commissioner of ME DEP, the ME DEP Bureau of Land and Water Quality, members of the Town of Jay Planning Board, Town of Jay Selectmen and the Town of Jay Code Enforcement Officer. The U.S. Fish and Wildlife Service has also participated in several meetings. Potential non-governmental stakeholders include, but are not limited to: Natural Resource Council of Maine, Environment Northeast, Appalachian Mountain Club, and Western Mountain Alliance. The University of Maine has participated actively in this project.

Industrial member associations who have been asked to participate actively include: the Maine Pulp and Paper Association, National Council of the Paper Industry of Air and Stream Improvement, Inc., and members of the American Forest and Paper Association. Other organizations will be welcomed as active participants if they are willing to dedicate the time for meaningful participation.

Comments from all other organizations and individuals are welcomed throughout the stakeholder process. In particular, all stakeholders, including the general public, have been and will continue for the life of the project to be, notified through the local newspaper and through local radio announcements of meetings and the availability for review of documents, meeting notes and technical data generated during project implementation and testing. The stakeholder group will also be invited to participate and observe the work during project implementation.

D. Innovative Approach and Multi-Media Pollution Prevention

This project provides EPA with a concrete opportunity to compare the environmental improvements that can result if a mill accepts numeric effluent limits tailored to the specific mill in place of more flexible narrative BMP requirements. It also gives EPA the opportunity to evaluate applicable technologies to determine the extent of environmental improvement that may result from their implementation at the Androscoggin Mill and similar mills for which such technologies are available. The project also offers EPA the possibility of exploring how to use a collaborative process to encourage companies to continuous improvements beyond the requirements of applicable regulations.

E. Transferability

At present, the project will impact only IP's Androscoggin Mill. However, the results of this project

may help clarify the possibility of applying these principles to other pulp and paper mills through technology transfer (such as presentations at conferences). In addition, this project may serve to inform future rule-making relevant to pulp and paper mills.

F. Feasibility of the Project

The Collaborative Process Team will identify the effluent improvement projects that the mill will undertake based in part on the criterion that the projects must be feasible for the facility. Should any of the projects prove infeasible based on technical or cost-effectiveness constraints, the collaborative process provides a means to share information about other projects that may better ensure achieving or surpassing the project's performance goals. IP has the financial capability, personnel and management commitment necessary to implement this XL project. The Agencies, by signing this FPA, agree to support this project, subject to any public review procedures necessary to implement the legal mechanisms for this project.

G. Monitoring, Reporting, Accountability, and Evaluation

Stakeholders and regulatory authorities will observe the project as it moves forward, and information exchanged as part of it will assist EPA in tracking environmental performance under the project. In addition, the reporting requirements outlined in Section II.F will provide a further mechanism to ensure project accountability.

International Paper agrees to report compliance with the Phase 1 limits to the Collaborative Process Team on a monthly basis and to provide biannual summaries for the estimated four-year duration of the project to the Project Signatories and interested stakeholders. Additionally as part of the technical assessment performed by the Technical Assessment Subgroup, IP agrees to identify effluent improvement projects, estimate their potential pollutant reduction, project costs, and their time frame for construction and full implementation.

Also as part of this XL project, IP agrees to monitor its wastewater pollutant loadings (production normalized and total) in order to evaluate pollutant contributions (for the technical evaluation) as well as evaluate success of each implemented effluent reduction project. See Section II.F for further detail. The Collaborative Process Team will recommend monitoring requirements to evaluate success of this project.

H. Avoidance of shifting the risk burden to other areas or media

This project is consistent with Executive Order 12898 on Environmental Justice. No group of citizens or neighborhood will be subject to disproportionate environmental impacts. Citizens in the Jay, ME, area will benefit from improved water quality resulting from the implementation of the effluent improvement projects. As a member of the Collaborative Process Team outlined for this project, EPA will work to minimize any adverse cross-media risk shifts.

IV. Description of the Requested Flexibility and the Project's Implementation Mechanisms

Since Final Project Agreements are not enforceable documents, EPA will need to provide the requested regulatory flexibility through a site-specific rule.

A. Requested Flexibility

IP asks that its Androscoggin Mill be exempted from all BMP requirements specified in 40 CFR 430.03(c) through (j). EPA and the ME DEP intend to provide this flexibility by issuing site-specific rules that exempts IP from these requirements and incorporating these changes in applicable portions of IP's reissued effluent discharge permit for that purpose. At the conclusion of the project, if the project is judged to be a success, EPA and ME DEP intend to allow IP to continue operating under the site-specific rule promulgated at the time of the FPA. However, the EPA and ME DEP may withdraw the exemption at any time in the future if the terms and objectives of the FPA are not met, or if the exemption becomes inconsistent with future statutory or regulatory requirements.

The Project Signatories to the Agreement do not anticipate any need to provide flexibility from any additional requirements. If additional flexibility should become necessary and is determined to be appropriate by EPA or the ME DEP, the FPA will be renegotiated and will be subject to public notice and comment, as appropriate.

B. Legally-Binding Implementation Mechanisms

The project contemplates two legally binding implementation mechanisms. The first is a site-specific rule that would exempt IP's Androscoggin Mill from the BMP requirements of 40 CFR 430.03. The second implementation mechanism is the mill's effluent discharge permit, which will incorporate, during the course of this project, new effluent limitations on COD and more stringent limitations on color. Under the terms of the FPA, the permit will be revised as soon as possible after the signing of the FPA to include Phase 1 permit limits for COD and color, and will be revised again once the effluent improvement projects are fully implemented to include Phase 2 limits for those parameters that reflect actual performance improvements.

V. Discussion of Intentions and Commitments for Implementing the Project

A. IP's Intentions and Commitments

As discussed more fully in this FPA, IP will:

- accept Phase 1 permit limits for COD and color (as specified in Section II.C) into its NPDES permit when reissued;
- accept future Phase 2 limits as set forth in Section II.D;
- work in good faith toward identification, implementation and completion of the effluent improvement projects within three years of signing the FPA; and
- provide necessary reports and monitoring information as discussed more fully herein.

B. EPA's Intentions and Commitments

As discussed more fully in this FPA, EPA will:

- reissue IP's NPDES permit (if ME DEP does not receive authority to implement the water permitting program - see footnote 1) ;
- promulgate a site-specific rule when the FPA is signed that exempts IP's Androscoggin's Mill from the BMP requirements of 40 CFR 403.03 (subject to consideration of public comment); and
- participate in good faith on the Technical Assessment and Collaborative Process Teams and make decisions expeditiously.

C. ME DEP's Intentions and Commitments

As discussed more fully in this FPA, ME DEP will:

- amend IP's state discharge license,
- promulgate a site-specific rule that incorporates the provisions of the federal site-specific rule promulgated pursuant to this XL Project as soon as possible after the FPA is signed that exempts IP's Androscoggin's Mill from the BMP requirements of 40 CFR 403.03 (subject to consideration of public comment); and
- participate in good faith on the Technical Assessment and Collaborative Process Teams and make decisions expeditiously.

D. Project Duration and Milestones

The Project Signatories intend that this project will be concluded at the end of four (4) years: One year for the Technical Assessment and Collaborative Process Team to confirm the list of effluent improvement projects; two years to implement the projects; and one year to collect monitoring data for the purposes of calculating the new permit limits and overall project evaluation.

E. Unavoidable Delay During Project Implementation

"Unavoidable delay" (for purposes of this Agreement) means any event beyond the control of any Project Signatory that causes delays or prevents the implementation of the Project described in this Agreement, despite the Project Signatories' best efforts to put their intentions into effect. An unavoidable delay can be caused by, for example, a fire, severe weather, acts of war, vandalism, or legislative or judicial action barring implementation. If IP needs additional time to fully implement the project, it will request a formal extension of this Agreement by the other Project Signatories.

When any event occurs that may delay or prevent the implementation of this Project, whether or not it is avoidable, the Project Signatory to this Agreement who knows about it will immediately provide notice to the remaining Project Signatories. Within ten (10) days after that initial notice, the Project

Signatory should confirm the event in writing. The confirming notice should include: 1) the reason for the delay; 2) the anticipated duration; 3) all actions taken to prevent or minimize the delay; and 4) why the delay was considered unavoidable, accompanied by appropriate documentation.

If the Project Signatories agree that the delay is unavoidable, relevant parts of the Project schedule (see Section V.D.) should be extended to cover the time period lost due to the delay. If they agree, they should also document their agreement in a written amendment to this Agreement. If the Project Signatories fail to agree, they should follow the provisions for Dispute Resolution outlined below.

This Section applies only to the provisions of this Agreement. Enforceable, regulatory mechanisms, such as permit provisions or rules, will be subject to modification or enforcement as provided in applicable law.

VI. Legal Basis for the Project

A. Authority to Enter Into the Agreement

By signing this Agreement, EPA, the State of Maine, the Town of Jay, and IP 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 document.

B. Legal Effect of the Agreement

This Agreement states the intentions of the Project Signatories with respect to IP's XL Project for effluent improvements. The Parties have stated their intentions seriously and in good faith, and expect to carry out their stated intentions.

This Agreement in itself does not create or modify legal rights or obligations and is not a contract or a regulatory action, such as a permit or a rule, and is not legally binding or enforceable against any of the Project Signatories. Rather, it expresses the plans and intentions of the Project Signatories 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 Project Signatories intend to follow with respect to dispute resolution and termination (see Sections VIII. and IX.). However, while the

Project Signatories fully intend to adhere to these procedures, they are not legally obligated to do so.

Because this Agreement itself does not create or modify any binding legal requirements, the BMP requirements of 40 CFR 430.03 will continue to apply to IP's Androscoggin Mill until EPA and ME DEP promulgates a site-specific rule to exempt the mill from the rule's provisions for the duration of this project. To this end, EPA is proposing a site-specific rule for this project at the same time making a draft version of this FPA available for public review. The ME DEP will issue a site-specific rule that incorporates the provisions of the federal site-specific rule promulgated pursuant to this project as soon as possible after this FPA is signed. Any rules, permit modifications or legal mechanisms that implement this project will be enforceable as provided in applicable law.

This Agreement is not a "final agency action" by EPA, because it does not create or modify legal rights or obligations and is not legally enforceable. Nothing any Project Signatory does or does not do that deviates from a provision of this Agreement, or that is alleged to deviate from a provision of this Agreement, can serve as the sole basis for any claim for damages, compensation or other relief against any Project Signatory.

C. Other Laws or Regulations That May Apply

The Project Signatories do not intend that this Final Project Agreement will modify or alter any other existing or future laws or regulations that may apply to the project sponsor, the facility, or the project. However as noted in above, EPA and ME DEP agree to take action to modify current regulations at 40 CFR 430.03 and applicable Maine regulation in furtherance of this Agreement.

In the event that EPA issues a new COD effluent guideline either before or during implementation of the project, IP agrees to abide by the existing terms of either the XL project or the effluent guideline, whichever is more strict, as determined by EPA and ME DEP. In other words, nothing in this FPA purports to exempt IP from any future effluent guidelines or other requirements promulgated by EPA or ME DEP that would apply to IP.

Air emission standards for pulp and paper facilities exist under Section III of the Clean Air Act. Under the Clean Air Act, IP must meet any air emission standards including the Maximum Achievable Control Technology (MACT) applicable to their facility, and the company shall not claim credit under XL for any projects implemented as part of attaining compliance with these regulations.

D. Retention of Rights to Other Legal Remedies

Except as expressly provided in the legal implementing mechanisms described in Section VI.B., nothing in the Agreement affects or limits either IP's, EPA's, the ME DEP's, or any other signatory's legal rights. Such rights may include legal, equitable, civil, criminal or administrative

claims or other relief regarding the enforcement of present or future applicable federal and state codes, rules, regulations or permits with respect to the facility.

Although IP 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, IP reserves any right it may have to appeal or otherwise challenge any EPA, or Maine actions implementing the Project. With regard to the enforceable implementing mechanisms, nothing in this Agreement is intended to limit IP's existing right to administrative or judicial appeal or review of modification, withdrawal or termination 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.

This Final Project Agreement may be amended by mutual agreement of all of the Project Signatories at any time during the duration of the project. The Project Signatories recognize that amendments to this Agreement may also necessitate modification of legal implementation mechanisms or may require development of new implementation mechanisms. If the Agreement is amended, EPA, Maine, and IP expect to work together with other regulatory bodies and stakeholders to identify and pursue any necessary modifications or additions to the implementation mechanisms in accordance with applicable procedures. If the Project Signatories agree to make a substantive and substantial amendment to this Agreement, EPA agrees to make available to the general public notice of the amendment and to provide the public an opportunity to participate in the process, as appropriate.

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

VIII. Process for Resolving Disputes

The Project Signatories agree that any dispute that arises under or with respect to this Agreement will be subject to informal negotiations between the Project Signatories to the Agreement. The period of informal negotiations will not exceed twenty (20) calendar days from the time the dispute is first documented, unless that period is extended by a written agreement of the parties to the

dispute. The dispute will be considered documented when one Project Signatory sends a written Notice of Dispute to the other Project Signatories.

If the Project Signatories cannot resolve a dispute through informal negotiations, the parties may invoke non-binding mediation by describing the dispute with a proposal for resolution in a letter to the Regional Administrator for EPA Region 1. The Regional Administrator 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 Project Signatories still have the option to terminate or withdraw from the Agreement, as set forth in Section IX. below.

IX. Withdrawal From or Termination of the Agreement

A. Expectations

Although this Agreement is not legally binding and any Project Signatory may withdraw from the Agreement at any time, it is the desire of the Project Signatories that it should remain in effect through the expected duration of four years, and be implemented as fully as possible unless one of the conditions below occurs:

1. Failure by any Project Signatory to (a) comply with the provisions of the enforceable implementing mechanisms for this Project, or (b) act in accordance with the provisions of this Agreement. Withdrawal by any one Project Signatory from the Collaborative Process Team does not necessarily constitute grounds for termination of the project if the remaining Project Signatories to the collaboration can work out terms for project continuation. Any assessments of failure will take the nature and duration of the project into account.
2. Failure of any Project Signatory 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, that renders the project legally, technically or economically impracticable.

In addition, EPA, ME DEP, the Town of Jay, and stakeholders do not intend to withdraw from the Agreement if IP does not comply with this Agreement or its implementation mechanisms, unless the non-compliance constitutes a substantial failure to comply with intentions expressed in this Agreement and its implementation mechanisms.

Before EPA, the Town of Jay, or ME DEP exercises its right to withdraw as a result of any noncompliance by IP, such party agrees to give IP notice and a reasonable opportunity to remedy any non-compliance. If there is a disagreement between the Project Signatories over whether a “substantial failure to comply” exists, the parties agree to use the dispute resolution mechanism identified in Section VIII. of this Agreement. EPA, the Town of Jay and ME DEP retain their discretion to address non-compliance through existing enforcement authorities, including withdrawal or termination of this Project, as appropriate. IP retains any existing rights or abilities to defend itself against any enforcement actions, in accordance with applicable procedures.

B. Procedures

The Project Signatories agree that the following procedures will be used to withdraw from or terminate the Project. They also agree that the implementing mechanism(s) will provide for withdrawal or termination consistent with these procedures.

1. Any Project Signatory that wants to terminate or withdraw from the Project is expected to provide written notice to the other Project Signatories at least sixty (60) days before the withdrawal or termination.
2. If requested by any Project Signatory 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 Project Signatory still desires to withdraw or terminate, that party will provide written notice of final withdrawal or termination to the other Project Signatories.

If any agency withdraws or terminates its participation in the Agreement, the remaining agencies will consult with IP to determine whether the Agreement should be continued in a modified form, consistent with applicable federal or State law, or whether it should be terminated.

3. In the event of project termination, and assuming IP has acted in good faith, IP will submit a plan for EPA and ME DEP approval that outlines IP’s intentions to come into compliance with BMP requirements within a reasonable amount of time, and EPA will promulgate a rule withdrawing the site-specific exemption from 40 CFR Part 430.
4. 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.

X. Signatories and Effective Date

This FPA is effective on the date it is signed by EPA’s Regional Administrator for Region I.

Mindy Lubber, Regional Administrator, U.S. EPA

Date Signed

Ira Leighton, Acting Deputy Regional Administrator, U.S. EPA

Date Signed

Martha Kirkpatrick, Commissioner, ME DEP

Date Signed

Bernard Boivin, Selectman, Town of Jay

Date Signed

F. Michael Craft, Mill Manager, International Paper

Date Signed