

US EPA ARCHIVE DOCUMENT

MEMORANDUM OF AGREEMENT  
BETWEEN  
THE DEPARTMENT OF DEFENSE  
AND  
THE U.S. ENVIRONMENTAL PROTECTION AGENCY  
ON REGULATORY REINVENTION PILOT PROJECTS

WHEREAS, the President on March 16, 1995, as part of his National Performance Review Regulatory Reinvention Initiative, announced a set of pilot projects that provide the flexibility to step outside the context of the established ways of doing things to identify new and innovative means to achieve our environmental goals;

WHEREAS, the President announced that the Administrator of the Environmental Protection Agency would give a limited number of regulated entities the flexibility to develop alternative strategies that will replace or modify specific regulatory requirements to test whether those alternative strategies can produce greater environmental benefits over time for the same or lower costs as existing regulatory requirements;

WHEREAS, the President directed EPA to work with other Federal agencies that have environmental responsibilities to ensure that their programs achieve environmental results in the most cost-effective manner, while eliminating needless bureaucratic procedures, and further directed that in return for regulatory flexibility, the federal agencies would achieve better overall environmental performance at lower cost than expected under existing regulatory approaches;

WHEREAS, it is the Department of Defense's responsibility under Executive Order 12088 to: (1) ensure that all necessary actions are taken for the prevention, control, and abatement of environmental pollution with respect to Federal facilities and activities under its control, (2) comply with applicable pollution control standards with respect to facilities under its control; (3) cooperate with the Administrator of the Environmental Protection Agency in the prevention, control, and abatement of environmental pollution; and (4) consult with the Administrator concerning the best techniques and methods available for the prevention, control and abatement of environmental pollution;

WHEREAS, it is the Environmental Protection Agency's responsibility under Executive Order 12088 to provide technical advice and assistance to Executive agencies to ensure their cost effective and timely compliance with applicable pollution control standards; and

WHEREAS, it is the responsibility of all Federal agencies under Executive Order 12856 and the Pollution Prevention Act of 1990 (42 U.S.C. 13101(b)) to: (1) exercise leadership in the field of pollution prevention through the environmental management of their Federal facilities and in the development of innovative pollution prevention programs; and (2) ensure that their Federal facility environmental management is conducted so that, to the maximum extent practicable, the quantity of toxic chemicals entering any waste stream, including any releases to the environment, is reduced as expeditiously as possible through source reduction, that waste that is generated is recycled to the maximum extent practicable, and that any wastes remaining are stored, treated or disposed of in a manner protective of public health and the environment.

Attachment 1

THE ENVIRONMENTAL PROTECTION AGENCY  
AND THE DEPARTMENT OF DEFENSE  
HEREBY AGREE AS FOLLOWS:

ARTICLE I. OBJECTIVE

a. This Memorandum of Agreement (MOA) is to establish a framework for the development of pilot programs at approximately three to five selected DOD facilities.

b. The collaborative pilot programs initiated under this MOA are intended to help EPA and the Department of Defense to develop new approaches to meeting their respective responsibilities that achieve better overall environmental performance at lower cost than expected under existing regulatory approaches. For example, a facility may find that upgrading its equipment to meet technology-based requirements would have a negligible impact on environmental quality, and that it could achieve better overall environmental performance at lower cost by redirecting its pollution control efforts toward the minimization of hazardous emissions from unregulated sources, the recycling of hazardous wastes and the reduction in the use of toxic chemicals in industrial processes.

c. EPA and the Department of Defense agree that the participation of facilities in Regulatory Reinvention Pilot Projects is in the public interest, and that carrying out the terms of Final Project Agreements, including the terms of any compliance agreement or other compliance mechanism incorporated into a Final Project Agreement, is an important contribution to the effort to reinvent environmental regulation and to heighten the levels of environmental protection.

d. Generally, with respect to participation in the Regulatory Reinvention Pilot Projects, the EPA and DoD agree to bear their own costs as appropriate, unless the EPA and DoD otherwise agree in the Final Project Agreements.

e. DoD will be given the flexibility to develop alternative strategies that will replace or modify specific regulatory requirements on the condition that they produce greater environmental benefits.

ARTICLE II. RELATIONSHIP OF CO-REGULATORS

a. EPA and DOD must cooperate with and gain the support of state, local, or tribal environmental agencies with regulatory responsibilities over the activities addressed in pilot projects developed under this MOA. In the event that a state, local, or tribal environmental agency with regulatory responsibility over such activities, or a citizen, brings any regulatory or judicial enforcement action against a facility for action or inaction within the terms of and in compliance with a Final Project Agreement, EPA agrees that it shall, as appropriate and as consistent with resource constraints, actively cooperate in the defense of such action. Specifically, EPA agrees that if it becomes obligated pursuant to this paragraph to assist in the defense of a citizen suit, its assistance will include if appropriate (but shall not be limited to) providing the assistance necessary to assert the appropriate defense against the citizen suit.

b. EPA and DoD agree to work with Final Project Agreement signatories, including co-regulators, to ensure that the terms of this MOA are reflected in the Final Project Agreements,

as appropriate.

### ARTICLE III. PILOT PROGRAM FOR ENVIRONMENTAL REGULATORY REINVENTION

a. The vehicles for implementing pilot programs under this MOA will be Final Project Agreements, which will be developed jointly by EPA, co-regulators, and DoD representatives through a collaborative effort to identify opportunities for lowering the costs of complying with environmental regulatory requirements, and for achieving at DoD facilities better overall environmental performance than expected under existing and reasonably anticipated regulatory approaches. In addition to EPA, co-regulators, and DoD, signatories to each Final Project Agreement may include such other stakeholders as appropriate. Each Final Project Agreement shall clearly set forth objective, enforceable requirements that the subject facility or facilities have agreed to meet.

b. A Final Project Agreement may have a compliance mechanism (such as a compliance agreement or an administrative order on consent) appended to and incorporated into the Final Project Agreement, or some other mechanism that might be available, in order to provide a legally authorized means for replacing specific regulatory requirements with the requirements of the Final Project Agreement. In the event that a Citizen's Suit is brought against EPA with respect to participation in this Agreement or any Final Project Agreement and the Department of Defense is not a named party, the Department of Defense agrees that it shall, as appropriate and as consistent with resource constraints, actively cooperate in the defense of such action.

c. If at any time during implementation of a Final Project Agreement DoD reasonably determines and EPA concurs that any requirement of such Agreement cannot be met due to circumstances beyond DoD's control (including, but not limited to, materially changed site conditions that could not reasonably have been anticipated, or the significant failure of an innovative technology) EPA and DoD shall attempt to negotiate mutually acceptable changes to the Final Project Agreement, including, if necessary, a revised set of applicable deadlines. In the event that EPA and DoD cannot agree on such changes, EPA shall notify DoD and DoD shall return to full compliance with all applicable statutory and regulatory requirements as soon as practicable.

d. EPA and The Department of Defense AGREE that Final Project Agreements will provide for DoD-funded objective verification, if necessary, to demonstrate that the net result of strategies in Final Project Agreements is better overall environmental performance than expected under existing regulatory approaches. The precise means of verification shall be agreed to by all signatories to the Final Project Agreements, and shall be consistent with the goals of saving money and reducing paperwork.

e. EPA AGREES to seek, prior to entering into a Final Project Agreement, the legal flexibility necessary to implement such Agreement. EPA shall upon the request of the DoD provide technical expertise in the area of pollution prevention and in other areas identified in the Final Project Agreements to DoD and the facilities participating in the Final Project Agreements, at no charge to DoD or to the facility. Further, EPA shall cooperate in the effort to develop better and more cost-effective ways of achieving environmental protection at each pilot facility. EPA shall marshal its resources to provide regulatory relief through such means as enforcement

mechanisms (including compliance agreements or consent orders), the fundamentally Different Factors Variance, and the Innovative Technology Waiver, all on a timely basis.

f. EPA and DoD AGREE that Final Project Agreements shall be in the public interest and shall protect human health and the environment, and will be effected within the agencies' lawful authority. Nothing in this MOA or in a Final Project Agreement shall preclude EPA from taking civil or criminal action, as appropriate, in response to any imminent and substantial endangerment to human health, welfare, or the environment caused by any action outside of the scope of actions specifically called for, or inconsistent with actions in compliance with, the terms of a Final Project Agreement. Further, DoD AGREES that in the event that any action within the scope of a Final Project Agreement causes, or DoD becomes aware that such action may cause, an imminent and substantial endangerment to human health, welfare, or the environment, DoD promptly will notify EPA, and EPA and DoD promptly will agree on appropriate actions and schedules for such actions to respond to the endangerment. Notwithstanding the terms of Article III g., EPA shall retain the right to pursue actions against any individual for civil and/or criminal violations based on actions outside the scope of actions specifically called for, or inconsistent with actions in compliance with, the terms of a Final Project Agreement.

g. EPA and DoD agree that the Final Project Agreement will provide clear and specific direction to DoD personnel as to their environmental obligations. EPA and DoD understand that DoD will enter into any Final Project Agreement only if DoD, including the appropriate Military Department headquarters, agrees that DoD personnel are not at risk of civil or criminal liability on account of any action at a facility required or specifically permitted by the Final Project Agreement at the facility.

h. The Department of Defense AGREES to propose by November 3, 1995, an initial pilot candidate for a Final Project Agreement, and later to propose additional candidates for Final Project Agreements that address the mutually agreed upon criteria set out in the next subsection.

i. EPA and the Department of Defense AGREE to the following criteria and standards for programs to be carried out under the terms of Final Project Agreements:

1. Environmental results. Each facility candidate, through implementation of the Final Project Agreement, should achieve better overall environmental results than expected under existing regulatory approaches.
2. Cost savings and paperwork reduction. Implementation of the contemplated Final Project Agreement should produce cost savings; increase the cost effectiveness of DoD's environmental investments; and decrease the paperwork burden.
3. Stakeholder support. The extent to which DOD and EPA seek and achieve the support of parties that have a stake in the environmental impacts of individual programs is an important factor. Stakeholders include communities near the project, local, state, or tribal governments, businesses, and environmental and other public interest groups.
4. Innovation/Multi-Media Pollution Prevention. Projects should test innovative

strategies for achieving environmental results. These strategies may include processes, technologies, or management practices. Programs that embody a systematic approach to environmental protection and that test alternatives to several regulatory requirements and/or affect more than one environmental medium are preferred. Further, programs that include projects that protect the environment primarily through source reduction and preventing the generation of pollution rather than by controlling pollution once it has been created are especially highly valued.

5. **Transferability.** Projects should test new approaches and technologies that could conceivably be incorporated into DoD facilities on a wide scale, and/or could help EPA to decrease the cost of regulatory compliance by DoD and the regulated community generally.
6. **Feasibility.** Projects should be technically and administratively feasible and DOD should commit the financial resources to complete the projects within the time frames agreed to in the Final Project Agreements. EPA should commit the regulatory resources necessary to make completion of the projects within those time frames practicable.
7. **Monitoring, reporting and evaluation.** Projects should have clear objectives that will be measurable and which will be measured in order to allow EPA and the public to evaluate how well the project has met those objectives. DOD should be clear about the time frame within which results will be achievable.
8. **Worker Safety.** Projects should not create worker safety hazards.
9. **Environmental Justice.** Projects should not create disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.

j. To ensure full citizen involvement in the decision making process, DoD will produce high quality and understandable environmental information that allows citizens in the communities surrounding DoD installations to participate fully.

#### ARTICLE IV. INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communications between DOD and EPA, DOD and EPA representatives to discuss and consider activities that may be pursued under this MOA are as follows:

For DOD:

Assistant Deputy Under Secretary of Defense  
(Environmental Quality)  
Office of the Secretary of Defense  
Washington, D.C. 20310

For the U.S. Environmental Protection Agency:

Director  
Federal Facilities Enforcement Office  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Washington, D.C. 20460

**ARTICLE V. EFFECTIVE DATE AMENDMENT AND TERMINATION**

a. This MOA is effective upon the date of the last signature by the parties and shall remain effective for the duration of any Final Project Agreement entered into pursuant to this MOA, unless amended by mutual consent or terminated by either party. If there is a disagreement between DOD and EPA over the implementation of this MOA, representatives of the two agencies will meet to discuss and attempt to resolve the dispute. If a resolution is not possible, DOD and/or EPA may terminate this MOA upon 30 days written notice to the other party. Termination of this MOA will not result in the termination of any Final Project Agreement, unless otherwise provided in such Final Project Agreement.

ACCEPTANCE for the Department of Defense:

BY:

Sherri W. Goodman  
Deputy Under Secretary of Defense  
(Environmental Security)  
Office of the Secretary of Defense  
Washington, D.C. 20310

ACCEPTANCE for the U.S. Environmental Protection Agency:

BY:

Steven A. Herman  
Assistant Administrator  
for Enforcement and Compliance Assurance