Department of
Environmental Protection

Lawton Chiles
Governor

South District
2295 Victoria Avenue, Suite 364
Fort Myers, Florida 33901-3881

Virginia B. Wetherell
Secretary

Regulatory Reinvention Pilot Projects FRL -5197-9
Water Docket, Mail Code 4101
US Environmental Protection Agency
401 M Street SW
Washington DC 20460

August 16th 1995

AUG 21 1995

XL PROJECT PROPOSAL

Dear Madam or Sir,

Pursuant to the President's ***Reinventing Environmental Regulation*** initiative, we would like your concurrence to proceed with a demonstration project . The project would involve an innovative approach to the permitting and operation of an industrial facility, which we believe will result in:

- Enhanced Environmental results,
- A reduction in Costs to the Facility Operator
- A reduction in Costs to the permitting agencies
- A reduction and simplification in paperwork activity

The project has the full support of all stakeholders, and is transferable to a large number of other facilities upon successful implementation. Meetings with all participants in the permitting process have led us to believe that the project is feasible and has a good prospect of success. All parties have the financial capability for carrying the project forward.

Summary:

The project involves a **one-stop** approach to the permitting of an existing citrus juice plant, and will utilize an innovative approach to regulatory compliance. Specifically, we propose to allow the applicant to prepare a **Comprehensive Operating Plan (COP)** for the facility, which will include **all operating procedures** to be used by the plant employees. Each agency with a regulatory interest in the facility will review and accept the **COP** as being sufficient to ensure that their own regulations and concerns are being addressed. The Florida Department of Environmental Protection will take the responsibility for coordinating the input and review of all agencies having a permitting interest in the facility. A team-based approach will be utilized to ensure timely input and consensus-building

The **COP** would be effective for twenty years, and would serve as the reference for all future compliance and enforcement activities.

The concept was proposed by a regulated facility, and has been discussed with all interested permitting agencies, federal, state and county, and all are highly supportive of this approach, and have committed to be responsive to the process.

Background:

This project has resulted from an initiative within the Florida Department of Environmental Protection to develop an Ecosystem approach to managing the environment. It was developed in meetings held by the Agricultural Permitting Streamline Group, which is an offshoot of the Incentive-Based Regulatory Alternatives Committee, one of the architects of the Ecosystem Management Implementation Strategy.

During those meetings, industry representatives have informed the Department of the difficulties that the private sector encounters when attempting to comply with the regulatory process, specifically:

- The process is complicated, time consuming, costly, and uncertain in its outcome, making it increasingly difficult to compete in a world market. Ernie Caldwell of the Jack M. Berry Corporation has spent a good part of the past 18 months attempting to persuade the various agencies that regulate the Citrus industry that there might be a more effective way of managing the permitting process.

- As an example, the LaBelle Juice Processing facility currently is required to obtain in excess of 25 operating permits from more than a dozen agencies. Each permit has its own unique starting date and duration, and associated fee. In most cases, permit renewal involves the need for consultants to prepare and certify the application, even though no changes have typically been made in the plant operation.

- The current approach to environmental regulation requires plant operating employees to be familiar with the content and intent of government regulations and permits. In practice, this rarely occurs, yet these are the individuals who have the most opportunity through error or omission to cause environmental harm.

- Although such facilities are typically financed over twenty years, permits are rarely issued for more than five years. This is perceived by the banking community to increase the risk of payback, resulting in higher interest rates.

- In many cases, the permitting agencies are focused only on their own particular specialty area, and are not aware of, nor are they interested in the other permitting activities involved at the site. Frequently, the monitoring and reporting requirements are different, and no review is usually made of the overall impact of the entire facility on the environment.

The Parties Come Together:

On Wednesday, July 19th 1995, senior officials from a dozen agencies met with Berry Corporation staff to discuss the situation. Agency Representatives included:

Governor's Office, State of Florida
US Environmental Protection Agency
US Department of the Interior
Florida Game & Fresh Water Fish Commission

Florida Department of Environmental Protection
Suwanee River Water Management District
South Florida Water Management District
South West Florida Water Management District
Hendry County, Florida

Almost all of the attending officials held policy-making or policy-influencing positions.

During the meeting, Mr. Caldwell proposed his alternative approach to permitting the juice plant, and for four hours the subject was thoroughly discussed by all parties.

Most significant during the discussions was the extremely positive attitude of those present - each recognized that the present approach to regulation needs improvement and a demonstrated a willingness to try something different. The expression "let's just do it!" was heard frequently.

EPA officials felt that this project was eminently qualified for MS. Browner's new XL initiative and promised their support to providing the necessary relief from the letter of agency rules, provided the intent is met, and the environment adequately protected. Colonel Rock Salt , Inter-agency Coordinator for US Dept. of the Interior Task Force provided considerable encouragement and enthusiasm.

Water Management District representatives, including an Executive Director, indicated that they had been trying to implement similar activities in recent months, and would be most responsive to this initiative.

The County administrator from Hendry County, where the LaBelle facility is located, promised his support and cooperation, as did the Bureau Chief from G&FWF.

Proposed Action:

Berry Corporation would like to start immediately preparing the **Comprehensive Operating Plan.** They envision that it will be written in user-friendly language that the plant operators can understand. Those instructions that are mandated by statutes, regulations and rules will be highlighted, and annotated so that the operator is well aware that deviation from those particular procedures is not acceptable. (Berry will make adherence to the procedures a condition of employment.).

Staff from each agency will assist in the preparation and review of the **COP,** offering input reflecting our familiarity with the rules, and also provide some holistic oversight with respect to the operation of the entire facility. Many agency staff also have technical expertise from association with industrial facilities and will share that knowledge and advise during the review process.

When the draft **COP** is complete, each regulatory agency will issue a single-page pro-forma permit, certifying that, if the facility is operated in accordance with the referenced **COP,** then the intent of their regulations will have been met.

As the process begins, we will need to develop procedures for future modifications to the COP, and also interagency understanding for multi-media inspection and enforcement actions.

Compatibility with the XL Program:

The project qualifies under the category: XL Projects for facilities. The Florida Department of Environmental Protection believes that this project will provide an opportunity to demonstrate excellence and leadership in serving the regulated community. We are seeking from the USEPA some flexibility in replacing the current permitting system with an alternate approach.

Environmental Results:

The facility proposed for the pilot project is currently in operation, has the required operating permits and is generally in compliance with the regulations. The proposed approach offers several opportunities to improve environmental results:

1. By simplifying the permitting process, the facility owner expects to realize significant operating cost reductions, part of which the company is willing to reinvest in meeting environmental standards more stringent than the law requires.
2. By allowing the permitting agencies to participate in the preparation of facility operating manuals, written in a user-friendly format, there is an expectation of greater understanding of, and compliance by the plant operators with environmental standards.
3. A net environmental benefit is expected to accrue from the holistic overview of the entire facility as a pollution source, rather than an analysis by individual medium. The permitting team will have the opportunity to propose changes to the operation which can potentially reduce the use of chemicals, water and other resources.

Cost Savings and Paperwork:

The cost of preparing a single permit renewal application, once every twenty years, together with the associated cost of reviewing and approving this application by the permitting agencies will yield a cost reduction for this one facility of several million dollars over the life of the permit. Savings will accrue to both the agencies and to the permittee.

The paperwork associated with the submittal and processing of the current portfolio of twenty-five permits, with a typical life of three to five years will be eliminated. It is not unreasonable to predict a reduction of over thirty thousand pages of associated paperwork from the process.

Stakeholder Support:

The proposer of this innovative approach, the Jack M. Berry Corporation, owner of the Labelle, FL juice plant, is most enthusiastic about the potential benefits of this project.
The local county government, and all interested state agencies have indicated at least verbal support of this project.

Innovation/Multi-media Pollution Prevention:

This will be a major milestone in the way in which environmental permitting agencies look at a facility. Historically, various programs have looked at specific "end-of-pipe pollution sources, without knowing or caring how each discharge was impacted by the overall operation of the plant. Now we have the opportunity to view the facility as a single entity, and view its impact on the environment from a "bubble" perspective, with the potential for a net overall improvement in its performance.

Another innovative aspect to this project is that government will be attempting to understand how industry operates, versus the traditional pattern where industry has been expected to learn and understand how the regulatory system works.

Transferability:

There are currently twenty-four similar juice processing facilities in the State of Florida, all of which could be eligible candidates for future use of this permitting approach. A similar approach could be transferable to other industrial facilities.

Feasibility:

All parties to this project have the financial capability, staff expertise and motivation to make it succeed. Some administrative accommodations will need to be made, particularly in the area of rules.

The proposed permitting approach is significantly different from the traditional application/review/issuance process. Currently, a permit is delivered to the permittee which describes in somewhat arcane language the regulatory standards and conditions which must be met. There is then no process to ensure that the terms of the permit are transferred to the operating employees, or are understood by them. Frequently, clarifications are made during later regulatory inspections and enforcement activity, usually resulting in the build-up of animosity between the parties.

The new approach is perceived as partnership between the parties where both industry and government are seeking the same result. It is only recently that the political climate has enabled regulatory agencies to have the flexibility to implement this type of process.

This project seeks from the USEPA the administrative latitude to deviate from the traditional permitting approach in favor of the certification of a Comprehensive Operating Manual.

Monitoring, reporting and evaluation:

The costs and paperwork associated with the current permitting requirements are already well documented. The costs and paperwork required by the new approach will be tracked and reported by both the applicant and the permitting agencies.

The specific higher environmental standards and procedures commitments by the applicant will be clearly identified in the **COP**.

Compliance and enforcement activity at the facility conducted by the interested agencies will be documented, compiled and reported.

Any concerns expressed by the public will be documented, together with the responses and any changes made to the COP to address them.

Shifting of risk burden

The project involves an existing facility, located in a rural area with no significant disadvantaged community within five miles. Worker health and safety will be specifically addressed in the Comprehensive Operating Manual. All requirements of Executive Order 12898 on Environmental Justice will be met.

Conclusion:

We are very excited about this project, and believe that it will accomplish many desired effects, including:

1/ Improved environmental consciousness by the regulated community
2/ Improved compliance with environmental standards
3/ Simplified procedures for permitting
4/ Enhanced perception of government by the regulated community, and
5/ The opportunity to evaluate the overall impact of an industrial facility, rather than the myopic review of the various regulated parts.

We also believe that the concept and process is easily transferable to other similar industrial facilities, resulting in similar positive impacts..

We look forward to your early response to this proposal.

Yours Sincerely,

Virginia Wetherell

Virginia B. Wetherell, Secretary

Department of Environmental Protection

Lawton Chiles
Governor

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Virginia B. Wetherell
Secretary

January 17, 1996

Mr. David Gardiner
Assistant Administrator
Regulatory Reinvention Pilot Projects
FRL-5197-9
Water Docket, Mail Code 4101
Environmental Protection Agency
401 M Street, Southwest
Washington, D.C. 20460

XL Project Proposal - Clarification

Dear Mr. Gardiner:

Thank you for your letter of November 13, 1995, requesting supplemental information concerning this proposal. We are pleased to provide the following clarifications, which we trust will enable you to make an informed judgment on its feasibility.

1) **Environmental Performance** - The project anticipates several areas where environmental performance should improve as a result of the new approach to permitting. They are:

Improved compliance with existing rules. The Comprehensive Operating Plan (COP) will be prepared in large part by plant operations personnel. First-level staff will be directly involved in the preparation of written operating procedures. As a result, we expect that there will be a better understanding of how their actions can negatively impact the environment, and what actions can be taken to prevent this. The involvement of plant employees in the process is expected to result in better buy-in and compliance with responsible environmental behavior.

Voluntary Higher Standards. The facility owner has committed to reinvest a part of the savings realized from reduced permitting activity into environmental upgrades. This will include the addition of pollution control and monitoring equipment and processes, testing protocols and the adoption of best management practices more stringent than the requirements of existing rules and standards.

One example of this is the voluntary adoption of international environmental and quality control standards such as ISO 4000, ISO 9000 and ISO 14000. Another example is the voluntary use of continuous emissions monitoring equipment (CEM) on discharge points such as the boiler stacks, where rules currently only require intermittent testing.

Recognition of Alternate Processes. The facility has chosen to voluntarily construct an artificial onsite wetland to manage and process treated wastewater discharges. Water from this area will be utilized to irrigate the adjacent citrus groves. As a result, there is no wastewater discharge from the facility. The facility received a permit for discharge of 400,000 gpd to surface waters. The facility nonetheless chose the more expensive, but more environmentally responsible alternative. The new approach to permitting will provide a mechanism to recognize this type of action in reviewing the overall environmental impact of the facility.

2) **Permit Duration and Review** - The Comprehensive Operating Plan (COP) approach to permitting recognizes that the facility is expected to change very little during its operational life. Thus, permit renewals, while expensive and time consuming, are usually routine, and repetitive in nature. The proposed process envisions a five-year permit, with a simplified automatic renewal up to a cumulative total of twenty years, subject to several conditions. These conditions would include the following:

a) Exemplary compliance history during the preceding five years

b) Opportunity for public comment and input

c) Upgrade of the facility to include best current operating practices and technology.

All of the agencies listed in our initial application are expected to be party to the proposed permitting process, and are expected to be signatories to a memorandum of understanding, a draft of which is attached for your information. A list of all permits currently issued to the facility, which will be supplanted by the COP is also attached, per your request.

3) **Stakeholder Support** - The Berry Corporation facility is located five miles from the nearest community (LaBelle, FL), and is essentially surrounded by 10,000 acres of citrus groves. Nevertheless, we recognize the importance of community input to provide increased accountability. The following are some of the steps we plan to take in order to include the community in the permitting process:

a) Selection of a Citizens Advisory Council to provide input and review of the draft COP. This council will include responsible environmental advocates, as well as local community activists from LaBelle.

b) Public Outreach concerning the permitting process. Publication of the draft COP in the community prior to issuing a notice of intent to issue. We plan to hold public meetings in the area to provide for citizen input and comment, since this is a new approach to permitting.

c) We will also solicit the advice, coordination and input of the LaBelle Chamber of Commerce, and the Regional Economic Development Initiative (REDI) which encompasses Hendry and the adjacent four counties.

Thank you for your interest in our project. We apologize for leaving out some of the details, which was done in the interest of providing a more concise, and more readable application. We look forward to your early favorable decision on the project.

Sincerely,

Virginia Wetherell

Virginia B. Wetherell
Secretary

VBW/pwp
Enclosure
cc: Bill Patton
Michael Phillips
Ernie Caldwell
Peter Ware

DRAFT

Memorandum of Agreement
between
Industry and Government
concerning the
Comprehensive Operating Plan Concept

I Purpose

The purpose of this agreement is to establish mutual objectives and procedures to be utilized in developing a Comprehensive Operating Plan for an industrial facility. The Comprehensive Operating Plan hereinafter referred to as the COP,will replace all existing regulatory environmental permits issued by federal, state and local agencies. (See attached)

II Background

Agricultural and industrial operations are often subject to multiple permits with varying duration, necessity continuous to prepare renewal applications. In many cases, no change to the original permit ensues.

The current approach to permitting and regulation is highly compartmentalized, within each agency, and sub-division of each agency, focused on a limited spectrum of environmental issues. As a result, opportunities for net environmental benefit are sometimes missed, and unnecessary costs are sometimes incurred by both government and the regulated community.

Regulatory staff have significant expertise in environmental management practices which could be of benefit to applicants. This resource is often wasted, when their responsibilities limit them to reviewing the applicant's permit application.

Few incentives, and in some cases disincentives, exist to report deviations from permit conditions in a timely manner - especially when such deviations are discovered during a "self-audit". As a result, harmful effects to the environment may linger on, or may never be brought to light.

III Objectives and Incentives

The objectives and expectations of the parties to this agreement include:

Government	*Industry/Agriculture*
Improve compliance with regulations	Improve compliance with regulations
Net improvement in the environment	Net improvement in the environment
Reduce costs of permit review and field inspection	Reduce costs of permit renewal applications
Better working relationship with the regulated facility	Better working relationship with government
Simplify paperwork and reporting	Reduce complexity in rules and paperwork
Opportunity to train staff in *place-based management, and cross-media permitting* and compliance	Certainty - long-term assurance of business operation
Create a process that may be transferable to other facilities	COP to replace current short-term permits

IV Implementation

In the development and implementation of the COP, the parties agree to utilize the following techniques to the greatest extent economically and environmentally in order to achieve the stated objectives:

Government	*Industry/Agriculture*
Courtesy Inspections	Employee Training
Technical Support	Higher Emissions Standards than required by rule
Operating Procedure Review	Employee Involvement/Empowerment
Holistic Approach - consider impact of facility on entire ecosystem	Self-Audit

Open communications	Open communications
Team Permitting	Revise policies to require staff to comply with COP as a condition of continued employed
Revise approach to penalty assessment to reflect real impact of violation	Apply Best Management Practices
Implement a "Self-Audit" process that will encourage facilities to review their compliance without the data being used to punish them	Upgrade technology to incorporate Best Available Control Technology
5 year renewal of COP	5 year renewal of COP

The Department of Environmental Protection will accept lead agency role, for coordinating the review of the Comprehensive Operating Plan with all other affected agencies.

V Duration

This agreement is intended to cover the period during which the Comprehensive Operating Plan is being developed, reviewed and approved by all parties. In the event that items are discovered during the implementation of this project that require remediation and/or violate current regulations, all parties agree to cooperate to resolve the item expeditiously and within the spirit of this agreement.

This innovative approach to regulation will require significant flexibility to modify existing federal, state and local permitting processes. A federal XL project has been requested from USEPA to facilitate this.

A strategic objective is for this pilot project to be completed prior to the 1996 legislative session. Hence, this approach can be described and demonstrated to the members during the session as an example of a better way to do business between government and the regulated community.

This agreement will be superceded upon the issuance of the Comprehensive Operating Plan.

Any party may terminate their inclusion in this agreement at any time upon 60 days written notice to the other parties.

VI Signatures

LABELLE PLANT - INDUSTRIAL PERMITS

PERMIT	PERMIT #	ISSUED	EXPIRES
Boiler #1	A026-161244	3/23/89	3/23/94
Boiler #2	A026-162365	4/18/89	4/16/94
Boiler #3	A026-230947	10/19/93	10/19/98
Dryer	A026-161241	3/23/89	3/23/94
Drinking Water	WC26-227842	4/7/93	4/7/98
Industrial WW/GW Men.	[illegible]	[illegible]	11/10/95
Domestic wastewater	IN1-94	9/23/93	10/1/94
SARA 111	33935		3/1/94
Stormwater Runoff (EPA)	in progress		

LABELLE PLANT - OPERATING PERMITS/LICENSES

County Occup.Lic.	391500-08561152		9/30/94
Citrus Con. Op. Lic.	4009	8/2/93	7/31/94
Citrus Fruit Dealers Lic.	317	8/2/93	7/31/94
Bureau of ATF			
Food Establishment Lic.	L14-92		9/30/92

RADIO STATION LICENSES

LaBelle Harvesting Tow.	9005500376	7/6/90	7/6/95
Berry Citrus Land hds.	9103331399	4/9/91	4/9/95
Fellsmere Tower	9105540922	8/13/91	6/13/96
LaBelle/W.Haven Tower	9005500375	7/6/90	7/6/90
Lake Placid Tower	[illegible]	[illegible]	[illegible]