the summer of 1999. In conjunction with taking final action on its response to the SO_2 NAAQS remand, EPA also intends to take any final action on the ILP no later than December 2000. In so doing, EPA will draw upon its response to the remand on the SO_2 NAAQS decision so as to ensure consistency between these actions.

Interim Actions

Between now and when final action on the SO_2 NAAQS remand and the ILP is taken, EPA intends to work with States/tribes with known areas of high 5-minute peak SO_2 concentrations to undertake a number of actions. These actions include the following: determining whether the existing SO_2 NAAQS and State Implementation Plan (SIP) requirements are being met in such areas; taking regulatory action in such areas where appropriate (e.g., SIP calls); and initiating enforcement review/action to ensure SIP requirements are met. The EPA also plans to issue monitoring and other guidance to States/tribes/regions to assist them in identifying and addressing high 5-minute peak problems.

Solicitation of Information on 5-Minute Peak SO_2 Concentrations

To supplement its current information on 5-minute peak SO_2 concentrations and exposures of sensitive asthmatic individuals to peak levels of concern, EPA is soliciting comments and associated information and analyses on such 5-minute peak SO_2 concentrations. The EPA will consider this information in the context of the interim actions described above and in its response to the remand and in its final ILP decision. More specifically, EPA solicits information and analyses on the following: sources or source types and the nature of events that are most likely to give rise to short-term peak SO_2 levels; the magnitude and frequency of such peaks; the time of day of the occurrence of such peaks; meteorological conditions in the area in which such peaks occur; the density of the population near the source(s) involved; and the frequency with which asthmatic individuals would likely be exposed to peak SO_2 concentrations at 0.60 ppm and above while at elevated ventilation rates (i.e., during exercise).

Dated: April 29, 1998.

Richard D. Wilson,

Acting Assistant Adminstrator for Air and Radiation.

[FR Doc. 98–11874 Filed 5–4–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6009–4]

Environmental Laboratory Advisory Board, Meeting Date and Agenda

AGENCY: Environmental Protection Agency.

ACTION: Notice of open meeting.

SUMMARY: The Environmental Protection Agency (EPA) will convene an open meeting of the Environmental Laboratory Advisory Board (ELAB) on June 4, 1998, from 2 p.m. to 5 p.m. This meeting will be conducted by teleconference. The public is invited to join Ms. Ramona Trovato in Room 911, West Tower, Waterside Mall, 401 M Street, SW., Washington, DC.

The agenda will include discussion on the newly established working group on Third Party Assessors; Consensus Position from EPA's Environmental Monitoring Management Council; Continuation of ELAB vs. former NELAC Coordination Committee; Conflict-of-Interest Issues with respect to the Accreditation Authorities; Training of Assessors; Method Specific Checklists; Simultaneous Approval of Laboratories; and the Agenda for July 1, 1998, meeting at NELAC IV.

The public is encouraged to attend. Time will be allotted for public comment. Written comments are encouraged and should be directed to Ms. Jeanne Mourrain; Designated Federal Officer; USEPA; NCERQA (MD–75); Research Triangle Park, NC 27711. If questions arise, please contact Ms. Mourrain at 919/541–1120, fax 919/541–4261, or e-mail mourrain.jeanne@epamai.epa.gov.

Dated: April 24, 1998.

Nancy W. Wentworth,

Director, Quality Assurance Division.

[FR Doc. 98–11877 Filed 5–4–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

Joint EPA/State Agreement To Pursue Regulatory Innovation

[FRL–6008–7]

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of Joint EPA/State Innovation Agreement.

SUMMARY: The U.S. Environmental Protection Agency (EPA) and senior State environmental officials recently signed an agreement entitled Joint EPA/State Agreement to Pursue Regulatory Innovation (hereafter ''Innovations Agreement''). The purpose of the Innovations Agreement is to improve environmental protection in the United States, improve EPA/State environmental management practices, and provide timely decision-making on good ideas. These goals will be achieved through innovation proposals by States, with the intent that many successful innovations will lead to system-wide improvements in environmental protection.

The Innovations Agreement embodies a set of general principles and a process for EPA/State innovation activities that includes:

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

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

ADDRESSES: An electronic version of the Innovations Agreement is available on EPA's Office of Reinvention internet home page at http://www.epa.gov/reinvent. Interested parties can obtain a single copy of the report by contacting Louise McLaurin (phone 202–260–4261 or e-mail mclaurin.louise@epamail.epa.gov).

FOR FURTHER INFORMATION CONTACT: For questions on the joint EPA/State Innovations Agreement, please contact John Glenn, U.S. Environmental Protection Agency, Office of Reinvention, (1803), 401 M Street, S.W., Washington, DC, 20460, phone 202–260–5029, e-mail glenn.john@epamail.epa.gov; or Bruce Brott, Minnesota Pollution Control Agency, phone 612–297–8380, e-mail bruce.brott@pca.state.mn.us.

SUPPLEMENTARY INFORMATION: To find new, better, and more efficient and

effective ways to improve environmental protection, the Environmental Council of the States (ECOS) and EPA Administrator Carol Browner formed a Task Group to develop a joint agreement on EPA/State regulatory innovation. The Task Group developed the draft Joint EPA/State Agreement to Pursue Regulatory Innovation (''Innovations Agreement''), which was published for public comment last fall in the **Federal Register** (62 FR 56182–89; October 29, 1997). A balanced set of eleven comments with 31 signatories representing industry, environmental interest groups, and government were submitted. All comments were considered in preparing the final draft of the Innovations Agreement. At the ECOS meeting on March 25, 1998, the State officials present voted unanimously to approve the Innovations Agreement. In late April, EPA and senior State environmental officials signed the joint Agreement. The full text of the Innovations Agreement and the EPA/State Response to Comments follow.

Part 1

Joint EPA/State Agreement To Pursue Regulatory Innovation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Through this agreement, as detailed in Part 2, States and EPA are committed to work together and with all stakeholders to apply the lessons learned from successful innovations in creating the best possible system to achieve greater environmental protection at a reasonable cost.

We agree to encourage innovation that will prepare us for meeting our environmental challenges well into the 21st century.

Carol M. Browner,

Administrator, U.S. Environmental Protection Agency.

Robert C. Shinn, Jr.,

Commissioner, New Jersey Department of Environmental Protection, President of ECOS.

Fred Hansen,

Deputy Administrator, U.S. Environmental Protection Agency.

Robert W. Varney,

Commissioner, New Hampshire Department of Environmental Services, Vice President of ECOS.

J. Charles Fox,

Associate Administrator for Reinvention, U.S. Environmental Protection Agency.

Peder Larson,

Commissioner, Minnesota Pollution Control Agency, and Co-Chair, ECOS Regulatory Innovations Task Group.

Randall Mathis,

Commissioner, Arkansas Department of Pollution Control and Ecology, and Co-Chair, ECOS Regulatory Innovations Task Group.

Dated: April 1998.

Part 2

I. Overview of This Agreement

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

—Statements of purpose and scope of the agreement;

—Over-arching principles that will govern joint EPA/State regulatory innovation activities;

—The process EPA and the States will use to identify good ideas, including both the continuation of existing State/EPA interactions to start innovation projects, and the establishment of a new mechanism for making decisions on innovative proposals that do not fit into ongoing reinvention programs; and

—Guidelines for how EPA and the States will evaluate the success of innovation activities carried out under this agreement.

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

II. Purpose and Scope of the Agreement

A. Purpose

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

1. Improved Environmental Protection

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

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

2. Improved EPA/State Environmental Management Practices

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

3. Timely Decision-Making on Good Ideas

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

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

B. Scope of the Agreement

As used in this agreement, ''regulatory innovation'' is a broad concept. It

encompasses the process of proposing, testing, evaluating, refining and sharing innovative approaches to environmental regulation in order to achieve national, regional, state, tribal, and local environmental objectives. Regulatory innovations should be more efficient and/or provide greater environmental protection than current approaches, foster cooperation, and include opportunities for strong stakeholder involvement.

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

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

III. Principles for EPA/State Regulatory Innovation

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

A. Experimentation

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

1. The States and EPA should recognize the value of prudent risk-taking through experiments designed to achieve improved results.

2. The States and EPA should seek ways to make good ideas work, presuming that innovations to help meet environmental goals are worth our investment.

3. The States and EPA should carefully monitor and manage innovations to ensure that problems are immediately identified and remedied. Experimentation should be based on sound judgment, reasoning and common sense.

4. If a promising experiment encounters difficulties that likely can be corrected and that do not jeopardize environmental protection, project sponsors should be allowed to fix problems before the experiment is abandoned in favor of the traditional approach.

5. Experimentation does not include relaxing health or environmental standards or reducing protection of public health or the environment.

6. Experiments should be designed to test new approaches and as appropriate lessons learned should be used to improve the current system of environmental protection.

B. Environmental Performance

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

1. Protecting public health and the environment are the primary goals of both EPA and State environmental agencies, and we agree that innovations can help us find cleaner, cheaper, smarter ways of improving our nation's environment. Innovations that facilitate a transition to pollution prevention and product stewardship as primary methods of achieving environmental goals are highly desirable and can have significant economic or societal benefits to support sustainable development.

2. Many opportunities exist to improve environmental protection through innovations that have the clear potential to provide environmental and ecosystem benefits. In addition, innovations may be designed primarily to improve the cost effectiveness of achieving environmental goals; these projects must ensure that there is no adverse impact on: environmental protection, public access to information, and public access to the decision-making process.

3. For projects that have a greater uncertainty of the environmental outcome, or that involve experimental technologies or approaches, innovations should be expected to have the clear potential to provide increased environmental protection, promote ecosystem sustainability, or both. EPA and the State agency, in their best judgment and in consultation with stakeholders, will determine whether such proposals have the clear potential to produce appropriate gains in environmental protection, improved sustainability of the ecosystem, or both.

4. Innovations may be designed to fit local and regional conditions, as long as local solutions do not create environmental problems for other localities, such as undesired downwind and downstream effects, or undermine national standards.

5. No population group should be subjected to disproportionately high and adverse human health or environmental impacts as a result of the innovation.

C. Smarter Approaches

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

1. Regulators should work with industry and communities to solve environmental problems by identifying ways to remove barriers that prevent prudent, common sense solutions.

2. Regulators should be professional, accountable and deserving of the public's trust.

3. Regulators should seek to understand all perspectives, and help stakeholders find common ground.

4. Regulators should act promptly to evaluate, and implement, proposals that are straightforward, technically achievable, and have clear advantages, while ensuring adequate opportunities for public involvement and review.

D. Stakeholder Involvement

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

1. Innovations should include opportunities for early, open, and

inclusive stakeholder involvement in project development, specifically including those who may be affected by the decisions. Stakeholders should be provided adequate time to review proposals and participate in the process. When an innovation has the potential to result in significant policy changes, additional efforts, that could include incentives and assistance, should be made to provide additional opportunities so that affected and interested stakeholders can be meaningfully involved.

2. Consistent with the principle of providing meaningful opportunity for stakeholder involvement, each State should have the flexibility to use its own stakeholder participation process, as long as applicable federal and State procedural requirements are met or exceeded. EPA and States will identify national program issues and ensure opportunities for active involvement from national and regional stakeholder groups, especially where decisions on regional, state, or local issues have broader impacts.

3. Project proposals and the process for their consideration should be made transparent to stakeholders so that the benefits of the proposed change can be fully evaluated. Information needed to understand the proposed innovation and to verify compliance and environmental performance should be publicly available in an understandable form. EPA and States commit to provide regular analysis of the types of innovations implemented and their environmental impacts.

4. Because some stakeholder groups (e.g., small businesses, public interest groups) often have a limited capacity to participate in innovation projects, EPA and States will explore different approaches to facilitating stakeholder involvement.

5. In circumstances where local governments share regulatory responsibility, they should participate as partners with the State in developing and implementing the innovation.

E. Measuring and Verifying Results

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

1. The success of innovations should be judged by the results they achieve. Goals and objectives should be: established in advance, measurable, and based on the desired results.

2. Results should be verifiable by reliable measurements and both process and results should be understandable to regulators and the public.

3. Regulators should have access to high quality information sufficient to verify the environmental performance of an innovation.

4. Regulators and the public should have a full understanding of the differences between the innovation and traditional approaches, including expectations for the project, accountability for performance, and any potential risks.

F. Accountability/Enforcement

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

1. For persons or activities not covered by the innovation project, applicable statutory and regulatory requirements remain in effect and fully enforceable.

2. If a promising innovation project encounters difficulties that likely can be corrected and that do not jeopardize environmental protection, regulatory agencies should evaluate the circumstances and use judgment in allowing project sponsors to correct problems before a project is abandoned in favor of the traditional approach.

3. Regulators must have authority to address such circumstances as imminent and substantial endangerment, actual harm, or criminal conduct.

4. Innovations may include both: (a) Enforceable ''alternative regulatory requirements'' that provide protection equivalent to that provided by otherwise applicable environmental standards or requirements, and (b) other ''beyond-compliance commitments'' that seek to exceed otherwise applicable standards or requirements. Alternative regulatory requirements and beyond-compliance commitments should be clearly distinguished in advance.

Alternative Regulatory Requirements:

—Alternative regulatory requirements should be enforceable with all the remedies available under current law.
—Regulators should consider the circumstances and use their judgment in choosing remedies when a facility fails to meet alternative regulatory requirements.
—Potential responses for failure to meet such alternative regulatory requirements should be identified in advance.

Beyond-Compliance Commitments:

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

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

G. State-EPA Partnership

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

1. As the primary front-line managers of many environmental protection programs, the States and local governments are natural laboratories for innovations. The States should manage their own programs, adapt to local conditions, and test new approaches for delivering more environmental protection for less.

2. The federal government should ensure good science, strong national health and environmental standards, and should work in partnership with the States by providing analysis, expertise, and facilitating learning among the States. EPA should promote innovation at all levels (national, regional, state, tribal, place-based, community, and in the private sector). EPA retains its role to set national standards and measures, implement programs not delegated to states or tribes, address interstate issues, apply and interpret national statutes and

regulations, and ensure fair and effective enforcement, thus ensuring that all states provide fundamental public health and environmental protection and a level playing field.

3. EPA and state roles in innovations must be clearly designed to utilize each party's unique strengths and avoid duplication. Decision makers should be clearly identified.

4. Assigned roles and responsibilities should be honored and respected, and joint problem-solving should be encouraged.

5. Communication must be open, honest, frank and frequent. The States and EPA should work to understand each other's perspectives, achieve consensus on major issues, make decisions in a timely manner, and resolve conflicts quickly and efficiently.

IV. Process for Considering State Innovations Proposals

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

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

A. Use Existing Pathways

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

B. New Process Established Under This Agreement

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

This process is intended to be flexible. For example, EPA Regional Offices, EPA Headquarters Offices, and the States are encouraged to maintain open lines of communication at both staff and management levels beyond the formal process described below, and States are encouraged to invite EPA into the early discussion stages of any project. Early consultation between EPA and the States is important in identifying obstacles early and in determining who needs to be involved so that the project can move forward expeditiously.

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

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

1. Stage One—Developing Quality Proposals

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

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

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

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

EPA will: (a) Provide clear statements of its position, along with timely and authoritative answers to questions about what changes, variances, or associated approvals a particular proposal may require; and (b) work with the State to identify the most efficient path by which a particular proposal could be implemented.

In addition, States will provide meaningful opportunities for stakeholder involvement in the design and development of regulatory innovation proposals. The degree of stakeholder involvement depends on the nature of the proposal. Where a proposal would involve a change in or variance from existing national

guidance, regulations, or statutes, early consultation among EPA, States, and national stakeholder groups can help identify critical issues that need to be addressed. If EPA believes that broader stakeholder involvement is warranted, in accordance with the Stakeholder Involvement Principle, EPA will contact the State and identify, in partnership with the State, an approach to obtain such involvement as early in the process as possible.

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

2. Stage Two—Review of Proposal and Decision

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

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

(1) Consistency with the principles in this agreement;

(2) Comments from stakeholders;

(3) Type of flexibility from federal guidance or regulation needed to implement the proposal;

(4) Clear presentation and analysis of issues;

(5) Expected benefits of the innovation (including net improvements in environmental, ecosystem, and efficiency results);

(6) Potential benefits of the innovation as compared to the investment of time and resources required for implementation, and impact on agencies' resources and workloads.

The review process is intended to be flexible. EPA and the State should maintain open lines of communication at all levels—staff and management—to ensure that questions and concerns are raised and discussed. During the review process, EPA may seek input from other States and stakeholders, including environmental groups and the regulated community, to fully identify the strengths and weaknesses of the proposal.

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

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

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

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

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

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

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

d. Time frames for decision. EPA and the States are committed to working together to ensure timely responses to State proposals.

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

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

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

V. Measuring and Evaluating Success

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

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

more on process measures in the near term.

A. Measuring the Innovation's Impact

The success of the innovation project's impact will depend on how well it was designed and the results achieved. Successful innovation project designs should be clearly described so successful projects can be used to improve the entire system, and/or adapted to other site specific situations. The quality of the projects implemented can be measured by: (1) Environmental impact, (2) efficiency, and (3) other relevant indicators. In addition to providing information about the success of an individual innovation project, these measurements also provide guidance on improving future innovation projects. States and EPA should agree in advance who is responsible for collecting and disseminating this information.

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

B. Measuring the Process

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

VI. Information Sharing

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

VII. Next Steps

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

A. Joint Evaluation

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

B. Modifications to the Agreement

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

Attachments

A. Proposed Core Performance Measures

B. Examples of Regulatory Innovations

Attachment A—EPA/State Environmental Regulatory Innovations, Proposed Core Performance Measures

Environmental Goal

A sustainable environment with healthy communities and ecosystems

Environmental Objectives

—Air quality improvements
—Water quality improvements
—Land quality improvements

Program Objectives (Outcomes)

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

Program Activities (Outputs)

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

Attachment B—Examples of Regulatory Innovations

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

Example 1: Mercury in Wastewater Effluent

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

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

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

the municipalities that need to develop mercury source reduction programs.

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

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

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

Example 2: Continuous Emissions Monitoring for Air Pollutants

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

Description and expected benefits:

—Federal guidance on practical enforceability requires that compliance demonstration schemes use available technology which produces verification of compliance data as frequently as practically possible.

—A facility is required to use continuous emission monitors (CEMs) to show compliance with an air emission limit. Data has been gathered for several years and it shows consistent emission levels at or lower than 50% of the limit. In addition, other surrogate process parameters are continuously monitored.

—The permittee wishes to show compliance by an alternative compliance method which requires periodic testing to assure continued compliance. The surrogate parameters will continue to be monitored and will be used to ensure that the operating conditions remain within the range under which compliance has been demonstrated by periodic testing.

—In exchange, the facility agrees to install CEM for certain toxic organics from certain processes. The nature and levels of these toxics are not very well defined based on mass balance approaches. The information generated by these CEMs will be useful for an air toxics analysis being conducted in the area.

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

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

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

Example 3: Tiered Permitting System for Hazardous Waste Facilities

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

Description and expected benefits:

—Current RCRA regulations exempt recycling facilities from any permitting requirements, but require a Part B permit if HW is stored prior to recycling.

—Environmentally safe recycling is preferable to disposal and should be encouraged.

—Recycling facilities can be as complicated as treatment and disposal facilities and require some oversight to ensure that they are protective of human health and the environment.

—Requiring the standard Part B permit for recycling facilities creates a disincentive and may greatly limit the number of recycling facilities.

—A less onerous tiered permit provides regulatory oversight and does not pose the same disincentive as a Part B permit for recycling facilities.

—The tiered permit incorporates performance standards and financial assurance as appropriate and is custom tailored to the facility without requiring all of the elaborate features of a Part B permit.

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

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

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

Example 4: River Basin-Based Planning and Permitting

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

Description and expected benefits:

River-basin based planning and permitting would:

—Enable better planning and resource allocation

—Increase consistency between permits

—Increase consideration of basin-wide pollutant inputs (point and nonpoint) for better decision-making and planning

—Improve efficiency of modeling, data collection for modeling, and permitting activities

—Provide opportunity for greater stakeholder involvement in the planning process Federal statutes prohibit permits with a term greater than five years

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

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

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

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

State: North Carolina.

Joint EPA/State Agreement to Pursue Regulatory Innovation, Response to Comments

Purpose of the Agreement and Environmental Performance

Summary of Comments: A number of commenters were concerned that the agreement did not emphasize the importance of innovation as means to move toward environmental sustainability. They suggested focusing the agreement on holistic pollution prevention and product stewardship approaches, because these approaches can help address the root causes of pollution and move toward a more

sustainable system. Also, these commenters felt that the agreement emphasized efficiency over environmental gains, rather than advocating innovations that can simultaneously achieve environmental, economic, and social goals. These commenters felt that environmental gain should be a key factor in prioritizing innovations. An opposing view was expressed by some commenters, that the agreement should put more emphasis on economic gains as incentives for innovation. A number of commenters expressed support for ''efficiency only'' projects that would achieve the same level of environmental quality. Conflicting comments were received about whether better environmental performance should be required in proportion to any regulatory flexibility granted.

Response: EPA and the states agree that the concept of innovations leading to environmental sustainability should be emphasized (added language to Purpose section and Environmental Performance sub-principle on this concept). Innovations that simultaneously address environmental, economic and social objectives are highly desirable. However, the agreement recognizes that, in some cases, it will make sense to pursue innovations that are primarily targeted at efficiency improvement, as long as environmental protections are fully maintained. The agreement does not include a specific ''proportionality'' test that would require increased environmental performance in return for regulatory flexibility. However, innovations which have a greater uncertainty of the environmental outcome, or are more experimental in nature, will be expected to have the potential for improved environmental results. Also, as proposals are reviewed, the potential benefits of a proposal will be weighed against the resources needed to implement the proposal, and if resource limitations become an issue, priority will be given to proposals that appear to have a greater return on investment.

Specific Comments

Comment: The agreement speaks several times of innovations that *have the clear potential to* provide environmental benefits. Other principles are not similarly qualified in the agreement. The italicized phrase should be replaced with a positive concept such as ''clearly.''

Response: The phrase ''have the clear potential'' is appropriate for projects that have a greater uncertainty of the environmental outcome, or that involve experimental technologies or approaches. However, we agree that it is important that the intent of the project is to achieve better environmental results, even if those results cannot be guaranteed, and we expect that experimental projects will be designed to achieve increased environmental protection.

Comment: A commenter said that the agreement will result in numerous waivers of EPA requirements, based only on ''equivalency,'' and will eliminate incentives to achieve superior environmental performance.

Response: EPA and the states are not entering into this agreement simply in order to provide a pathway for obtaining waivers of regulatory requirements. The purposes of this agreement are clearly stated: to improve environmental protection, to improve EPA/State environmental management practices, and to provide timely decision-making on good ideas. We believe that this agreement will foster cooperative exploration of innovative approaches that can potentially lead to substantial improvements in both our management system and in the level of human health and environmental protection. It is not our intent to undermine incentives for achieving superior environmental performance. For example, EPA's Project XL offers regulatory flexibility in return for superior environmental performance, stakeholder involvement, and several other criteria. If under this agreement, EPA receives proposals that are more appropriate for Project XL (e.g., proposals requesting significant regulatory flexibility for a single facility) then EPA will recommend that those proposals will be directed to the XL process.

Experimentation

Summary of Comments: A commenter said that the agreement should more clearly acknowledge that ''experimental'' efforts may at some future time be incorporated into the mainstream of environmental protection. Other commenters said that the agreement speaks of ''maintaining'' or ''not jeopardizing'' environmental protections, rather than enhancing them, and doesn't address the value of interim incentives or enforcement responses.

Response: EPA and the states agree that a main purpose of experimentation is to test approaches that may later be appropriate to be applied more broadly. A sub-principle has been added to the Experimentation principle which states ''Experiments should be designed to test new approaches and as appropriate lessons learned should be used to improve the current system of environmental protection.'' The idea of using interim accountability measures has been added to the Accountability/Enforcement principle.

Stakeholder Involvement

Summary of Comments: Many commenters addressed the issue of stakeholder involvement in the development of innovation proposals. A number of commenters agreed that ''stakeholder involvement should be appropriate to the type and complexity of the innovation proposal.'' Some commenters raised concerns that stakeholder processes can become too elaborate or can delay a project for too long, and that consensus should not be required. Other commenters emphasized that the agreement did not convey a true partnership approach, lacking elements such as: firm requirements for inclusiveness, addressing the need for technical assistance, and success measures that evaluate the effectiveness of the stakeholder process. These commenters also felt that the linkage between stakeholder involvement and the process for different categories of projects should be addressed.

Response: EPA and the states believe that stakeholder involvement is important to successful innovation projects, and we are adding a clear statement to the Stakeholder Involvement principle that stakeholder involvement is important because it produces better innovations. We believe that the stakeholder principle provides sufficient flexibility for EPA and States to design stakeholder processes that are appropriate for different types of innovations and as appropriate, allows states to use existing stakeholder participation processes. There is a range of opportunities for stakeholder involvement that may be appropriate, depending on the type and complexity of the innovation. For a straight-forward innovation designed to streamline an existing process, providing opportunity for participation and comment may be sufficient. For proposals with significant policy implications, the need for public involvement will likely be greater, and it is the responsibility of government agencies to take extra steps so that active involvement can occur. Some changes were made to the stakeholder principle and sub-principles to clarify this intent.

EPA and the states realize that it is often difficult for some parties, such as small businesses and public interest groups, to actively participate in stakeholder processes. EPA and the states will try different approaches to

facilitating stakeholder involvement, such as: providing easily-accessible information about new project proposals (e.g. via the Internet), providing assistance in understanding proposals to help focus on priority issues and projects, and pursuing other creative mechanisms that foster participation. Issues such as technical assistance for stakeholder participants will be addressed on a project-by-project basis. Also, language was added to the section on ''Measuring and Evaluating Success'' to emphasize the need to evaluate the effectiveness of the stakeholder process.

Specific Comments

Comment: A commenter expressed the need for affirmative language on all levels of government working together and to more clearly recognize and define the role of local governments in the regulatory system and in innovation.

Response: EPA and the States agree that local governments are essential partners in innovations that come under the jurisdiction of local regulatory authorities. A sub-principle has been added to the Stakeholder Involvement principle to recognize the importance of working cooperatively with local governments.

Comment: Several commenters stated that the reference to involving national stakeholder groups to examine national issues should be broadened to recognize the important role of state groups, and the interest of national groups in important state and local issues. Criteria, and an accountability mechanism, are needed to help identify cases where national (or state) stakeholder involvement is needed.

Response: EPA and the states agree that stakeholders should have the opportunity to be involved in design and development of proposals, and that both national and regional groups may be interested in important regional, state, and local issues that are likely to have broader impacts (added clarifying language to stakeholder sub-principle). At this time, we do not think it appropriate to develop specific criteria for national stakeholder involvement. We will make every effort to make information available and to keep stakeholders informed about proposals under this agreement, so that stakeholders will have the opportunity to participate. As we gain experience with the process, we will consider whether it is possible and appropriate to develop criteria for national stakeholder involvement.

Comment: Several commenters pointed to the need for special efforts to involve stakeholders such as small business and public interest groups in innovations, due to their limited resources.

Response: EPA and the States agree that creative approaches to foster such involvement should be encouraged. A new sub-principle was added to Stakeholder Involvement to encourage these efforts.

Comment: A commenter expressed concern that the EPA review process includes the active solicitation of comments after the stakeholder process has been completed.

Response: EPA and the states agree that in cases where there has been a robust stakeholder process, that no additional input would be needed. However in some cases, such as a proposal that comes to EPA in a preliminary stage of development, EPA may need to consult with stakeholders to ensure that all points of view are considered, prior to making a decision. In cases where a federal or state regulation will be changed, public notice and comment may be part of the required legal process that would occur following the preliminary decision.

Comment: A commenter asked for clarification about subprinciple D.2 (the requirement that stakeholder processes meet or exceed applicable state and federal requirements) and whether this refers to procedural or environmental requirements.

Response: The language has been added to indicate that this statement refers to procedural requirements.

Smarter Approaches

Comment: A commenter pointed out the need to ensure that proposed innovations do not undermine the original purpose of ''regulatory barriers.''

Response: EPA and the states agree that the underlying regulatory objectives of a ''regulatory barrier'' need to be carefully considered in the development of innovations. The language in the ''Smarter Approaches'' subprinciple indicates that the purpose of removing ''regulatory barriers'' is to solve environmental problems. In deciding whether a proposed innovation is helping to solve an environmental problem, regulators will need to ensure that the underlying environmental purpose of the ''regulatory barrier'' will still be achieved.

Accountability/Enforcement

Summary of Comments: Some commenters raised concerns that all conditions that are integral to an innovation project should be enforceable, and that accountability could be strengthened by including a series of interim accountability measures as part of the project design. Another commenter suggested that EPA and the states should not pursue traditional enforcement mechanisms such as penalties if problems are encountered during implementation of an innovation project.

Response: EPA and the States agree that accountability and enforcement remedies should be used that are appropriate to the circumstances of an innovation project, and the language of the Accountability/Enforcement section has been clarified to reflect this intent. For example, it may be appropriate for project participants to agree on a series of interim accountability measures that will be tracked as the project is implemented. In order to preserve enforcement authority for use in serious circumstances, we cannot rule out the use of penalties. The agreement indicates that ''alternative regulatory requirements'' will be enforceable with all the remedies available under current law. ''Beyond compliance commitments'' may also be part of some innovation agreements, and accountability measures for these commitments should be determined when the innovation is designed. In some cases, if innovations include a set of activities, it may difficult to distinguish between ''alternative regulatory requirements'' and ''beyond compliance commitments.'' In these cases, EPA and the state will carefully evaluate all proposed activities and determine an appropriate requirement category based on the projected net result of the proposed activities.

Specific Comments

Comment: A commenter said that clarification was needed to convey that current requirements are enforceable only to the extent that they are not modified by an approved innovation project.

Response: EPA and the States agree that the intent of the agreement is that all applicable statutory and regulatory requirements, other than those included in the innovation project, remain in effect for all entities and are fully enforceable.

Roles of Project Proponents and Stakeholders

Summary of Comments: Several commenters raised questions about whether sponsors other than a state could initiate projects. A commenter suggest that more incentives for industry to participate should be provided. Several commenters also raised the issue of appeals, and whether parties other than the state could appeal an EPA decision on a proposal.

Response: We are committed to working with partners in the regulated community, and other stakeholders, to develop successful innovation projects and have a variety of mechanisms in place to do so. The focus of this agreement is to facilitate *state* proposals for innovative environmental management approaches. States are co-regulators with EPA and are responsible for implementation of delegated or authorized environmental programs. We encourage non-state sponsors to partner with states in moving innovations forward under the agreement. Other pathways (such as Project XL) are available for other sponsors to work with directly with EPA on innovation projects. Similarly, because this agreement is designed for state proposals, states are the appropriate parties to appeal decisions. Input of interested stakeholders will be considered throughout the review and appeals processes.

Relationship of Categories of Projects and Application of Principles

Summary of Comments: A number of commenters stated that the agreement should include objective criteria for deciding how projects should be classified and where certain principles may vary based on the category.

Response: While the principles articulated in this agreement will set a standard for all innovation proposals, we expect some principles or sub-principles to be more relevant to certain types of projects. For example, while stakeholder input will be important for all innovations, we anticipate increasing levels of stakeholder involvement in Categories 2 and 3, as compared to Category 1. In terms of environmental performance, cost-effectiveness projects would generally be expected to fit in Category 1. More experimental proposals that fall in category 2 would generally be expected to have the potential to provide increased environmental protection. Other principles may also vary somewhat in their applicability across categories.

EPA Review and Decision on Proposals

Review Criteria

Comments: A commenter stated that the agreement should further define the decisional criteria that EPA will use to approve or disapprove a proposal. Several commenters said that the criteria addressing resources should also include impact on stakeholders' resources and workloads.

Response: The agreements lists several criteria EPA will use in reviewing proposals. We believe these criteria can only be refined through some direct experience in evaluating project proposals. The first criterion is ''consistency with the principles in the agreement.'' Evaluation of proposals against this criterion will include an evaluation of whether stakeholder involvement in design and development of the innovation is consistent with the Stakeholder Involvement principle.

Statutory Change

Comments: A commenter said that where statutory impediments are identified, EPA should be willing to entertain statutory revisions and, together with states, advocate these revisions to Congress. Another commenter said that EPA should not indicate that it will reach agreement with all the states before pursuing any changes in interpretation or statutes.

Response: EPA and the states believe that exploration of innovative approaches may, in some cases, point to the need for regulatory or statutory change. Where such changes will promote effective, common sense solutions to environmental problems, EPA is committed to pursuing change through appropriate mechanisms. In all cases, we believe there must be an open process and full public discussion and debate.

Handling Numerous Proposals and Setting Priorities

Comments: A commenter pointed out that the management of numerous state innovation proposals may become an overwhelming task for EPA, the states, and interested stakeholders, and therefore, EPA and ECOS should focus first on those innovation proposals having the greatest potential for success.

Response: EPA is concerned about the difficulty of managing appropriate participation and review for numerous proposals while upholding high standards of review and meeting ambitious time frames for decisions. EPA will strive to address all State innovative proposals promptly and carefully. It is difficult to anticipate how many projects may be proposed. If a large number of projects are submitted, EPA will likely need to use a screening and priority-setting process to ensure that available resources are used effectively.

Time Frames for Decision

Comments: One commenter suggested that the agreement include a forcing function to ensure that deadlines are met, such as a default mechanism that the project is approved if time expires. Another commenter said that the agreement should clarify that the 3-month decision is a definitive decision by EPA to accept or reject the proposal.

Response: EPA is committed to responding as promptly as possible to innovation proposals, as reflected in the ambitious 3-month target for decision-making. However, the 3-month deadline will not be met in all cases—a great deal will depend on the quality and completeness of the proposal, and, in a number of cases, more information will likely be needed to augment the initial proposal submission. EPA and the state will jointly agree on extending the deadline as appropriate to the circumstances. Additionally, the 3-month decision is a *preliminary* decision to go forward with a project. EPA must follow all legal requirements that are applicable in each situation in order to reach a final decision and begin implementation. Thus, ''default approval,'' in cases where EPA does not meet the target, is not possible. For example, a proposal that involves change to a regulation must be carried out through notice-and-comment rulemaking, and under the law, EPA cannot make a final decision until public comment has been considered.

Other Comments

Stakeholder Evaluation of Proposals and Results

Comments: A commenter recommended establishing a national advisory committee, perhaps including stakeholder representatives from the local, state, and national level, that would evaluate proposals, analyze ongoing progress with innovations, and evaluate the transferability of successful results.

Response: The Stakeholder Involvement principle provides for the participation of stakeholders in the evaluation of project proposals. EPA and the states agree that stakeholders also need to be involved in evaluating the success of innovations implemented under this agreement. The Next Steps section has been modified to say that EPA, states, and other interested parties will work jointly on evaluating both the results of innovations and the process for review and implementation of the projects.

Confidential Business Information

Comments: A commenter said that information sharing is an important part of the process, however, the agreement lacks guidance regarding protection of confidential business information.

Response: EPA and the states feel that there are adequate provisions in place, outside of this agreement, in federal and state law and regulation, to adequately

protect confidential business information. As we move forward with implementing the agreement, we will develop procedures to ensure that information shared in the development of proposals but designated as confidential business information remains confidential.

Measuring Success/Core Performance Measures

Comments: A commenter said that core performance measures should emphasize environmental results (e.g., fewer diseases from pollution) over bean counting (i.e., number of projects). Another commenter said that the three environmental objectives (air, water, land quality improvements) are not inclusive of all ecosystem improvements, and that the measures should take a broader holistic approach towards improving environmental quality.

Response: EPA and the states agree that success measures should look more broadly at improving human health and environmental quality. The set of measures in Attachment A of the agreement is provided as a starting point for discussion. As implementation of the agreement gets underway, EPA and the states, working with stakeholders, will further develop the set of performance measures that will be used for evaluating success.

Specific Comment

Comment: A commenter said that the provisions under the Measuring/Verifying Results principle do not *require* measurement and monitoring.

Response: EPA and the states believe that the intent of this language is clear—that innovations must have results that are measurable and verifiable.

Legal Status of the Agreement

Comment: A commenter stated that it is inappropriate for EPA to enter into an informal agreement with a non-profit organization (ECOS) that would subvert EPA's legal obligations.

Response: A paragraph has been added to the agreement to clarify its legal status. The paragraph says, ''This agreement signals the commitment of EPA and state environmental agencies to work together on innovations. It does not create any legal obligations for EPA or the states, and does not alter EPA's or states' statutory responsibilities or the nature of authorized or delegated state programs. Any innovations under this agreement will be implemented within our existing legal authorities using appropriate procedures.''

Dated: April 29, 1998.

J. Charles Fox,

Associate Administrator, Office of Reinvention.

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ENVIRONMENTAL PROTECTION AGENCY

[Docket No. 98F–FRL–6008–8]

Final EPA Supplemental Environmental Projects Policy Issued

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a revised, final *EPA Supplemental Environmental Projects Policy.* This Policy supersedes the May 1995 *Interim Revised Supplemental Environmental Projects Policy.* Based on experience gained implementing the Interim Revised SEP Policy, EPA has refined and clarified this Policy to better assist it in exercising its enforcement discretion to establish appropriate settlement penalties and supplemental environmental projects (SEPs) that secure significant environmental and public health improvements.

DATES: EPA will implement this Policy effective May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ann Kline, 202–564–0119, Office of Regulatory Enforcement, Mail Code 2248–A, United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: These final revisions to the EPA Supplemental Environmental Projects (SEP) Policy refine and clarify the 1995 Interim Revised Supplemental Environmental Projects Policy for easier implementation. The basic structure and operation of the Policy remains unchanged. The primary purpose of this Policy is to obtain environmental and public health protection and improvements that may not otherwise have occurred without the settlement incentives provided by this Policy. The final Policy retains the 1995 Policy framework for determining whether a proposed project can be considered in establishing an appropriate settlement penalty. In addition, this Policy also sets out clear legal guidelines, well-defined categories of acceptable projects and simple easy-to-apply rules for calculating and applying the cost of a SEP in determining an appropriate settlement penalty.

The most significant changes made to the 1995 Interim Revised Policy include: (1) Explicit encouragement of community input into the development of SEPs in appropriate cases; (2) a prohibition on using SEPs to mitigate claims for stipulated penalties except in extraordinary circumstances; and (3) the creation of an ''other'' category, under which projects that do not fit within a defined category of this Policy but otherwise meet all other criteria of the Policy may be approved under certain procedural requirements. A full copy of this Policy is set forth below and also may be found at U.S. EPA's Web site at http://www.epa.gov/oeca/sep.

Dated: April 10, 1998.

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance, United States Environmental Protection Agency.

A. Introduction

1. Background

In settlements of environmental enforcement cases, the U.S. Environmental Protection Agency (EPA) requires the alleged violators to achieve and maintain compliance with Federal environmental laws and regulations and to pay a civil penalty. To further EPA's goals to protect and enhance public health and the environment, in certain instances environmentally beneficial projects, or Supplemental Environmental Projects (SEPs), may be part of the settlement. This Policy sets forth the types of projects that are permissible as SEPs, the penalty mitigation appropriate for a particular SEP, and the terms and conditions under which they may become part of a settlement. The primary purpose of this Policy is to encourage and obtain environmental and public health protection and improvements that may not otherwise have occurred without the settlement incentives provided by this Policy.

In settling enforcement actions, EPA requires alleged violators to promptly cease the violations and, to the extent feasible, remediate any harm caused by the violations. EPA also seeks substantial monetary penalties in order to deter noncompliance. Without penalties, regulated entities would have an incentive to delay compliance until they are caught and ordered to comply. Penalties promote environmental compliance and help protect public health by deterring future violations by the same violator and deterring violations by other members of the regulated community. Penalties help ensure a national level playing field by