

US EPA ARCHIVE DOCUMENT

**Final Project Agreement
for
U.S. Postal Service**

**Colorado Environmental Leadership Program
And Project XL**

April 2000

Table of Contents

I. Introduction

- A. Project Summary and Purpose**
- B. Project Contact List**

II. Project Description

- A. USPS Commitments**
- B. Credits for Use in the Colorado Clean Fuel Fleet Program**
- C. Project as a Substitute for the Federal Clean Fuel Fleet Program**

III. Project XL Criteria

- A. 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. Legal Basis for the Project

- A. Authority to Enter Into an Agreement**
- B. Legal Effect of the Agreement**
- C. Legally Binding Implementing Mechanisms**
- D. Retention of Rights to Other Legal Remedies**

V. Withdrawal From or Termination of the Agreement

- A. Expectations**
- B. Procedures**

VI. Project Duration

VII. Unavoidable Delay During Project Implementation

VIII. Amendments or Modifications to the Agreement

IX. Process for Resolving Disputes

X. Signatories

I. Introduction

A. Project Summary and Purpose

The Colorado Department of Public Health and Environment (CDPHE), the United States Postal Service (USPS), and the U.S. Environmental Protection Agency (EPA) have developed this project pursuant to the Colorado Environmental Leadership Act. (Article 6.7 of Title 25, C.R.S.) This project was developed in conjunction with EPA's Project XL Program, and this agreement is the Final Project Agreement (FPA) for the U.S. Postal Service XL Project.

In Fiscal Year 1999, the USPS initiated a new vehicle purchase for flexible fuel vehicles¹ (FFVs) to be used nationwide. In the Denver area, such new vehicle purchases require that 50 percent of the new vehicles are certified Low-Emitting Vehicles (LEVs). The USPS has been a strong supporter of alternatively-fueled vehicles. Presently, the USPS uses 232 compressed natural gas vehicles and has helped stimulate development of a natural gas fueling infrastructure. The USPS supports the enhanced use of the range of clean-fuel vehicles. For its most recent vehicle upgrade, the USPS sought bids nationwide. The only bid that USPS received for this vehicle purchase involved Transitional Low-Emitting Vehicles (TLEVs) which would not meet the LEV requirements. These were the only vehicles that would meet the USPS's unique specifications. Thus, USPS was faced with three options for compliance with the Colorado Clean Fuel Fleet Program (CFFP):

- 1) Reject delivery of the vehicles and continue operating its aging, high-emission fleet;
- 2) Apply for a waiver from CDPHE to operate the 320 vehicles that the Denver area was originally allocated; or
- 3) Request flexibility under the Environmental Leadership Program and Project XL to enable the USPS to concentrate approximately 810 FFVs in the Denver area, eliminate

¹The EPA regulations define a flexible fuel vehicle as one that is designed and engineered to operate on any mixture of 2 or more different fuels. 40CFR 88.102-94.

512 aging fleet vehicles from the Denver/Boulder non-attainment area,² and relocate 282 1987-1991 vintage USPS delivery vehicles.

The USPS chose Option #3. As a result, the USPS has come forward with a proposal to replace 512 aging postal vehicles with TLEVs that are capable of using unleaded gasoline with up to 85 percent ethanol (E-85). The USPS proposal will result in lower emissions than would compliance with the minimum legal requirements of the CFFP and will promote the use of E-85 in the Denver area. In exchange for these commitments, the USPS will receive credits from the State of Colorado that can be used to satisfy the vehicle purchase requirements of the Colorado Clean Fuel Fleet Program.

The Denver area is currently a non-attainment area for carbon monoxide but is in the process of redesignating to attainment. This project will provide significant reductions in the levels of carbon monoxide in the area. These reductions will result from the destruction of 512 pre-1984 USPS vehicles and the relocation of an additional 282 pre-1991 USPS vehicles that each emit about 250 pounds per year more carbon monoxide than each of the replacement FFVs, the addition of approximately 810 FFVs to the USPS fleet, and the stimulation of the development of a public infrastructure for the sale of E-85 fuel which would in turn increase the use of E-85 vehicles by other fleet operators and the general public.

In the absence of this agreement, the USPS could continue to operate the high-emitting postal vehicles or sell them for an average of \$800 to \$1500 per vehicle. However, the USPS is committed to maintaining a safe and healthy environment for its employees and customers. The USPS believes that environmental protection is the responsible thing to do and makes for sound business practices. With respect to alternative fuel vehicle usage, the USPS has a proven track record in the Denver metro area. Of the existing 232 compressed natural gas dual fuel delivery vehicles in service in the Denver area, the USPS has maintained an alternative fuel utilization of nearly 70%. In addition, once the new FFVs are incorporated into the fleet, alternative fuel vehicles will comprise over 65 percent of the Denver USPS fleet. Nationally, the USPS is evaluating its alternative fuel vehicle fleet to more fully optimize available resources.

² The USPS plans to destroy 528 aging fleet vehicles; however, 16 of these vehicles are not located in the Denver/Boulder non-attainment area. This FPA focuses on vehicles located in the Denver/Boulder non-attainment area. At least 512 aging vehicles in the Denver/Boulder non-attainment area will be destroyed. As a result, USPS will purchase approximately 810 new vehicles, but receive up to 794 credits (for the 512 destroyed vehicles in the non-attainment area and the 282 relocated vehicles that are currently in the non-attainment area).

B. Project Contact List

USPS: Ryan Walker, 303-454-4142
 EPA Headquarters: Nancy Birnbaum, 202-260-2601
 EPA Regional Office: Mary Byrne, 303-312-6491
 CDPHE: Tamera Van Horn, 303-692-3477

II. Project Description

A. USPS Commitments

To create superior performance in air emission reductions by upgrading its fleet and encouraging clean fuel options, the USPS agrees, subject to the terms of this agreement, to take the following action:

- ✧ Per a contract with Ford Motor Company, the USPS commits to take delivery of approximately 810 USPS FFVs certified as Transitional Low Emitting Vehicles (TLEVs). The FFVs are capable of operating on unleaded gasoline or E-85. The USPS will take delivery of the FFVs in shipments of 180 vehicles which will arrive every 4-6 weeks. The current projected delivery date of the first group of vehicles is April of 2000. The delivery schedule is dependent on Ford's production schedule.
- ✧ For each E-85 vehicle that the USPS deploys, the USPS agrees to remove either a pre-1984 Carrier Route Vehicle or a Long-Life Vehicle (LLV) from service in the Denver area. The USPS further agrees that it will either destroy a pre-1984 vehicle or relocate an LLV within 120 days of deployment of the corresponding E-85 vehicle. The USPS agrees to destroy 512 pre-1984 postal vehicles currently in service by the USPS in the Denver carbon monoxide non-attainment area. The USPS will scrap³ vehicles and handle recovered fluids in accordance with state and federal law. The USPS also agrees to relocate 282 LLVs (1987-1991 vintage USPS delivery vehicles) currently in service in the Denver carbon monoxide non-attainment area to other western cities, where they will replace aging fleet vehicles (the majority of which will be scrapped). The destruction and relocation of the vehicles will be completed by July 31, 2001 unless the deployment of E-85 vehicles is subject to an unavoidable delay⁴ (see section VII.). The USPS will use its best efforts to receive and deploy the vehicles from Ford as quickly as possible.

³For the purposes of this FPA, scrappage requires that the USPS destroy the pre-1984 vehicles without compensation (except for scrap metal value), removing the battery (if desired), the catalytic converter (if desired), and any parts that must be removed by law. No other parts of the vehicle may be removed prior to scrappage.

- ⌘ The USPS has supported a range of clean fuels. For this project, the USPS commits to help stimulate the development of a Denver area E-85 infrastructure to support its vehicles, which would also be available to the public. The USPS will use its best efforts, in conjunction with the National Ethanol Vehicle Coalition, to identify and encourage fueling stations to install E-85 fueling tanks. The USPS will consider adjusting its schedule for the location of vehicles based upon the opening of E-85 pumps at service stations.
- ⌘ The USPS commits to use E-85 to the maximum extent practicable, taking into account the cost, availability, and location of service stations providing E-85.
- ⌘ As part of this agreement, the USPS also agrees to convert one of its existing underground storage tanks to an E-85 tank within 90 days of receipt of the first shipment of E-85 vehicles. The USPS intends to use such storage tank to operate at least 71 postal vehicles on E-85 for the purpose of generating credits under this Agreement.
- ⌘ The USPS agrees that, whenever it purchases replacements for any of its light delivery fleet vehicles (including the new E-85 vehicles), the replacement vehicles will meet or exceed California TLEV certification standards (if such vehicles, based on operational need, are available). The USPS further commits that, if it increases the size of its light delivery fleet, the additional vehicles will meet or exceed federal Tier 1 certification standards. In addition, the purchase of subsequent or additional vehicles by the USPS will be in accordance with Colorado Air Quality Control Commission Regulation No. 17 requirements.
- ⌘ The USPS agrees that the use of credits that it receives under this agreement is limited (limitations to the use of credits granted under this agreement are detailed in Section B below).

B. Credits for Use in the Colorado Clean Fuel Fleet Program

CDPHE has proposed an amendment to Air Quality Control Commission Regulation No. 17: Clean Fuel Fleet Program. The proposal has been scheduled for a rulemaking hearing before the Air Quality Control Commission, an independent rulemaking agency. The proposed rule change would clarify the use of Environmental Leadership Program credits to comply with the vehicle purchase requirements of Regulation No. 17 as provided in this agreement. If the proposed rule change is adopted, credits will be issued to USPS once they have been accepted into the Colorado Environmental Leadership Program and have met the requirements to obtain credits detailed below. The credits will be contingent upon USPS's participation in the Colorado Environmental Leadership Program and the promulgation of the rule change.

- ⌘ The USPS will receive one credit for the destruction of each pre-1984 postal vehicle operating

in the Denver/Boulder non-attainment area. The USPS will qualify for up to 512 credits for the destruction of the pre-1984 postal vehicles. These credits will be issued by CDPHE to the USPS as the vehicles are scrapped.

- ✧ The USPS will also qualify for up to 282 additional credits that will be granted to it by CDPHE upon documentation of the operation of FFVs on E-85. The number of credits that the USPS receives will be determined by the percentage of E-85 used during the two years after the receipt of the first E-85 vehicles. For example, if half of the fuel used in the vehicles during the two-year period is E-85 and half is gasoline, the USPS would receive half the credits available (141). See Section III.G. (Monitoring, reporting, accountability, and evaluation methods to be used).
- ✧ In order to qualify for the credits described in this FPA the USPS must purchase at least 794 E-85 FFVs. If an event beyond the control of USPS prevents the purchase of the minimum 794 vehicles, the parties agree to meet to discuss how the credit distribution needs to be adjusted. See Section VIII. (Amendments).
- ✧ USPS shall comply with the purchase requirements set out in Section II.B.1 of Regulation No. 17. To the extent the USPS uses additional credits described in this FPA to satisfy the requirement to purchase Clean Fuel Vehicles, USPS shall not be entitled to light duty vehicle waivers under section II.B.5 of Regulation No. 17 and any waivers previously granted shall terminate.
- ✧ The USPS will exhaust all of the credits granted under this agreement before it seeks any further waivers from the purchase requirements for light duty vehicles under Regulation No. 17.
- ✧ Limitations on use of credits. The USPS shall be limited to the following conditions with respect to credit usage and sale:
 - 1) USPS use of banked credits **B** If the USPS uses the banked credits generated under this agreement itself, it may use the credits to either purchase a new vehicle that has an accompanying Manufacturer Statement of Origin or Manufacturer Certificate of Origin, or lease a vehicle.
 - 2) USPS open market sale of banked credits **B** If the USPS sells the banked credits generated under this agreement to a third party, the USPS may only sell the credits to the purchaser of a new replacement vehicle that meets or exceeds California TLEV certification standards or a new additional vehicle that meets or exceeds federal Tier 1 certification standards. Further, the new vehicle must have an accompanying Manufacturer Statement of Origin or Manufacturer Certificate of Origin. In addition, the purchaser must agree to scrap a pre-1990 vehicle. (Requirements for scrappage

are defined in footnote 3 above.)

C. Project as a Substitute for the Federal Clean Fuel Vehicle Program

CDPHE intends to submit certain elements described in this FPA to EPA as a substitute for the Clean Fuel Vehicle Program prescribed under part C of subchapter II of the Clean Air Act. The submittal of a substitute program is authorized by 42 USC section 7511a(c)(4)(B). The language that CDPHE intends to submit to EPA is attached in the Appendix. CDPHE will not support the submission of the substitute program to EPA until USPS notifies it that USPS has received at least 794 FFVs. EPA's preliminary analysis of the language in the Appendix indicates that this state implementation plan (SIP) revision will satisfy the requirements for a substitute measure under section 182(c)(4)(B) of the Clean Air Act (CAA). However, EPA can only make a final judgment on this SIP revision after it reviews the revision in a public rulemaking proceeding based on the administrative record before EPA, including all public comments. Nothing in this FPA shall be construed to limit or modify in any fashion EPA's discretion under sections 110, 182, and 301 of the CAA, or general principles of administrative law.

III. Project XL Criteria

A. Superior Environmental Performance

There are a number of environmental benefits contemplated by this project. Some of the environmental benefits involve direct reductions of air emissions by replacing high-emission vehicles with low-emission vehicles. For example, this project will reduce emissions of carbon monoxide, carbon dioxide, nitrogen oxides, volatile organic compounds (VOCs), and toxics (mainly VOCs). Even if the vehicles were run on gasoline, ALL pollutants would be reduced significantly. Other benefits are more difficult to measure—for example, building the infrastructure for alternative fuel vehicles. The environmental benefits of the project are summarized as follows:

- ⌘ Introduction of approximately 810 FFVs within the Denver metropolitan area.
- ⌘ A significant decrease in USPS's contribution to mobile source emissions within the Denver metropolitan area. The model year 2000 vehicle engines are inherently cleaner burning and more fuel-efficient than the older model year vehicle engines they would replace. For example, each of the vehicles to be scrapped emits 250 pounds per year more carbon monoxide than each of the replacement FFVs. The net emissions reduction over a 20-year life cycle is estimated to be 432 tons of carbon monoxide, 24 tons of hydrocarbons, and 10 tons of nitrogen oxides.
- ⌘ Expedited removal of 512 1975-1983 model year delivery vehicles from the Denver/Boulder non-attainment area. Vehicles will be removed from service and sold as

scrap. USPS estimates that the vehicles to be scrapped under this project travel over 1.6 million vehicle miles per year in the Denver area.

- ⌘ Reduction in evaporative emissions of hazardous chemical constituents (e.g., benzene) associated with unleaded fuel dispensing.
- ⌘ Increased market demand for E-85 fuel, both through the USPS's addition of the approximately 810 vehicles and the publicity that the project will provide regarding alternative fuel vehicles. These two factors will provide economic incentive to encourage retail fuel providers to convert existing gasoline storage tanks to E-85 storage tanks. As the commercial availability of E-85 increases, the purchase of dedicated alternative fuel vehicles, including FFVs and those that meet LEV or cleaner emissions standards, by vehicle fleets and private individuals will increase, thereby reducing mobile source emissions further.
- ⌘ Creation of a model USPS alternative fuel vehicle metropolitan area that could be expanded to other areas.
- ⌘ The ethanol component of E-85 fuel presents less risk to the environment and worker safety while stored.
- ⌘ Reduced number of vehicle miles traveled by the USPS, through the use of larger trucks (eliminating 24,960 vehicle miles per year) and an infrastructure that will reduce trips back to a central refueling center.

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

The USPS will receive partial relief from Colorado's Clean Fuel Fleet Program requirements. This relief will provide USPS with additional credits that it would not otherwise have received. The credits will allow USPS the flexibility to purchase new vehicles that meet its unique criteria.

Cost savings will also accrue to the USPS through reduced labor charges by eliminating double trips, reduced fuel costs by gaining better gas mileage, and reduced E-85 costs by consolidating E-85 vehicles in a smaller area.

Additional savings for the USPS will result from the consolidation of E-85 vehicle maintenance facilities. This consolidation will reduce the number of technicians who need to be trained. In addition, with the number of vehicles placed in Denver, servicing of the vehicles will be easier.

C. Stakeholder Involvement and Support

The USPS has involved stakeholders from throughout the Denver area in this project. Representatives from environmental groups, other delivery companies, the petroleum industry, and the alternative fuel industry participated in the stakeholder process by attending meetings, commenting on documents, and participating in the development of this agreement.

D. Innovative Approach and Multi-Media Pollution Prevention

Allowing the replacement of old high-emission vehicles by flexible fuel vehicles with significantly lower emissions is an innovative way to reduce emissions from mobile sources. The use of approximately 810 FFVs in a small area will provide an active and visible demonstration of this emerging automotive technology. The USPS delivery vehicles will be present in hundreds of neighborhoods on a daily basis.

Flexible fuel vehicle technology in practice will generate media attention that can be used to inform the public regarding the applicability of this new technology and its flexibility of operation on mixtures of different fuels. This, in turn, will promote the use of FFVs.

The USPS has developed technical specifications for modifying an existing underground storage tank (UST) to properly house E-85 fuel. This modified UST will serve as demonstration projects for public evaluation. Successful implementation will allow other community businesses to evaluate the USPS fueling systems in consideration of modifying their own fuel storage infrastructure.

Another innovative strategy involved in this project is the manner in which the new FFVs will be deployed. The USPS Western Area Flex Fuel Vehicle Plan is to concentrate the new FFVs within a limited number of metropolitan regions across the western United States and to further concentrate FFVs at facilities within these chosen metropolitan areas. The USPS objective in adopting this strategy is to promote development of retail E-85 fueling infrastructure. In essence, the USPS is proposing to concentrate the vehicles in a relatively limited number of locations (i.e., USPS facilities with greater than 50 delivery vehicles) thereby providing retail fuel vendors with a viable market base as an incentive to providing E-85.

E. Transferability of the Approach to Other Entities or Sectors

The replacement of old high-emission vehicles with new, lower-emission flexible fuel vehicles is an idea that is transferable to the thousands of vehicle fleets in the country. In addition, this project could serve as a model for the development of a sustainable E-85 infrastructure and a demonstration of the ease of use and affordability of E-85 vehicles in fleet applications as well as for private use vehicles. Indeed, many of the lessons learned here could apply to the development of any alternative fuel infrastructure.

The building of the E-85 infrastructure would allow businesses that have existing E-85 flexible fuel vehicles in their fleet to now use them on an alternative fuel. It may also serve to encourage businesses to purchase dedicated alternative fuel vehicles. The information on the project can be disseminated to interested parties to allow them to see the ease and affordability of purchasing and using an alternative fuel vehicle. As companies purchase more alternative fuel vehicles as a direct result of the observations and information obtained from the final report for this project, the air quality for the Denver metropolitan area could improve.

Incentives for others to undertake fleet enhancement projects are available through the Colorado Environmental Leadership Program. These actions could provide significant future benefits to regional air quality. Such incentives may require or be enhanced by regulatory flexibilities, which can be informed by the lessons of this project, and can be applied in the future by the Colorado Environmental Leadership Program.

In addition, there may be an opportunity to directly transfer this XL project to one or more other cities.

F. Feasibility of the Project

The contract has been negotiated and awarded for delivery of 10,000 FFVs nationwide in the first year of the contract. The FFVs are in final design stage. Ford currently plans to begin delivery of the vehicles by the end of April 2000.

The USPS will work closely with its stakeholders, in particular the National Ethanol Vehicle Coalition, to promote and encourage the development of E-85 fueling at retail fueling stations. The USPS can provide market incentive for retail fueling stations to provide E-85. The USPS can also contract for and receive bulk delivery of E-85 to the facility with a converted on-site underground storage tank. At least two sources of E-85 bulk fuel are presently available. This will provide for immediate E-85 utilization of 71 FFVs.

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

Stakeholders, the general public, cosponsors, Colorado and EPA will observe the project during its three-year term. Six months after the delivery of the first E-85 vehicles the USPS will submit a semiannual report to Colorado and EPA. Thereafter, USPS will submit an annual report on the anniversary of the delivery of the first E-85 vehicles. This annual report will include information for the previous year on the following items, if applicable:

- Narrative of the process and steps that occurred to implement the project
- The roles and responsibilities of stakeholders that facilitated project success

- Description of difficulties and lessons learned from the scrappage process
- Discussion of the affordability, availability, and ease of purchase of FFVs
- Discussion of FFV performance
- Location map of retail E-85 fueling locations
- Engineering specifications for modified UST systems
- Utilization report for FFVs operating in the Denver metropolitan area (including where the vehicles are being used)
- Status of destruction and relocation of the pre-1984 and Long-Life vehicles
- Other lessons learned and pitfalls to avoid
- Information regarding fuel costs, fuel usage (including the amounts of E-85 and gasoline used), and fuel economy

These reports will provide EPA, Colorado, and stakeholders with sufficient information to judge the success of the project, and to determine how it can be replicated in other areas.

In addition, the USPS will notify both agencies how they intend to scrap the vehicles as set forth in footnote 3 above and provide a list of the postal service vehicles that will be destroyed pursuant to this Agreement. The list will include the Vehicle Identification Numbers, vehicle make and model, vehicle model year, and emission levels. The USPS will provide a waste management plan from the scrapyard to CDPHE for approval. The USPS will certify in writing its compliance with scrappage of each vehicle. The USPS will provide the relevant PS Form 4587 - Request to Repair, Replace, or Dispose of a Postal-Owned Vehicle for each of the destroyed vehicles to CDPHE within a month after the last vehicle is scrapped. The USPS will also provide proof that the destroyed vehicles were in service in the Denver carbon monoxide non-attainment area.

The USPS will provide the CDPHE with a schedule for destroying the 512 postal vehicles. The schedule will include times, dates and locations, and CDPHE will view this procedure to assure scrappage occurs.

Any application for credits for the operation of a FFV on E-85 will include documentation adequate to demonstrate what percentage of E-85 was used in the E-85 vehicles over the previous two years (beginning on the date that the USPS received the first shipment of E-85 vehicles).

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 Denver area will benefit from better air quality resulting from the replacement of 512 high-emission vehicles and 282 LLVs (1987-1991 vintage USPS delivery vehicles) with approximately 810 FFVs. Citizens in other western cities will benefit by the replacement of 282 high-emission vehicles (most of which will then be

scrapped) with the 282 LLVs relocated from the Denver area. Because the LLVs will replace higher emission vehicles, citizens of these other cities will experience no detrimental impacts.

In addition, the safety technology incorporated into all new vehicles benefits those drivers who will be operating the new FFVs. The USPS is replacing vehicles that are approximately twenty years old. Advances in safety technologies of vehicles in the past two decades are an inherent benefit to the vehicle operator. In this way the project will reduce risks to vehicle operators significantly.

IV0 Legal Basis for the Project

A. Authority to Enter Into the Agreement

By signing this Agreement, EPA, the State of Colorado, and USPS 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 Parties with respect to USPS's XL Project. 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 Party. Rather, it expresses the plans 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 V. and IX.). However, while the parties fully intend to adhere to these procedures, they are not legally obligated to do so.

Because this Agreement does not create or modify any binding legal requirements, Colorado intends to propose a revision to its SIP to use this project to meet Clean Air Act requirements for a Clean Fuels Fleet program or alternative program. A draft of the SIP revision that Colorado plans to propose can be found in the Appendix. 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 Party 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 Party.

C. Legally Binding Implementing Mechanisms

Notwithstanding Section IV.B. above, portions of this Agreement will be made enforceable through other mechanisms as follows:

- ✧ The USPS understands and agrees that CDPHE will include the requirements set forth in the Appendix in the federally enforceable SIP. The USPS understands that, upon approval by EPA, these requirements will be enforceable SIP requirements. In order to accomplish this result, the CDPHE may submit the Appendix to EPA for incorporation in the SIP. The remaining provisions of this agreement that are not included in the Appendix shall not be construed to be a requirement of the SIP.
- ✧ EPA has reviewed the proposal to submit the requirements set forth in the Appendix as a SIP revision. Based on the facts currently available and the law, EPA believes that this measure would qualify as a substitute, under section 182(c)(4)(B) of the Clean Air Act, for the Clean Fuel Vehicle Program prescribed under section 246 of the Clean Air Act for the Denver carbon monoxide non-attainment area. However, EPA can only make a final judgment on this SIP revision after it reviews the revision in a public rulemaking proceeding based on the administrative record before EPA, including all public comments. Nothing in this FPA shall be construed to limit or modify in any fashion EPA's discretion under sections 110, 182, and 301 of the CAA, or general principles of administrative law.
- ✧ CDPHE agrees that, to the extent the USPS destroys postal vehicles and acquires TLEVs in reliance on this agreement, the USPS will be entitled to credits for use in the CFFP as provided in this agreement.
- ✧ CDPHE plans to terminate any waivers that have been granted, once adequate credits have been issued to the USPS.

Except as provided in this section, the parties do not intend for this Agreement to modify or alter any other existing or future laws or regulations that may apply to the project sponsor, the facility, or the Project.

D. Retention of Rights to Other Legal Remedies

Except as expressly provided in the legal implementing mechanisms described in Section IV.C., nothing in the Agreement affects or limits either USPS's, EPA's, the State'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 USPS 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, USPS reserves any right it may have to appeal or otherwise challenge any EPA or Colorado actions implementing the Project. With regard to the enforceable implementing mechanisms, nothing in this Agreement is intended to limit USPS'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.

Notwithstanding the preceding paragraph, if CDPHE issues to USPS the credits discussed in section II.B, USPS agrees not to object to the incorporation of the Appendix into the SIP.

III0 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 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, 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.
- 40 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.
- 50 The United States Postal Service withdraws itself or is terminated from participation in the Colorado Environmental Leadership Program pursuant to section 25-6.7-107, C.R.S.

B. Procedures

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

1. Any party that wants to terminate or withdraw from the Project is expected to 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 Section IX. of 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. If any agency withdraws or terminates its participation in the Agreement, the remaining agencies will consult with USPS 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.
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. It may be necessary to invoke the implementing mechanisms provisions that end authorization for the Project in the event of withdrawal or termination.

VI. Project Duration

The parties intend that this project will last for three years from the date of receipt of the first shipment of vehicles by USPS. Ford currently plans to ship the first 180 vehicles to USPS in April 2000.

VII. Unavoidable Delay During Project Implementation

"Unavoidable delay" (for purposes of this Agreement) means any event beyond the control of any Party that causes delays or prevents the implementation of the Project described in this Agreement, despite the Parties' best efforts to put their intentions into effect. An unavoidable delay can be caused by, for example, a fire or acts of war.

When any event occurs that may delay or prevent the implementation of this Project, whether or not it is avoidable, the Party to this Agreement who knows about it will immediately provide notice to the remaining Parties. Within ten (10) days after that initial notice, the Party 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 Parties, agree that the delay is unavoidable, the schedule 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 Parties don't agree, then 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.

VIII. 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 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. If the Agreement is amended, EPA, Colorado, and USPS 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 parties agree to make a substantive and substantial amendment to this Agreement, the general public will receive notice of the amendment and be given an opportunity to participate in the process, as appropriate.

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.

IX. Process for Resolving Disputes

Any dispute which arises under or with respect to this Agreement will be subject to informal negotiations between the parties 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 party sends a written Notice of Dispute to the other parties.

If the parties 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 8. 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 parties still have the option to terminate or withdraw from the Agreement, as set forth in Section V.

X. Signatories

George A. Boettger
District Manager
United States Postal Service

William P. Yellowtail
Regional Administrator
EPA Region 8

Jane Norton
Executive Director
Colorado Department of Public Health
and Environment