FINAL PROJECT AGREEMENT

ELMENDORF AIR FORCE BASE

AIR QUALITY ENVVEST INITIATIVE

PREAMBLE

This Final Project Agreement ("FPA" or "Agreement") is prepared in support of President Clinton's Reinventing Environmental Regulation Initiative. This Agreement states the intention of the United States Environmental Protection Agency (EPA), Elmendorf Air Force Base, Alaska ("Elmendorf" or "base"), and the Alaska Department of Environmental Conservation (ADEC) (collectively hereinafter referred to as "the Parties") to carry out a pilot project pursuant to the 1995 Memorandum of Agreement (MOA) between the Department of Defense (DOD) and EPA on Regulatory Reinvention Pilot Projects,[1] testing innovative approaches to environmental protection. The program resulting from the MOA is called ENVVEST and represents an initiative to develop new approaches for meeting DOD and EPA responsibilities while achieving better environmental performance at lower cost. The ENVVEST program mirrors and supports EPA's regulatory relief efforts for industry and communities under Project XL.

Under this Agreement, Elmendorf will agree to demonstrate superior environmental performance and superior environmental technology through the implementation of an alternative-fuel vehicle program and other pollution prevention projects. The Elmendorf initiative follows President Clinton's mandate that regulatory reinvention under the Project XL/ENVVEST program put the focus on progress rather than process. The EPA and ADEC will, in return, allow Elmendorf the use of innovative means for complying with the Clean Air Act Operating Permit Program
(Title V).

DEDICATION

This agreement is dedicated to the memory of Walter Walsh of the U.S. Environmental Protection Agency. This project would not have been possible without his hard work and perseverance. Unfortunately, Walter did not live to see the fruits of his labor. His work, however, will live on in the environmental benefits that will accrue from this project.

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[1] *See* Attachment 1, "Memorandum of Agreement between the Department of Defense and the U.S. Environmental Protection Agency on Regulatory Reinvention Pilot Project," November 2, 1995.

I. Overview–Purpose of Agreement

This Agreement is a joint statement of the Parties' intentions with regard to the Elmendorf Air Quality ENVVEST Initiative. This Agreement is not intended to create legal rights or to be a contract or a regulatory action, such as a permit or rule. While it does not give rise to any rights enforceable in a legal action either to compel performance of the Agreement or for damages, it is intended to clearly state the plans of the Parties and to represent the firm commitment of each Party to carry out the project.

II. Description of the Project

A. General Project Description

According to the 1990 census, the Anchorage Metropolitan Statistical Area (MSA) encompasses 1,698 square miles and has a reported population of 226,338. Anchorage is the largest city in Alaska, and about half of all Alaskans reside within the Anchorage MSA. Anchorage is currently classified a serious nonattainment area for the federal carbon monoxide (CO) standard. The southern boundary of the base borders the Anchorage nonattainment area. Located just north of Anchorage, Elmendorf Air Force Base encompasses approximately 13,000 acres. It has more than 800 buildings, two runways, more than 150 miles of roads, and more than 7,500 personnel from all branches of the United States and Canadian armed forces. With civilian workers, retirees, and their families, the number of people associated with Elmendorf rises to nearly 25,000. Just under a third of the military people live in Elmendorf's 1,644 family housing units and dormitories, while the other families reside off base. Total economic impact of Elmendorf on the Anchorage vicinity is nearly $500 million a year.

The 3rd Wing's mission is to train and equip an Air Expeditionary Force lead wing comprised of 6,900 personnel and F-15C, F-15E, E-3, C-130, and C-12 aircraft. Additionally, the wing provides air superiority, surveillance, tactical airlift, and agile combat support forces for global deployment and maintains the installation for critical force staging and throughput operations in support of worldwide contingencies. Elmendorf provides medical care for all military forces in Alaska and hosts the Eleventh Air Force Headquarters, associated units, and tenants.

Elmendorf, like many other military installations, differs from most civilian stationary air pollutant sources, in that the base hosts and supports a wide variety of functions and activities. These include an operational airfield, residential housing, office buildings, gas stations, utilities, military police and fire departments, public schools, chapels, a hospital, dental clinics, retail stores, and recreational facilities, amongst others.

With the introduction of regulatory reinvention and the creation of Project XL/ENVVEST, Elmendorf recognized an opportunity to propose a pollution

prevention program for reduction in air pollutant emissions. The flexibility expected from application of EPA guidance regarding major stationary sources on military installations allows Elmendorf to reinvest administrative cost savings, realized from a limited applicability of the Title V permitting program. The environmental improvement comes through reduced CO emissions and other pollution prevention initiatives.

Title V has changed the approach to source-specific regulation under the Clean Air Act by requiring each state to develop and implement an operating permit program for all *Major Stationary Sources* (42 U.S.C. § 7661 *et seq.*) of air pollution and other stationary sources subject to requirements under Sections 111, 112, 129, or Title IV of the Clean Air Act. The major purpose of this program is to consolidate, in a single document,[2] all of the federal, state, and local requirements applicable to the stationary source, thereby simplifying compliance and enforcement. On December 5, 1996 (61 FR 64463-64475), EPA granted interim approval to the Alaska Permit to Operate program pursuant to the requirements of Title V of the Clean Air Act and the Code of Federal Regulations, Title 40, Part 70 (40 CFR 70).

The current Alaska operating permit program would treat the entire Elmendorf installation as a single air contaminant (AS 46.14.990(1)) emission source for the purpose of determining if a state-issued Clean Air Act Title V permit is required. The 1996 base emissions inventory, prepared by ENSR in support of the base's Title V permit application, lists 106 sources of regulated contaminants (AS 46.14.990(23)) that would need to be addressed in the permit. Using the current Alaska permitting approach, the costs of obtaining and maintaining a Title V permit would be very significant for the installation.

In order to increase the opportunities for pollution prevention efforts, the base proposes to use the Project XL/ENVVEST process to reallocate money currently earmarked for Title V permitting requirements, into several non-funded pollution prevention projects. The base intends to demonstrate superior environmental performance through the introduction of a compressed natural gas (CNG) fleet and fueling program. These alternative fuel vehicles, and the supporting infrastructure should reduce the levels of CO on the base, and support Alaska's efforts to reduce CO levels in the non-attainment area. Furthermore, the use of alternative fuel vehicles by Elmendorf will assist the Municipality of Anchorage and the State of Alaska in their efforts to demonstrate and promote the feasibility of compressed natural gas technology. Any additional cost savings will be applied to another pollution prevention project(s) agreed to by the Parties. A list of feasible projects available at the base has been developed, along with the estimated costs and environmental benefits of each. While this list focuses primarily on hazardous air contaminants (HAC) (AS 46.14.990(14)) reduction projects, Elmendorf will hold at least one public meeting to discuss these and other possible

[2] *See* preamble at 57 FR 32251.

pollution prevention opportunities. Upon concurrence of the Parties, a supplemental agreement will be developed, setting forth the project(s) selected and any necessary measures to assure their performance.

The base will accomplish this pollution prevention effort through a two-fold exercise of regulatory flexibility by ADEC and the EPA. First, Elmendorf, ADEC, and the EPA will use EPA's policy document, entitled "Major Source Determinations for Military Installations under the Air Toxics, New Source Review, and Title V Operating Permit Programs for the Clean Air Act" ("Major Source Guidance"), dated August 2, 1996. This Major Source Guidance recognizes that military installations possess unique characteristics warranting flexibility in major source determinations similar to that available to industry under EPA's regulations and policies. The Major Source Guidance allows military installations under common control to divide into functionally distinct emitting activities. The primary activities of the installation and their emission sources can be separated from the support activities and their emission sources, for example, separating emission sources directly supporting the flight line operations from emission sources such as housing. To that end, the base has utilized the Major Source Guidance to divide the 106 emission sources into eleven functionally distinct emitting activities by using common control classifications and the Standard Industrial Classification (SIC) Code manual. The control and SIC code breakout of the base can be found in
Attachment 2[3]. Major stationary sources covered by National Emission Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards will be included in the Title V permit, if applicable.[4] Based on potential to emit (PTE), a number of emission sources would be considered major stationary sources. However, only one of the emission sources, the central heating and power plant (CH&PP), is a truly major stationary source[5] based upon its actual emissions of oxides of nitrogen (NOx)
(> 100 tpy) and CO (> 100 tpy). Except for those emission sources discussed below,

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[3] For additional information see EPA Region 10 Memorandum "EPA Determination Regarding the Consistency of the Elmendorf ENVVEST/XL Project Proposal and EPA's Guidance for Military
r 5, 1999.

[4] Pursuant to EPA's policy of "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)" (Jan 25, 1995), extended by EPA on Aug. 27, 1996 and July 10, 1998, sources whose actual emissions remain below 50% of the major source threshold are not considered major sources for NESHAPS and Title V applicability purposes. If the base's NESHAP sources are determined to be below 5 tons per year (TPY) of any single HAP and 12.5 TPY total HAPs, the base will not be subject to Aerospace NESHAPs requirements or require a Title V permit for those sources. Also see Memorandum from John Seitz and Eric Schaeffer to Barbara McCallister Titled: *Special Consideration Under EPA's Potential-to-Emit Transition Policy for Elmendorf Air Force Base* (Nov 4, 1999).

[5] To be classified as a "major stationary source," a source must emit, or have the potential to emit, 100 tons per year of any air pollutant (as defined in section 302(j) of the Clean Air Act), or 10 tons per year of any hazardous air pollutant, or 25 tons per year of any combination of hazardous air pollutants (as defined in section 112(b) of the Clean Air Act).

all other regulated emission sources fall well below the major stationary source threshold.

The second avenue of regulatory flexibility is the use of a three-pronged mechanism to limit the PTE (AS 14.990(21)) of several other activities some of which are a subset of the 11 SIC Code activities discussed above. Actual emissions from these other sources are considerably below applicable major source thresholds. Consequently, the base will seek and apply limits on the potential to emit from these sources. First, the base will apply for Preapproved Limits for the thirty-nine emergency diesel engines on the flightline pursuant to18 AAC 50.230 (a, b, c and e). Second, the base will apply for Preapproved Limits for throughput of gasoline from its distribution facility (fuel tanks) pursuant to 18 AAC 50.230(a, b, d and e).[6] Third, the base will apply for a state permit to cover basewide HACs under Owner Requested Limits set forth in 18 AAC 50.225.[7] These alternative emission standards create practicably enforceable limits and are a necessary part of the permitting scheme under this project. The administrative costs associated with these PTE limits are expected to be minimal because the base already tracks much of the necessary reporting information.[8] Approval of these limits means Elmendorf will not be a major source of HACs. Without approval of these limits, Elmendorf could be considered a major source of HACs and be required to have a basewide permit.

The use of the EPA Major Source Guidance and limitations on the PTE of some sources will allow the base to streamline the Title V permit process. Consequently, only the CH&PP and several other sources subject to new source performance standards will be included in the Title V permit. This will simplify monitoring, recordkeeping, and reporting associated with Title V, and result in significant cost savings that will be applied to pollution prevention projects. The remaining emission sources will be covered by the Preapproved Limits as described above.

B. Conformity to the Memorandum of Agreement

The following section addresses criteria for consideration under the DOD/EPA Memorandum of Agreement.

1. Regulatory Flexibility

Information regarding regulatory flexibility is discussed in the preceding section.

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[6] Maximum daily throughput would be less than 19,900 gallons.

[7] Limitations on a source's ability to emit air contaminants at the request of the owner or operator.

[8] Owner-requested limits require a $300 retainer to cover Alaska's pre-application assistance, billable at $78 per hour. Preapproved limits require a processing fee of $100.

In support of this proposal, ADEC, in cooperation with EPA, will exercise regulatory flexibility by designating the CH&PP as the only major stationary source at Elmendorf, and propose approval of the scaled-down version of the base's Title V permit. ADEC will work toward inclusion of the Major Source Guidance into 18 AAC 50.

2. Cost Savings and Paperwork Reduction

Elmendorf expects to realize considerable cost savings and paperwork reduction through the application of the ENVVEST initiative. Without ENVVEST, the Major Source Guidance, and PTE limits, Elmendorf could be treated as a single major source, from fence-line to fence-line. For this scenario, the total funding requirement programmed through fiscal year 2004 is currently at $2.045M.

Under the alternative scenario of permitting the Elmendorf CH&PP as the only major source, and ADEC approval of potential to emit limits, the total funding requirement programmed through fiscal year 2004 would be reduced to $518K.

In this alternative scenario, the total reinvestment opportunity for pollution prevention projects, including an alternative-fuel vehicle program, is expected to be $1.527M. The cost of pollution prevention projects undertaken pursuant to this Agreement will not exceed Elmendorf's cost savings of this scenario.

3. Description of Stakeholder Involvement

Starting in the spring of 1997, the base began presenting the ENVVEST proposal to various groups in the community. Those groups included three local community councils, a municipal transportation committee, and the base restoration advisory board. The proposal was also presented to the 1998 EPA Region X Federal Facility Conference and at an ENVVEST public meeting held in Anchorage March 8-9, 1999. Additionally, notices have been placed in the Anchorage Daily News to inform the public about the FPA and make it available for review. See the attached "ENVVEST Public Outreach Plan, Elmendorf Air Force Base" for more details on future stakeholder involvement (Attachment 3).

4. Environmental Results: Innovation/Pollution Prevention

It is the intent of the Parties to reinvest the Title V savings into environmentally significant pollution prevention projects. One of the pollution prevention projects that will take place is the installation of a compressed natural gas

(CNG) fueling station on the base, the conversion of certain base fleet vehicles to be capable of using CNG as well as the procurement of dual fuel and dedicated CNG fuel vehicles. The exact number of vehicles that will become CNG capable has not yet been determined. The base has an active CNG working group composed of members from the Civil Engineering Squadron and Logistics Group that are in the process of developing the details of the fleet. The most likely scenario is to convert a combination of light-duty and heavy-duty vehicles and acquiring dual fuel and dedicated CNG vehicles. Converted vehicles will be tested to ensure they result in reduced emissions, manufactured dual fuel and dedicated fuel vehicles will also be analyzed to ensure positive environmental performance.

The cleaner-burning CNG vehicles will contribute to reduced carbon monoxide (CO) emissions for Elmendorf and will demonstrate to the general public that this level of technology is achievable and beneficial. Carbon monoxide is a product of the incomplete combustion of fossil fuels and is emitted directly from the tailpipe of vehicles. Carbon monoxide enters the bloodstream through the lungs and forms carboxyhemoglobin, a compound that inhibits the blood's capacity to carry oxygen. People with heart disease are particularly sensitive to CO poisoning. Infants, the elderly, and individuals with respiratory diseases are also sensitive receptors. Carbon monoxide can also affect healthy people by impairing the capacity to exercise, visual perception, manual dexterity, learning functions, and the ability to perform complex tasks.

Elmendorf has assembled a list of other feasible pollution prevention opportunities available at the base, along with the estimated costs and environmental benefits of each opportunity. The Parties have discussed the opportunities for HAC reduction projects. The Parties agree to meet in a public forum to discuss selection of the opportunities called for under this Agreement. Upon agreement of the opportunity or opportunities by the Parties, they will sign a supplemental Agreement no later than September 30, 2001, setting forth the opportunities selected and any necessary measures to assure their performance.

5. Transferability, Feasibility, Monitoring, Reporting, and Evaluation

a. Transferability

This initiative is a pilot program, which implements a new approach to air pollutant source permitting and administrative management. The ultimate goals of this initiative are 1) to demonstrate the feasibility of alternative-fuel vehicles in the Anchorage area, and 2) to reduce air pollution by way of prevention at the source. A demonstration of the environmental benefits achieved from this approach may justify the

transfer of this type of initiative to similar DOD installations. The alternative-fuel vehicle program has the potential for technology transfer to other entities that are interested in a similar program. It will also be useful as a template for DOD installations located near urban areas, which are currently considered significant markets for alternative-fuel vehicles.

b. Feasibility

It is estimated that the administrative cost savings realized through this initiative will be $1.527M. These savings will be available for investment into pollution prevention for the alternative-fuel vehicle program and another project(s). It is estimated, at this point in time, that the cost distribution will be approximately $1,000,000 into the alternative-fuel vehicle program and $500,000 in another project(s). Administratively, the proposal is feasible. Mechanisms are in place to allow for permit and procedural flexibility.

c. Monitoring, Reporting, and Evaluation

It is anticipated that evaluation of the project will be accomplished on several fronts. Elmendorf will work closely with EPA, ADEC, and the Municipality of Anchorage to determine how the CNG technology demonstration and initiatives at Elmendorf can contribute to the overall air quality improvement efforts in the Anchorage area. Elmendorf will continually evaluate the CNG program over the life of the ENVVEST project to demonstrate the viability of alternative-fuel vehicle programs in Anchorage. Criteria and milestones for evaluating the success of the other project(s) will be decided upon when the project(s) is/are chosen.

The ENVVEST Team will inform the stakeholders as the project evolves, in accordance with the Public Outreach Plan. Elmendorf will prepare progress reports at least annually, in conjunction with submittal of the facility operating report to ADEC or on a basis agreed to by all stakeholders, which will document progress toward the stated goals of this proposal.

6. Environmental Justice pursuant to Executive Order 12898

The Parties do not expect that any unjust or disproportionate environmental impacts will be realized as a result of this project.

III. Implementation of the Elmendorf Initiative

A. Elmendorf Responsibilities

The alternative-fuel vehicle program will be phased over the six-year period, with the construction of the fueling station commencing in 1999. Elmendorf awarded a construction contract for the compressed natural gas fueling station in 1999, with an anticipated completion in 2000. Fleet vehicle conversion will begin concurrent with the completion of the CNG infrastructure.

The additional pollution prevention project(s) will be initiated prior to expiration of this Agreement, and will be funded with the cost savings over and above what is applied to the CNG project.

Preliminary milestones are as follows:

- Late 1998/Early 1999 – Complete design for CNG fueling station (Complete)
- FY 2000 – Begin construction of CNG fueling station
- Late 1999/Early 2000 – Begin vehicle conversions/purchases
- Before end of FY 2001 – Supplementary Agreement on additional pollution prevention project(s)

B. ADEC Responsibilities

The ADEC will provide technical assistance to Elmendorf regarding opportunities for HAC and criteria pollutant emission reductions. As the permitting authority for the State of Alaska, ADEC will be responsible for expeditious development and public notice of a draft operating permit(s) and for making a final permit determination pursuant to 18 AAC 50.340. ADEC will, to the maximum extent practicable, assist Elmendorf in developing an approvable permit application. ADEC will implement EPA's August 2, 1996 guidance 'Major Source Determinations for Military Installations Under the Air Toxics, New Source Review, and Title V Operating Permit Programs of the Clean Air Act' as it applies to the base, by issuance of a Title V permit. ADEC will also assist Elmendorf with efforts to calculate the PTE of emission sources on the base, taking into account pollution control equipment and enforceable operating limitations due to the use of pre-approved or owner-requested limits and expeditiously approve the owner-requested limits.

C. EPA Responsibilities

EPA will also provide technical and administrative assistance to Elmendorf and ADEC in their pursuit of this Agreement. A portion of that assistance will involve review and approval of the manner in which the sources on the base will be segregated by SIC

code. EPA will review and, as appropriate, approve the regulatory relief approaches adopted by ADEC.

IV. Administration of the Agreement

A. Duration and Renewal of Agreement

This FPA expires 5 years after effective date of the agreement. Notwithstanding expiration of this FPA, it is the intent of the Parties that this Agreement will result in permanent reductions of criteria pollutant air emissions from Elmendorf and that Elmendorf will continue to benefit from the regulatory flexibility provided through this Agreement. The Parties agree to make good faith efforts to carry out this intent when Elmendorf's Title V operating permit(s) and any necessary supporting Agreements come up for renewal.

B. Funding

Upon execution of this Agreement, Elmendorf will redirect, with the assistance of its major command, Headquarters, Pacific Air Forces, Hickam Air Force Base, Hawaii, Title V permit funds required to implement program emission reduction projects. The following projected funding strategy has been agreed to:

FY 99…….$550,000

FY 00…….$170,000

FY 01…….$200,000

FY 02…….$200,000

FY 03…….$207,000

FY 04…….$200,000

TOTAL……...……$1,527,000

All funding commitments by Elmendorf will be subject to approved funding and will be in accordance with the Anti-Deficiency Act (31 U.S.C. 1341). Pollution prevention projects will be funded from the funds estimated to be available in the totals identified above. If the costs of implementing the Title V permit and enforceable potential to emit limits exceed the amount currently estimated, those costs will be deducted from the funds programmed for ENVVEST, in the year where required. All Parties agree that administrative costs should be minimized to enhance the benefits of pursuing this initiative.

C. Effect of Future Changes to Regulations or Emission Sources

Future changes to regulations or emission sources, such as new EPA regulations, changes to EPA regulations and/or ADEC rules, the addition of new emission units at the base, or changes in emissions at the base, could affect the scope and coverage of the Title V and potential to emit permits for the base. Nothing in this FPA affects the obligation of the base to comply with any future regulations or requirements.

D. Events Preventing Implementation of Agreement

If at any time during implementation of this FPA, Elmendorf determines, and EPA and ADEC concur, that any requirement of such Agreement cannot be met due to circumstances beyond the control of Elmendorf (including, but not limited to, materially changed site conditions that could not reasonably have been anticipated, insufficient availability of appropriated funds, or the significant failure of an innovative technology) Elmendorf, EPA, and ADEC will use their best efforts to negotiate mutually acceptable changes to this FPA.

If during FPA implementation, all opportunities for dispute resolution are exhausted and this FPA is terminated after a permit application completeness determination is rendered under 18 AAC 50.340, the base will be required to submit a revised Title V permit application. ADEC will notify the base in writing of that requirement, describing in particular the information requested. Elmendorf will have 12 months from the date the notification is received to submit its revised application.

E. Dispute Resolution

Any dispute that arises with respect to the meaning, application, implementation, interpretation, amendment, termination, or modification of the FPA, the resolution of which is not expressly provided for in the FPA, will in the first instance, be the subject of informal negotiations. To initiate informal negotiations, any signatory, which believes it has a dispute with any other party, will simultaneously notify all of the parties, in writing, setting forth the matter(s) in dispute. If the dispute cannot be resolved by the

parties within 30 days of receipt of such notice, then one or both parties may invoke non-binding mediation by setting forth the nature of the dispute, with a proposal for its resolution, in a letter, and submit it to a three-person dispute resolution committee consisting of one member designated by each party.

F. Public Records and the Administrative Record

Elmendorf will issue, within 90 days of execution of this Agreement, and every year thereafter, until completion of the Agreement, progress reports, which document progress toward goals, established by this Agreement. The reports will document equipment changes and replacement, process changes, and other relevant facts, which support any assertions of actual emission reductions or the progress thereof, or successes and benefits achieved through the alternative-fuel vehicle initiative and other pollution prevention project(s) implemented. The reports will be provided to EPA, ADEC, and any interested party that requests such reports. In addition, Elmendorf shall maintain a central records repository to maintain a copy of all ENVVEST related materials for at least five years after the Agreement expires.

G. Enforcement

While this Agreement is not legally binding, the requirements of 18 AAC 50, Air Quality Control, the terms and conditions of the Title V operating permit, and any pre-approved or owner requested limits are legally enforceable.

H. Periodic Review and Evaluation Activities

Each party will review this Agreement on an annual basis to measure progress towards mutually agreed milestones. The review will be an evaluation of the progress towards achieving the objectives of this Agreement.

I. Means of Giving Notice

When giving notice with regard to FPA modification or termination, the Parties will contact the FPA signatories in writing. Informal communication may be given by phone or in writing to the following contact offices:

Environmental Flight Chief
U.S. Air Force, Elmendorf Air Force Base
3 CES/CEV
6326 Arctic Warrior Drive

Elmendorf AFB, Alaska 99506-3240

Deputy Regional Administrator
United States Environmental Protection Agency, Region 10
1200 Sixth Avenue
Seattle, Washington 98101

Director Air and Water Quality Division
Alaska Department of Environmental Conservation
555 Cordova Street
Anchorage, Alaska 99501-2617

J. Effective Date

This Agreement is effective upon the date of the last signature by the Parties.

JONATHAN S. GRATION
Brigadier General, USAF
Commander, 3rd Wing

CHUCK CLARKE
Regional Administrator
United States Environmental Protection Agency, Region 10

MICHELLE BROWN
Commissioner
Alaska Department of Environmental Conservation

List of Attachments

1. Memorandum of Agreement between the Department of Defense and the U.S. Environmental Protection Agency on Regulatory Reinvention Project, November 2, 1995

2. SIC Code Division of Elmendorf AFB

3. Elmendorf AFB ENVVEST Public Outreach Plan

4. Public Comments and EPA's Response to Public Comment

Attachment
1

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

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

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

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

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

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

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

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

ARTICLE I. OBJECTIVE

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

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

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

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

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

ARTICLE II. RELATIONSHIP OF CO-REGULATORS

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

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

ARTICLE III. PILOT PROGRAM FOR ENVIRONMENTAL REGULATORY REINVENTION

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

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

appropriate and as consistent with resource constraints, actively cooperate in the defense of such action.

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

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

e. EPA AGREES to seek, prior to entering into a Final Project Agreement, the legal flexibility necessary to implement such Agreement. EPA shall upon the request of the DoD provide technical expertise in the area of pollution prevention and in other areas identified in the Final Project Agreements to DoD and the facilities participating in the Final Project Agreements, at no charge to DoD or to the facility. Further, EPA shall cooperate in the effort to develop better and more cost-effective ways of achieving environmental protection at each pilot facility. EPA shall marshall its resources to provide regulatory relief through such means as enforcement mechanisms (including compliance agreements or consent orders), the fundamentally Different Factors Variance, and the Innovative Technology Waiver, all on a timely basis.

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

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

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

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

1. Environmental results. Each facility candidate, through implementation of the Final Project Agreement, should achieve better overall environmental results than expected under existing regulatory approaches.
2. Cost savings and paperwork reduction. Implementation of the contemplated Final Project Agreement should produce cost savings; increase the cost effectiveness of DoD's environmental investments; and decrease the paperwork burden.
3. Stakeholder support. The extent to which DoD and EPA seek and achieve the support of parties that have a stake in the environmental impacts of individual programs is an important factor. Stakeholders include communities near the project, local, state, or tribal governments, businesses, and environmental and other public interest groups.
4. Innovation/Multi-Media Pollution Prevention. Projects should test innovative strategies for achieving environmental results. These strategies may include processes, technologies, or management practices. Programs that embody a systematic approach to environmental protection and that test alternatives to several regulatory requirements and/or affect more than one environmental medium are preferred. Further, programs that include projects that protect the environment primarily through source reduction and preventing the generation of pollution rather than by controlling pollution once it has been created are especially highly valued.
5. Transferability. Projects should test new approaches and technologies that could conceivably be incorporated into DoD facilities on a wide scale, and/or could help EPA to decrease the cost of regulatory compliance by DoD and the regulated community generally.
6. Feasibility. Projects should be technically and administratively feasible and DoD should commit the financial resources to complete the projects within the time frames agreed to in the Final Project Agreements. EPA should commit the regulatory resources necessary to make completion of the projects within those time frames practicable.
7. Monitoring, reporting and evaluation. Projects should have clear objectives that will be measurable and which will be measured in order to allow EPA and the public to evaluate how well the project has met those objectives. DoD should be clear about the time frame within which results will be achievable.
8. Worker Safety. Projects should not create worker safety hazards.
9. Environmental Justice. Projects should not create disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.

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

ARTICLE IV. INTERAGENCY COMMUNICATIONS

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

For DoD:

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

For the U.S. Environmental Protection Agency:

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

ARTICLE V. EFFECTIVE DATE AMENDMENT AND TERMINATION

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

ACCEPTANCE for the Department of Defense:

BY:

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

ACCEPTANCE for the U.S. Environmental Protection Agency:

BY:

Steven A. Herman
Assistant Administrator
for Enforcement and Compliance Assurance
United States Environmental Protection Agency
Washington, D.C. 20460

Attachment
2

Sources not under common control

SIC Code	SIC Title
35	Construction, mining and Materials handling equipment (asphalt plant-contractor)
55	Gasoline service stations (AAFES-amenity)

Sources under common control, separated by SIC Code

SIC Code	SIC Title
45	Transportation by air (flightline operations)
48	Communications
49	Electric and gas utility services (CH&PP)
65	Real Estate (housing)
75	Automotive repair and gasoline service stations (non-AAFES)
80	Health services (hospital and clinics)
87	Engineering, accounting, research, management and related services
92	Justice, public order, and safety (fire and police)
97	National security (military weapons)

Attachment
3

ENVVEST

Public Outreach Plan

Elmendorf Air Force Base

Prepared By
Elmendorf Air Force Base
Alaska

Public outreach and education are a vital component of a successful environmental program. This Public Outreach Plan outlines the means by which the public and regulatory community (hereinafter referred to as 'Stakeholders') will be afforded the opportunity to gain active involvement in the ENVVEST initiative at Elmendorf Air Force Base, Alaska (hereinafter referred to as 'Elmendorf').

STAKEHOLDER IDENTIFICATION

Elmendorf requests that Air Force command structure, base environmental management personnel, the United States Environmental Protection Agency (EPA), the Alaska Department of Environmental Conservation (ADEC), and the Municipality of Anchorage (MOA) become involved in the public participation process. These agencies will be invited to participate in the negotiation and implementation of the project and to engage in active discussions concerning project goals and progress. All other interested parties, including local community councils and environmental groups, are also invited to become involved in the public participation process and will have an active voice in the discussions.

Stakeholders fall into three basic categories, to include (1) primary participants, (2) interested parties, and (3) members of the general public.

> Primary participants include the regulatory community of EPA and ADEC, the Restoration Advisory Board, local community councils and government officials, and interested members of the public. EPA and ADEC have had considerable influence on the details of the project proposal and will continue their active involvement during the implementation phase.
>
> Interested parties have demonstrated some interest in the project, yet do not wish to actively participate in project development and implementation. Interested parties will usually want be kept informed of project development and progress, and may wish to attend public meetings and contribute their comments in written or verbal form.
>
> Members of the general public will, most likely, not become actively involved in project development and implementation. Although not actively involved, members will be provided with project information through the local media and central information repository. Members of the general public have the opportunity to participate more actively if they choose to do so.

The following organizations and individuals will be contacted and asked to participate in the public process:

- The Government Hill, Mountain View, and Russian Jack Community Councils
- The Anchorage Clean Air Coalition
- The Alaska Center for the Environment
- The Anchorage Metropolitan Area Transport Study (AMATS) Citizens' Air Quality Advisory Board
- The Anchorage Chamber of Commerce
- The Anchorage Assembly
- Anchorage Mayor Rick Mystrom
- State legislators from local districts
- Others, as deemed appropriate

NOTIFICATION AND EDUCATION OF THE GENERAL PUBLIC

Elmendorf will notify the public of its intent to develop a Final Project Agreement (FPA) with EPA and ADEC. The public will be invited to request inclusion on a mailing list for continued receipt of information concerning Elmendorf's ENVVEST initiative.

The following methods will be used to contact and inform potential Stakeholders.

Local Newspapers: Notices will be taken out in local newspapers to inform the general public of public meetings and public notices and comment periods. The local newspaper will also be invited to report on the project, as it evolves.

Elmendorf Newspapers: Notices will be published in the "Sourdough Sentinel", to encourage involvement from the base populace. The "Sourdough Sentinel" and the "Environmental Update" will also be asked to report on the project, as it evolves.

Fact Sheets: Fact sheets, announcing public meetings and notices, and information on project implementation, will be provided to parties included on the mailing list.

Central Records Repository: A central records repository will be chosen to maintain copies of project related materials.

PUBLIC MEETINGS AND WORKSHOPS

Public meetings and workshops will be conducted to inform the general public of project development, and to invite participation and comments. Public meetings may be held during development of the Final Project Agreement, based on public interest, or as decided by the primary participants.

Elmendorf will meet with members of the three surrounding community councils, AMATS, and other concerned groups to explain in-depth what the project entails and the expected benefit to the local community. This will provide another public forum to address concerns that the general public may have concerning the Project XL/ENVVEST process. Elmendorf will compile the questions, comments, and suggestions that arise from these and other public comment forums and provide them to EPA and ADEC. The record of the workshop will also be made available to any workshop participant, upon request.

ADVISORY BOARD

The goal of the Restoration Advisory Board (RAB), created in 1994, is to provide a forum to enhance the communication and coordination among the Air Force, EPA, ADEC, and affected communities in response to actions undertaken by the Environmental Restoration Program at Elmendorf. In addition to providing their own comments, RAB community members are responsible for gathering and communicating to the board any specific concerns from their communities about proposals or projects under consideration. Elmendorf briefs all important environmental issues to the RAB. The RAB is effectively functioning as a Community Advisory Board (CAB).

ELMENDORF POINT OF CONTACT

The central point of contact for the Elmendorf ENVVEST initiative is 3rd Wing Public Affairs Office (3 WG/PA), (907)-552-5755.

Attachment
4

RESPONSE TO COMMENTS

The notice of availability of the draft Final Project Agreement (FPA) for public comment was published on November 5, 1999. 64 FR 60443. EPA received one comment in response to the notice. The commenter was Trustees for Alaska (Trustees). Trustees indicated that it was opposed to the FPA in its current form for six reasons. We will address each of these reasons in turn. However, before discussing the specifics we would first like to express our appreciation for the interest shown by Trustees in improving the project. We would also like to note that, in subsequent discussions with Trustees regarding its comments and our proposed changes to the FPA, it appears that Trustees no longer opposes the project. Rather, Trustees expressed an interest in seeing Elmendorf Air Force Base (EAFB) evaluate other potential hazardous air pollutant problems, such as emissions from jet engines, as part of this project. We encouraged Trustees to participate in the upcoming public meetings to provide its perspectives regarding the types of hazardous air pollutant reduction projects that EAFB should pursue.

To begin, we would like to explain the broad benefits that we envision from this project. Project XL projects are designed to test new approaches to environmental protection. If a pilot is successful, the new approach (and the superior environmental benefits it achieves) may be transferred to other facilities. EPA hopes that the lessons learned from EAFB's project can be applied to other military installations, and can result in greater environmental benefits being achieved at installations nationwide.

In addition, most of the flexibility provided by this project could have been obtained without Project XL through the imposition of limits on EAFB's potential-to-emit and the application of EPA's policy document, entitled "Major Source Determinations for Military Installations under the Air Toxics, New Source Review, and Title V Operating Permit Programs for the Clean Air Act", dated August 2, 1996. However, by participating in this XL Project, EAFB obtains the flexibility to redirect money that would have been spent on Title V costs into pollution prevention projects. EAFB has agreed to invest $1.5 million into projects that will result in actual emission reductions that likely would not have otherwise occurred. EPA views this project as providing actual environmental benefits with modest regulatory relief.

Trustees first expresses concern that the FPA "commits the State of Alaska to exempting Elmendorf AFB from the Title V permitting process without any enforceable commitment from the AFB to reduce emissions." While there are no numerically enforceable emission reductions, as discussed above portions of the EAFB can be exempted from Title V permitting only after the EAFB applies for, and obtains, enforceable potential-to-emit limits. And while it is true that the voluntary pollution prevention measures, and the resulting carbon monoxide and hazardous air pollutant emission reductions, are not enforceable through conventional means, they are spelled out as commitments in the FPA. As a result, if EAFB failed to live up to its commitments, EPA or the State would terminate the FPA and the additional flexibility that it provides.

Second, Trustees argues that "the agreement makes a special case out of the AFB, exempting it from the EPA applicability criteria for aerospace NESHAP." Trustees is correct that the agreement gives EAFB special treatment; that is the result of every XL project. However, the treatment that EPA is providing EAFB in this project is substantially similar to that which it has provided to numerous other sources under EPA's "Potential to Emit Transition Policy" (dated January 25, 1995). The purpose of the "Potential to Emit Transition Policy" is to allow certain sources to have additional time to obtain practicably enforceable potential-to-emit limits in order to avoid being considered a "major source," provided they maintain their emissions below 50% of the applicable major source thresholds. Because of the unusual circumstances surrounding the delay in reviewing EAFB's Title V permit application and the requested potential-to-emit limits as a result of the ENVVEST/XL negotiations, EAFB and the State of Alaska were unable to get potential-to-emit limits in place before the compliance date for the Aerospace NESHAP. However, actual hazardous air pollutant emissions from EAFB are substantially below the major source thresholds. In order to allow for the completion of this project, EPA decided to grant EAFB a narrow exception to the recordkeeping requirements in the "Potential to Emit Transition Policy." This allows EAFB to be treated as a non-major source of hazardous air pollutants under the Potential to Emit Transition Policy and to have additional time to obtain practicably enforceable potential-to-emit limits.

Third, Trustees is concerned that "the savings of $1.5 million has not been documented and could simply be compliance avoidance costs." The savings achieved through this project are not from reducing "compliance costs" but rather from changing the major source status of EAFB, and therefore reducing the Title V requirements that would otherwise apply to the EAFB. The EAFB has estimated the costs of applying for, maintaining, and complying with Title V for the entire EAFB. By applying EPA's guidance for military installations, and by obtaining potential-to-emit limits, most of EAFB will not be subject to Title V, thereby saving the EAFB approximately $1.5 million over the next 6 years. By providing EAFB with the flexibility described above, the project will facilitate the use of the $1.5 million for such environmentally-beneficial projects as the use of compressed natural gas (CNG) vehicles and the implementation of projects that reduce hazardous air pollutant emissions.

Fourth, Trustees is concerned that "the state's and AFB's expressed 'preference for hazardous contaminant reduction projects' is not framed as an enforceable commitment." As discussed in the response to Trustees' first point, if EAFB failed to live up to its commitments, EPA or the State would terminate the FPA and the additional flexibility that it provides. However, in response to Trustees' comment, the FPA has been revised to more clearly state the EAFB's commitment to pursue hazardous air contaminant reduction projects and not just reflect a "preference for" such projects. In addition, the revised FPA makes clear that input from EAFB's stakeholders and the public will be considered in the selection of such projects.

Fifth, Trustees expresses opposition to the project because "the CNG project does not involve[] dedicated fuel vehicles." We assume that this concern stems from the possibility that some converted vehicles and some dual-fueled vehicles could actually emit more carbon monoxide than dedicated fuel vehicles. The EAFB understands the concerns associated with vehicle conversions and dual-fueled vehicles and has committed to ensuring that all of the CNG-fueled vehicles are indeed less polluting. The FPA has been revised in response to this comment to ensure that emission testing and evaluation will occur so that the conversion and purchase of vehicles actually results in lower carbon monoxide emissions. By including both the conversion and purchase of vehicles in the project, the Parties are able to achieve greater environmental benefits. Instead of purchasing only new vehicles with the savings from the project, EAFB will convert a number of its current fleet vehicles to be capable of using CNG as an alternative fuel. This enables EAFB to ultimately have more vehicles capable of using CNG than it could afford if it were only purchasing new vehicles. It also enables EAFB to invest in other environmentally-beneficial projects. This does not preclude EAFB from using other funds to purchase additional dedicated fuel vehicles or dual-fueled vehicles. In fact, in the future, EAFB plans to purchase new dual-fueled vehicles and new dedicated fuel vehicles to replace older vehicles as they are retired.

Finally, Trustees states that "CO emissions will increase, not decrease, under the agreement as proposed." As with the previous comment, we assume that this concern stems from the possibility that some converted vehicles and some dual-fueled vehicles could actually emit more carbon monoxide than dedicated fuel vehicles. As noted above, the FPA has been modified to clarify EAFB's commitment to test the converted vehicles and to evaluate emissions of the new vehicles. Thus, only conversions that reduce carbon monoxide emissions will be used, and EAFB's increased reliance on CNG and concomitant decrease in the use of regular fuel will reduce carbon monoxide emissions in the Anchorage area.