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Part IV

Environmental Protection Agency

Regulatory Reinvention (XL) Pilot Projects; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5811–7]

Regulatory Reinvention (XL) Pilot Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of modifications to project XL.

SUMMARY: This notice modifies EPA's existing guidance on Project XL and solicits new XL proposals. This notice clarifies EPA's definition of the three key project elements: superior environmental performance, regulatory flexibility and stakeholder involvement. It also describes changes intended to bring greater efficiency to the process of developing XL projects.

EFFECTIVE DATE: April 23, 1997.

ADDRESSES: Proposals submitted to Project XL should be sent to Regulatory Reinvention Pilot Projects, FRL–5197–9, Water Docket, Mail Code 4101, US EPA, 401 M Street, SW., Washington, DC, 20460. The docket does not accept faxes.

FOR FURTHER INFORMATION CONTACT: Christopher Knopes, Office of Policy, Planning and Evaluation, United States Environmental Protection Agency, Mall 3202, Mail Code 2129, 401 M Street, SW., Washington, DC, 20460. The telephone number for the Office is (202) 260–2220. The facsimile number is (202) 401–6637.

SUPPLEMENTARY INFORMATION: On March 16, 1995, President Clinton announced a portfolio of reinvention initiatives to be implemented by the Environmental Protection Agency as a part of its efforts to achieve greater public health and environmental protection at more reasonable cost. One of these reinvention priorities, Project XL, is a national pilot program to test new approaches for meeting environmental goals and responsibilities. Through a series of site-specific agreements with project sponsors, EPA expects to gather data and experiences that will help the Agency make sound decisions as we look for ways to improve the current regulatory system.

XL projects directly benefit the local environment, participating facilities and their communities. But those who do not participate in XL will also benefit from its lessons. EPA, working with state environmental agencies, intends to transfer successful approaches into the current system of environmental protection. Broader implementation of cleaner, cheaper and smarter ideas is the ultimate objective of Project XL.

This objective distinguishes XL from other approaches to regulatory change discussed in environmental policy circles, with names such as ''alternative compliance'' and ''alternative path.'' Like XL, these approaches seek to offer site-specific alternatives to the traditional system of environmental protection. But where XL tests ideas that, if successful, will change our national system of environmental protection, these approaches seek to customize the broader system to meet the needs of a specific location. Supporters of customization want their approach available to a large number of regulated facilities, and focus principally on the project's benefits to the local environment and participating facility itself. In contrast, the number of XL experiments is limited to 50, making it vital that each project creates lessons with broad application and potential benefits to the broader environment.

In a May 23, 1995, **Federal Register** notice (60 FR 27282, May 23, 1995), EPA describes Project XL as a program that offers a balanced set of benefits to the environment, the regulated community and the public. In that notice, the XL program was defined through eight criteria by which proposals are selected for participation. While all of these criteria are still important, the first three actually define Project XL: superior environmental performance, regulatory flexibility (termed Cost Savings and Paperwork Reduction in the original notice), and stakeholder involvement. These criteria are equal in stature and together provide the context for the experimental nature of the program.

Since the inception of Project XL, there have been requests for clarification of EPA's definitions of these three essential program elements. EPA recognizes the critical need to ensure that environmental regulatory agencies, potential project sponsors, and other interested stakeholders have a clear understanding of the concepts, definitions, and boundaries of Project XL. Today's notice clarifies the concepts, definitions, and boundaries of superior environmental performance, regulatory flexibility, and stakeholder involvement, and provides guidance on future program management. With today's notice, the learning opportunity afforded by Project XL will proceed with greater certainty and efficiency.

For projects that have already entered the program—where final project agreements (FPAs) are already being developed or have been approved—the guidance contained in this notice does not impose new requirements or procedures. While the guidance both on Superior Environmental Performance and on Flexibility present more fully developed definitions of these criteria, they build on approaches already being applied to projects in development and will generally be familiar to current XL participants. The Stakeholder guidance does recommend additional steps to ensure that projects garner broad community support. As these steps are based on considerable up-front decision-making within the stakeholder group, EPA does not expect that sponsors will be able to retroactively implement all of these steps into ongoing projects.

EPA seeks comment on all aspects of this notice on an ongoing basis. The guidance as defined in this notice is the result of Agency experience to date and ongoing dialogue with states, industry and various stakeholders. As Project XL is a continuously evolving program, EPA intends to continue dialogue, to receive and to review comments on the various aspects of the program, and to update and to revise this guidance as necessary.

Project XL conducts projects in four areas: facilities, sectors, federal facilities, and communities. Community-based projects differ substantially from the other types of XL projects. EPA recognized and addressed these distinctions by issuing a separate **Federal Register** notice to initiate the XL Communities program (60 FR 55569, November 11, 1995). In keeping with the recognition of communities' need for different approaches, EPA will clarify in the near future the applicability of this guidance to community XL projects.

This notice also includes a general solicitation for new proposals to Project XL. This solicitation lays out some areas that have been identified by the Agency or others in the environmental community as important to pursue in the quest for a more efficient and results-oriented regulatory system. EPA intends to pursue the identification of more specific priority areas for regulatory reinvention and project ideas that should help guide potential project sponsors, and to publish a future notice with the results. Today's notice also solicits new ideas from parties outside of the regulated community. The Agency is working on a process that will facilitate the development of ideas that may originate from these individuals, and will describe that process in a future notice.

EPA encourages facility, sector or federal facility project sponsors to utilize this opportunity to truly reinvent the way they conduct environmental management. While there are many

proposals that may meet the criteria for inclusion in Project XL, EPA looks to develop in Project XL those ideas that introduce fundamentally different ways of providing environmental protection and achieving stronger environmental results. Project XL offers good actors—environmental leaders and today's average performers alike—a tremendous opportunity to think ''outside the box'' of our current system and to find solutions to obstacles that limit environmental performance. EPA looks to leaders in the regulated and environmental communities to identify and develop dramatically different approaches to protecting the environment. For average performers, XL presents an opportunity to move into a position of environmental leadership and to create a path for others to do the same.

This notice includes revisions to the process by which an idea becomes an XL project. New emphasis is placed on pre-proposal planning and communication with stakeholders, EPA's internal management of projects, and close partnership with states. Also outlined are definite points at which information will be made widely available to the public during the project development and negotiation processes.

Evaluation is not covered in this notice, though it is an area that the Agency believes is critical to Project XL's success. Evaluation will occur at many levels—project specific (e.g., Did the project achieve its goals?), functional (e.g., Did the stakeholder process work?), process (e.g., How can we improve the process?), and programmatic (e.g., How do we take the lessons learned from these experiments and transfer the successes to improve our current system?). Each level of evaluation will involve collaborative efforts on the part of the Agency, states, other affected regulatory agencies, project sponsors and stakeholders. In some cases, outside groups may also be interested in evaluating aspects of projects or the program. At a minimum, project agreements will contain clear performance measures to help EPA and interested stakeholders verify progress with project goals, and then use the results to find better solutions to today's environmental management challenges.

Solicitation for New XL Project Proposals

Today EPA is renewing its invitation, first issued in the **Federal Register** on May 23, 1995, (60 FR 27282, May 23, 1995), for regulated facilities, sectors, and regulated federal facilities, and interested stakeholders, to submit XL pilot project proposals. The goal of implementing a total of approximately 50 projects remains. To date, EPA has approved 3 XL projects for implementation, has proposed approval of a fourth, and is developing 10 additional XL projects with state and local governments, project sponsors and stakeholders.

Potential Project Themes

EPA did not originally identify the specific types of proposals it hoped or expected to result from its May 23, 1995, solicitation, preferring instead to encourage others to respond with their own ideas. A September 11, 1996, **Federal Register** notice supplemented the general solicitation with an invitation for projects specifically aimed at creating innovative environmental technologies, and EPA retains a strong interest in proposals in this area. But the open invitation for all proposals still exists, and today's notice does not change EPA's general invitation for all kinds of ideas. Nevertheless, EPA does wish to describe several general themes that have been identified as important to pursue in the context of testing innovations for 21st century environmental protection. Many of these themes are based on the need to incorporate more incentives for pollution prevention in our system of environmental protection:

- Regulatory approaches that encourage source reduction and recycling of hazardous waste or materials produced or used during manufacturing or commercial operations, and the on-site reuse of wastes or by-products in production processes;
- Incentives for greater or continuous collection of emissions data, particularly for hazardous air pollutants, to enable performance-based approaches and to increase public understanding;
- Approaches that minimize the generation of wastes containing persistent, bio-accumulative, and toxic chemicals;
- Facility-wide emissions limits under the Clean Air Act that also incorporate continuous emissions reduction;
- Enhanced systems for data collection on employee health and exposure to environmental pollutants to aid company efforts to minimize work-related health problems;
- Regulatory mechanisms to encourage consideration of the environment throughout the entire life cycle of a product;
- Incorporation of environmental stewardship in the customer and supplier relationships of regulated facilities; and
- A multi-media closed-loop approach to environmental technology development.

EPA and state environmental agencies intend to identify more specific priority areas and additional themes in the near future, in an effort to inform potential project sponsors. Efforts will be made to seek the input of a wide range of interested parties, including other regulators, environmental and environmental justice groups, trade associations, and academic institutions with an interest in environmental policy. The results of these efforts will be published in the **Federal Register** and made available through other media.

Stakeholder Initiated Projects

Today's notice reaffirms EPA's interest in having stakeholders not directly connected with regulated facilities come forward with XL proposal ideas or to co-sponsor projects with companies. While the development of an XL proposal is more typically initiated by a regulated firm or co-sponsoring organization, it may also be initiated by EPA, by a state environmental agency, or by other non-regulated parties. EPA encourages stakeholders to bring their own ideas forward. Those stakeholders who wish to initiate projects may discuss the proposal concept with EPA or the state environmental agency; contact firms directly to discuss proposal concepts; or engage the assistance of EPA or the state environmental agency in identifying potential participants from among the regulated community. EPA will, upon the request of stakeholders who wish to initiate projects, consider using its own resources (e.g., the **Federal Register** and the Agency's Project XL Internet Web Site, www.epa.gov/ProjectXL) to identify potential participants from among regulated firms. Beyond its openness to stakeholder initiated proposals, EPA is developing a process to solicit themes and specific ideas from groups outside of the regulated community, and to turn those ideas into fruitful XL projects.

Superior Environmental Performance

In order to test innovative approaches to reinvent environmental protection for the 21st Century, Project XL offers potential project sponsors and co-sponsors the opportunity to develop and implement alternative strategies that produce superior environmental performance, replace specific regulatory requirements, and promote greater accountability to stakeholders. The May

23, 1995, **Federal Register** notice defining the XL program stated EPA's intent to approve only those projects that ''achieve superior environmental performance relative to what would have been achieved through compliance with otherwise applicable requirements.'' This notice further refines the definition of superior environmental performance to assist future applicants, stakeholders and those evaluating the program.

EPA is establishing a two tiered assessment of superior environmental performance for Project XL proposals. Tier 1 is a quantitative benchmark of the project against the environmental performance that would have occurred absent the program. It establishes a baseline of equivalence from which superior environmental performance can be measured. A project that is not at least equivalent, based on the factors discussed in Tier 1, can not be considered superior overall. Tier 2 is an examination of factors, both quantitative and qualitative, that lead EPA to judge that a project will produce a superior level of environmental performance that merits testing the innovation being proposed. This two tiered approach should aid EPA and others in evaluating proposal merits and deciding what should or should not be tested. It is not EPA's intent to suggest a hierarchy. Tier 1 and Tier 2 are both essential in determining whether a project is likely to achieve superior environmental performance.

Parenthetical examples are included throughout this notice. These are meant to aid the reader in understanding the general discussion, but not to signal EPA's preferences or requirements for specific XL projects.

These guidelines on superior environmental performance reflect EPA's experience with Project XL to date. Because the guidelines measure performance levels relative to today's system of environmental regulation, the results achieved through the use of these guidelines will be incremental improvements over the current system. EPA recognizes that these guidelines may be too limited in their definition of superior environmental performance in some cases, particularly where a project involves a radical departure from our current environmental regulatory system. In these cases, EPA encourages the sponsors to propose and provide a rationale for alternative definitions of superior environmental performance. EPA will consider these alternatives, as appropriate.

Tier 1: Is the Project Equivalent?

Tier 1 establishes an environmental performance benchmark for an XL project. This benchmark provides a reasonable estimate of what would have happened to the environment absent Project XL. It quantifies current performance levels and sets a baseline against which the project's anticipated environmental performance can be compared.

These benchmarks are expressed in terms of loadings to the environment. The term loadings is meant by EPA to incorporate a broad set of stressors to the environment, such as emissions of specific pollutants or generation of waste streams released to the environment by disposal.

- The project benchmark will be set at either the *current actual* environmental loadings or the *future allowable* environmental loadings, whichever is more protective.
- Where the project includes new facilities that have not yet been built or expansion of existing facilities for additional production of a current product or for new products that have not yet been produced, the benchmark will be set at the level of performance generally representative of industry practice, or the future allowable environmental loadings for such a facility or production process, whichever is more protective.
- These benchmarks may be on a per-unit of production basis or other comparable measure (e.g., volume of liquid hazardous waste generated per unit of product), as appropriate, to distinguish real environmental gains relative to what would happen absent XL from fluctuations in production.
- Except in outstanding site-specific circumstances, voluntary measures that are in place at the time the project is proposed and remain in place during the project (e.g., previous installation of on-site wastewater treatment not for compliance purposes) should be included in the benchmark. This distinction assumes that these voluntary measures would have been in place already and remained in place absent XL (e.g., include in the benchmark the effect of the pre-existing wastewater treatment system, as long as that system continues to operate).

EPA will also seek to benchmark the project from a pollution prevention perspective. While other Tier 1 benchmarks are expressed in terms of loadings to the environment, this benchmark may be expressed in terms of inputs to production (e.g., use of toxic chemicals, fresh water, or other natural resources). EPA will be most interested in inputs of specific environmental and/or stakeholder concern. EPA will compare the project's use of those inputs against the volume of the inputs that would be used absent Project XL. This attention to pollution prevention is meant to encourage projects that reduce the use of materials of environmental or public health concern, as well as projects that reduce ultimate loadings to the environment.

The project will be benchmarked against each environmental loading in each environmental medium (e.g., air, water, land). However, EPA will consider projects involving tradeoffs among loadings as part of a test of innovative environmental management. These projects may exceed the appropriate benchmark for one loading but fall short of it for another. To address the imprecision inherent in evaluating tradeoffs among environmental loadings and environmental media, projects of this type should demonstrate, with an adequate margin of safety, overall superior environmental performance over what would be achieved absent XL. Benefits should be measurable through an analytic methodology acceptable to regulatory agencies and to stakeholders. EPA will not approve projects that threaten ecological health or risk-based environmental standards (e.g., Water Quality Standards).

Tradeoffs may be allowed among different loadings that contribute to a single environmental outcome (e.g., VOC and NO_X emissions contributing to smog formation). In this case, project sponsors should evaluate the tradeoff using the best available analytic methodology. In these evaluations, however, project sponsors should consider the risk or benefits arising from situations in which one of these loadings might also contribute to other environmental outcomes (e.g., VOC emissions that also contain hazardous air pollutants).

Tradeoffs may also be allowed among different loadings that produce different environmental outcomes (e.g., waste minimization technology that reduces hazardous waste incineration but increases waterborne pollutant discharge) where there is a demonstrable net benefit to public health and the environment. Project sponsors should clearly define the various environmental outcomes and the project's effect on them. A project involving such tradeoffs may pose challenges beyond analytics. EPA will not approve projects that create a shifting of risk burden (e.g., diversion of hazardous air pollutant emissions from stacks to the work area, or lower net

level of remediation at a waste disposal site in a low income community). To the contrary, in entertaining projects that incorporate tradeoffs, it is EPA's intent to produce clear risk reduction.

Tier 2: Superior Environmental Performance

Tier 2 is an examination of factors that lead EPA to judge that a project will produce truly superior environmental performance. Although the weighting of factors in Tier 2 is necessarily subjective, the factors themselves should be expressed in quantitative terms wherever possible. Tier 2 factors include, but are not limited to:

- The increment by which the project exceeds the appropriate Tier 1 benchmarks.
- Pollution prevention upstream from end-of-pipe releases (e.g., a project that alters production processes to eliminate the need for toxic ingredients, instead of just disposing of toxic waste created).
- Environmental performance more protective than the best performance practices of facilities with comparable products or processes (e.g., closed loop production at a steel mill).
- Incorporation of continuous improvement towards ambitious quantitative environmental aspirations (e.g., project with a zero emissions goal).
- The extent to which the project produces clear reduction of risk.
- Historic demonstration of leadership in environmental performance of the facility (e.g., through voluntary measures taken prior to XL).
- Improvement in environmental conditions that are priorities to stakeholders, including issues not governed by EPA rules (e.g., habitat preservation, green space, parks or other protected areas, odors, noise).
- The extent to which the project substantially addresses community and public health priorities of concern to stakeholders, including issues not governed by EPA rules (e.g., identification of community health patterns, employee safety issues beyond those regulated by EPA).

Where projects involve areas regulated by agencies other than EPA or state environmental agencies, those other agencies should be brought into the process.

Accountability for Environmental Performance

Project documents should clearly distinguish among the different ways in which facilities may be held accountable for commitments to superior environmental performance. There are two broad types of accountable commitments: enforceable commitments and voluntary commitments. These should not be confused with broader corporate aspirations, which may be ambitious and set without prior knowledge of the means to achieve them.

- *Enforceable commitments* are those levels of performance which can be compelled by government. Failure to achieve these commitments constitutes grounds for government or citizen enforcement action, with all of the remedies generally available absent Project XL. XL Projects redefine compliance on a site-specific basis, and EPA will ensure a level of enforceability that is, in its own judgment, at least equivalent to the level which would be achieved absent the project. Each project will have an enforceable component, described in the final project agreement (FPA), but also contained in a legally binding document, such as a permit, rule-making, or administrative order.
- *Voluntary commitments* are those for which a facility may be held accountable through means other than injunctive relief, penalty or other conventional legal enforcement action. Failure to achieve these commitments is an appropriate basis for termination or modification of the XL project. Voluntary commitments will be contained in the FPA, which is not itself legally binding on the parties. Accordingly, both the FPA and associated legal implementing mechanisms should reserve EPA's discretion to terminate a project and to return the facility to compliance with otherwise applicable requirements where voluntary commitments have not been met.

Accountability for commitments—whether enforceable or voluntary—is most effective where project goals and results are transparent. Projects should include mechanisms to provide government and stakeholders with access to data sufficient to verify whether commitments have been met. In making decisions related to Project XL and other matters, EPA relies upon the statements and representations made by project sponsors. Federal laws intended to ensure the accuracy and truth of such statements apply. Project sponsors should know that failure to meet commitments or failure to act in good faith in reporting related to these commitments, will draw a strong response from the Agency.

The type of accountability appropriate for a particular commitment should be discussed within a project's stakeholder process and incorporated into the FPA. There may be cases, for example, where stakeholders believe that a particular commitment is critical to the success of a project and may wish accountability for that commitment to reflect this (e.g., by more detailed reporting of a voluntary commitment, or by incorporating that commitment into the enforceable component of the project).

Project XL is intended for good actors. Those companies and facilities with a history of violations of enforceable commitments pose additional issues to be factored into consideration of XL proposals and projects. EPA generally will not approve XL projects for facilities that are the subject of an on-going enforcement action unless the facility resolves outstanding compliance issues (e.g., through payment of penalties and, where applicable, completion of all injunctive relief and obligations under an administrative order or judicial decree) before participating in Project XL. Occasionally, a past or ongoing violation may be discovered in the course of project development. Such violations, if discovered and reported by the project sponsor during the course of project development, will be handled in accordance with EPA's Audit Policy.

Finally, enforceable and voluntary commitments should not be confused with corporate aspirations. Corporate aspirations are not commitments for which a facility should expect to be held accountable through government action or citizen enforcement. However, ambitious corporate aspirations (e.g., zero content of a priority pollutant in a facility's effluent, 100% reclamation of a raw material, or elimination of a potential toxic from use in production) are important drivers for superior environmental performance and will be assessed accordingly by EPA in the context of Tier 2, as discussed above. Corporate aspirations will be contained in the FPA as part of the project description and as elements that help to make up the project's superior environmental performance, but should be clearly distinguished from accountable commitments.

Historic Voluntary Controls

These guidelines aim to ensure that XL projects will achieve a better environmental outcome in the future than would have occurred absent the program. EPA recognizes, however, that future progress is often built on a foundation of historic environmental leadership. Many of the facilities that will participate in XL have already taken voluntary measures to achieve a level of environmental performance far better than is required by applicable regulations. EPA wishes here to offer guidance on the treatment of these pre-

existing voluntary measures in the context of evaluating the environmental performance of an XL project.

In the Tier 1 analysis discussed above, EPA seeks to benchmark the XL project against a reasonable estimate of what would have happened to the environment in its absence. In general, pre-existing voluntary measures should be included in this benchmark. EPA believes it reasonable to assume that voluntary measures that are in place at the time a project is proposed and remain in place during the project's life would also have remained in place without the project. The alternative assumption—that pre-existing voluntary measures are creditable to the XL project itself—could create a bank account from which a company could draw, potentially resulting in a lower level of environmental performance.

However, in outstanding site-specific circumstances, the potential negative effects of crediting a pre-existing voluntary measure to the XL project may be outweighed by other positive elements of superior environmental performance contained in the XL project (e.g., where a credit provided for performance in one environmental area is more than outweighed by superior performance in another area). In these cases, EPA would consider crediting the pre-existing voluntary control to the XL project.

In the Tier 2 analysis discussed above, EPA seeks to determine whether the net environmental performance achieved by the project beyond its benchmark is superior. Pre-existing voluntary measures play an important role in this determination. For example, facilities that have not implemented significant voluntary measures to control pollution prior to XL should be able to achieve a far greater environmental improvement via XL than those facilities that have implemented such measures. Facilities in the latter category may not be able to achieve additional improvements through end-of-pipe controls and may, thus, look to innovative, but untested, pollution prevention and technology strategies for additional environmental improvements. EPA recognizes the need to accommodate the uncertainties inherent in these strategies in project design.

Regulatory Flexibility

In order to test innovative approaches to reinvent environmental protection for the 21st Century, Project XL offers project sponsors and co-sponsors the opportunity to develop and implement alternative strategies that produce superior environmental performance, replace specific regulatory requirements, and promote greater accountability to stakeholders. This notice discusses further the ways in which the regulatory flexibility available in XL can enhance operations at participating facilities, to assist future applicants, stakeholders and those evaluating the program.

Regulatory flexibility and its potential to reduce costs and improve the operating efficiency of facilities is the principal reason for firms to voluntarily participate in Project XL. The success of Project XL depends on providing to participating regulated firms incentives that are significant and tangible. Projects that test truly innovative alternative strategies for environmental protection will in many cases require regulatory flexibility to overcome barriers to achieving objectives. Such flexibility will be necessary to create the opportunity for superior environmental performance, stakeholder accountability and other benefits. Where a project meets the other XL decision criteria, EPA will aggressively offer flexibility needed to produce superior environmental performance and promote greater accountability to stakeholders.

Sponsors should articulate the link in their project between the flexibility sought, the superior environmental performance expected, and other benefits. Where that link is strong (i.e., where flexibility and other benefits are factually or legally linked) the project's ideas are more likely to be applicable at other sites. The closer the factual link between the requested flexibility and anticipated environmental benefits, the more likely EPA is to approve the project. Recognizing the experimental nature of Project XL, EPA will use tools that ensure project sponsors who operate in good faith a smooth transition back to the traditional regulatory system, where projects do not meet expectations.

Tools for Creating Flexibility

EPA and state regulators have the tools under existing authority to provide appropriate flexibility from otherwise applicable regulatory requirements. These tools include alternative permits and existing waiver mechanisms, generally applicable interpretive statements, and site-specific rules that replace otherwise applicable requirements. Other tools may be identified as projects are developed. Ultimately, however, the selection and development of flexibility tools requires a case-by-case assessment.

The tools noted above provide a firm legal foundation for XL projects in cases where project sponsors, government and stakeholders construct a project that produces superior environmental performance, promotes greater accountability to stakeholders, and meets the other XL decision criteria. These tools are strongest when tailored to be only as broad as needed for implementing the project terms.

Flexibility provided in XL projects establishes new conditions that must be met by participating facilities. As discussed above, some, if not all, of these conditions will be legally binding and enforceable requirements. EPA and state environmental agencies will select tools that ensure that project sponsors, in exchange for meeting these new requirements, have protection from liability for non-compliance with previously and otherwise applicable requirements replaced by XL actions.

Specific statutory provisions may limit the scope of flexibility available to certain XL projects. To date, however, this concern generally has not been a real barrier to implementation of projects that meet the XL decision criteria.

Selection of Flexibility Tools for Specific Projects

The need to select tools to fit the conditions of a project is secondary to the creation of the project itself. Project sponsors and stakeholders, along with regulators, should first develop a project that incorporates superior environmental performance, flexibility and stakeholder accountability, and then seek tools that authorize the project they have created.

EPA has developed a hierarchy for the selection of flexibility tools to fit the conditions of a project. Investigation of tools should begin with exploration of the full range of discretion and flexibility available under the combination of existing federal and state regulatory and statutory mechanisms. Options may include use of existing statutory and regulatory variance and waiver mechanisms, deviation from existing practices and policies to the extent permitted by statute and regulation, flexible interpretations of regulatory requirements, and other such regulatory and statutory mechanisms. Under these kinds of approaches, some projects may be implemented, in whole or in part, through permit modifications or the issuance of new permits incorporating the terms of the project.

EPA expects that the flexibility tools needed for many projects will not be found within the range of discretion afforded by existing federal and state regulatory mechanisms. In these cases, site specific rule-making, which can authorize projects that do not fit within

existing regulatory requirements, should be explored. EPA wishes to emphasize that the creation of a site-specific rule need not delay a project or create additional resource burdens for project sponsors or stakeholders. The legal steps required in rule-making (e.g., public notice and comment) are already part of XL project development, whether or not a site-specific rule is used. The other formal steps typically encountered in national rule making (e.g., EPA's standard regulatory development process and review by the Office of Management and Budget) have been modified or tailored to fit the needs of Project XL.

EPA recognizes the possibility that specific statutory provisions may limit the scope of flexibility available to certain XL projects by limiting the authority of EPA or the states to promulgate site-specific rules. These situations must be addressed on a case-by-case basis among project sponsors, stakeholders and regulators. Options include modification of the project to avoid these issues and the use of carefully tailored compliance mechanisms.

Value of Flexibility

Firms participate in XL for many reasons. However, in general, firms that successfully develop and implement XL projects utilize the flexibility offered by the program to reap financial, competitive, and community benefits.

The flexibility available to facilities in XL creates real cost savings and opportunities to use environmental budgets efficiently. By implementing performance standards in lieu of other requirements, for example, XL lowers the cost of pollution control by giving a facility the ability to choose the most cost effective means of achieving those standards. XL performance standards and other innovations can act in lieu of pre-construction or other permit reviews, speeding new products to market and giving participating firms a leg up in an increasingly time-driven business environment. XL projects that remove the barriers to recycling of metals or reuse of chemicals allow firms to recoup their value as useful products, avoid disposal costs and potential environmental liabilities. Streamlined reporting requirements reduce administrative overhead.

XL also strengthens participating firms' competitive position in other ways. XL participants are helping to define a regulatory system for the 21st Century, a system designed to meet their needs as well as those of the environment and communities. These firms will be in a better position to respond as the innovations tested in XL are implemented more broadly, and to anticipate or suggest future changes.

The regulatory innovations developed through XL support and encourage pollution prevention and technological innovation at participating facilities by giving firms greater flexibility to experiment and reducing barriers to trying new technology. New technologies may reduce compliance costs or create new market opportunities for their developers. XL may, for example, remove regulatory barriers to the marketing of goods created through pollution prevention or recycling.

Participation in XL strengthens the community ties of participating firms, creating a basis in trust for resolution of other conflicts that may arise in or outside of the context of environmental regulation. XL firms typically enter the program with strong environmental reputations from which to build. However, the extensive interaction of community and facility representatives in the course of XL project development may help both groups forge real and informed trust. The regulatory flexibility offered in XL creates an opportunity to make community participation more meaningful, for example, by allowing firms to redesign reporting mechanisms in ways that enhance community understanding and trust, or by permitting a new kind of public involvement that is more substantive than conventional processes.

Other incentives for participation in XL are case-specific. For example, firms may gain favorable tax treatment for certain environmental control or pollution prevention expenditures made in the context of Project XL. In other cases, firms may reduce their health care costs by creating an XL project that better identifies and eliminates environmentally connected work force health concerns.

EPA encourages firms to view the flexibility afforded by XL as an opportunity to create real incentives for environmental improvement, whether they be financial, competitive, technological, community-related, or otherwise.

Stakeholder Involvement

In order to test innovative approaches to reinvent environmental protection for the 21st Century, Project XL offers potential project sponsors and co-sponsors the opportunity to develop and implement alternative strategies that produce superior environmental performance, replace specific regulatory requirements, and promote greater accountability to stakeholders. The May 23, 1995, **Federal Register** notice defining the XL program made clear that an important factor in EPA's approval of projects is ''the extent to which project proponents have sought and achieved the support of parties that have a stake in the environmental impacts of the project.'' Stakeholders were defined as including ''communities near the project, local or state governments, businesses, environmental and other public interest groups, or other similar entities.'' This definition includes both those stakeholders in the proximity of the project and those stakeholders interested in the broader implementation of the concepts being tested in the project, such as state, regional or national environmental groups. In today's notice, EPA offers guidelines on meeting the stakeholder involvement criterion to assist future applicants, stakeholders and those evaluating the program.

Stakeholder involvement is critical to the success of each XL project. Stakeholders provide information about the preferences of the community. They may identify issues that have escaped the notice of project sponsors and regulators. And stakeholder support is essential if the knowledge gained in facility-based experiments is to be transferred to the generally applicable system of environmental protection. An effective process for stakeholder involvement is an acknowledgment that today's regulators and regulated community do not have a monopoly on the best ideas for tomorrow's system of environmental protection.

In this notice, stakeholders are grouped into three categories, each with a distinct role in project development and implementation. Those stakeholders interested in the broader implementation of the concepts being tested in the project, as well as those stakeholders in the local community or directly affected by the project, should have the opportunity to place themselves in any one of these three categories. *Direct participants* in project development work intensively with project sponsors to build a project from the ground up. The views of direct participant stakeholders will strongly influence the details of the project as well as EPA's ultimate decision to approve or not to approve the project. *Commentors* have an interest in the project, but not the desire to participate as intensively in its development. The project development process should inform and be informed by commentors on a periodic basis. The views of informed commentors are a strong indicator of the broad potential for wider applicability of the innovation being tested in a project. Members of the

general public should have easy access both to the project development process and to information about the environmental results of the project once it is implemented, and should have the ability to participate more actively if they so choose. Actions for involvement of each of these three categories of stakeholders at each step in the process—from pre-proposal to implementation of an FPA—are discussed here.

Over and above these three categories of stakeholder involvement, EPA strongly encourages firms and established non-governmental organizations to partner as *co-sponsors* of XL projects. For example, a firm and a state citizens group may join together and propose an XL project to EPA and the state environmental agency. *Co-sponsors* are distinct from the three categories of stakeholders described above and discussed in this notice, and co-sponsorship has many advantages over individually sponsored projects. The participation of the non-regulated partner lends credibility to the broader stakeholder involvement process discussed in this notice. It also builds the capacity of non-governmental organizations and industry to work directly with each other. This notice does not discuss the relationship among project sponsors in a co-sponsorship situation, but rather details EPA's expectations with regard to the involvement of a broader group of stakeholders beyond the project sponsors themselves.

Pre-Proposal Activities

Project sponsors should do as much groundwork as possible to engage appropriate stakeholders before formally proposing an XL project to EPA. There are four actions project sponsors should take at this step in the process:

- Gain from EPA, the relevant state, tribal, local, or other regulatory agencies their support of the proposal and their commitment to participate in project development;
- Develop as part of the proposal itself a stakeholder involvement plan consistent with the guidance contained in this document;
- Identify and contact potential *direct participants* to gain their commitment to participate early in potential project development; these direct participants may be stakeholders already known to the project sponsor or may be identified through referrals (e.g., through environmental interest group networks); and
- Identify and contact potential *commentors* on the proposal.

Stakeholder Initiated Proposals

While the development of an XL proposal is more typically initiated by a regulated firm or co-sponsoring non-governmental organization, it may also be initiated by stakeholders themselves, by EPA, or by a state environmental agency. EPA encourages stakeholders to bring their ideas forward. Stakeholders who wish to initiate projects may:

- Discuss the proposal concept with EPA or the state environmental agency;
- Contact firms directly to discuss proposal concepts; or
- Engage the assistance of EPA or state environmental agency in broadly soliciting potential participants from among regulated firms.

EPA will, upon the request of stakeholders who wish to initiate projects, consider using its own resources (e.g., the Web site and **Federal Register**) to broadly solicit potential participants from among regulated firms. However, to be considered by EPA, a formal XL proposal must ultimately include the voluntary participation of the owner or operator of facilities addressed in the proposal.

Proposal Development

Once received by EPA, XL proposals enter the proposal development stage. During this stage, EPA and state environmental agencies determine whether a proposal should advance as an XL project, advance in some other forum, or not advance at all.

The first step in proposal development is an intake process, in which EPA determines whether a proposal is within the scope of Project XL based on the eight XL proposal selection criteria as refined in this notice. If the answer is yes, EPA consults with the appropriate state environmental agency, forms an internal proposal review team consisting of regional and headquarters staff, and immediately places the following information on EPA's Project XL Web site to inform stakeholders of the proposal:

- The full proposal, including the stakeholder involvement plan; and
- The names and contact information for the EPA regional and headquarters project leads and project sponsor leads.

The second step in proposal development is an effort by the EPA proposal team to analyze, in consultation with the state environmental agency, the merits of the proposal, including its stakeholder plan. During this step, EPA will generally provide feedback to the project sponsors. Stakeholders aware of the proposal at this early stage may:

- Contact the project sponsors directly, or contact EPA project leads via phone, electronic mail, or the Web site with pertinent questions or other feedback for the project sponsors; and
- Contact the project sponsors to express interest in becoming a *direct participant* or a *commentor,* should the proposal move forward and become a project.

EPA will then transmit its own findings and questions, in addition to stakeholder feedback, to the project sponsors and make them available on the Web site. The project sponsors' response to feedback may be in the form of a revised proposal, answers to questions, or withdrawal of the proposal. In developing their response, the project sponsors should confer with the stakeholders whom they have identified, particularly *direct participants.* EPA will post the project sponsors' response to feedback on its Web site.

Based on its assessment of the information provided up to this point by the project sponsors, with special attention given to the issues raised by stakeholders, and in consultation with the state environmental agency, EPA will decide whether a proposal should advance as an XL project. EPA will notify the project sponsor and post its decision on the Web site.

Project Development

A proposal that advances is described as an XL project, and enters the project or FPA development stage. FPAs are developed through a sponsor-led process of dialogue and negotiation among states, sponsors, EPA, and stakeholders who are *direct participants.* That process is made visible and accessible so as to invite response from *commentors* while informing the *general public.*

Further Identification of Stakeholders

The first step in the FPA development process is to notify the *general public* of the project and more formally invite stakeholders to become *direct participants* or *commentors.* The project sponsors should:

- Notify the general public via local media of their intent to develop an FPA and invite *direct participants* to identify themselves within a set time period (e.g., 30 days); (The public notice should include a brief description of the project, including the stakeholder plan, and the name and contact information for a person in the sponsors' organization, at the state environmental agency, and at EPA);
- Make special efforts to recruit:

—Potential *direct participants* and *commentors* from among economically disadvantaged stakeholders and among stakeholders most directly affected by the environmental and health impacts of the project;
—Potential *direct participants* and *commentors* who have specific interest or expertise in the issues addressed in the project from among the national environmental and environmental justice communities and the industry segment of which the facility is a part; and
—Potential *direct participants* and *commentors* from among participating facilities' non-managerial employees.

Stakeholders should be aware that direct participation in an XL project involves a substantial personal commitment of time and energy, requiring consistent attendance at meetings, a willingness to abide by the agreed upon process, and intensive work over the project development period. EPA encourages *direct participant* stakeholders to seek input from others in their work on project development. However, stakeholders are not expected to represent larger social, economic or demographic groups except in cases where they are authorized to do so.

In general, all stakeholders who express a timely desire to be *direct participants* and understand the commitment involved should be given the opportunity to do so. However, there may be a need for project sponsors to limit the number of *direct participants* (e.g., to maintain a balanced or workable process). EPA will not determine the membership of the group of *direct participants*, but may advise sponsors of whether it believes the group as assembled is consistent with the guidance contained in this document.

Team Training

Once *direct participants* have been identified, EPA encourages project sponsors to discuss with them the need for team training at the outset of project development activities. Where training has been requested by *direct participant* stakeholder groups, the project sponsors should:

- Provide training to *direct participants* on the technical issues addressed in the project, including the overall environmental and health impacts of the test facility; and
- Provide training to sponsors' own representatives and to *direct participants* on meaningful participation in a collaborative process, such as XL project development, with special emphasis on addressing the issues of concern to the local community, to members of minority communities and to non-managerial employees; and
- Permit EPA and state environmental agency representatives to participate in these training opportunities.

As added assurance that *direct participants* have an opportunity for meaningful participation, EPA will make its own expertise available for the purpose of team training in the technical issues addressed in the project and in participation in collaborative processes. EPA strongly encourages state environmental agencies to do the same.

Ground Rules

Ground rules are the first order of business before proceeding with the project development process. The project sponsors may propose ground rules in the stakeholder plan. Before beginning, *direct participant* stakeholders and the project sponsors should agree on a set of ground rules to guide project development. All effort should be made to create ground rules that are generally acceptable to *direct participant* stakeholders.

EPA encourages examination of the ''Model Plan for Public Participation'' developed by its National Environmental Justice Advisory Council, as ground rules are developed that:

- Define the relationship of *direct participant* stakeholders, as individuals and as a group, with respect to the project sponsors (e.g., advisory, consultative, or decision-making);
- Clarify how and whether *direct participant* stakeholders will decide on group views (e.g., by consensus, majority vote, or sub-group consensus);
- Determine whether direct participant stakeholders, as individuals or groups, would sign the FPA;
- Agree on time lines for the development of the project as a whole and for appropriate short-term milestones;
- Contain a process for documenting proceedings and decisions, including dissenting opinions;
- Contain a process for changes in membership to the *direct participant* group as needed or desired;
- Determine how the project development process will be managed, including whether a third-party facilitator is desirable (EPA encourages the use of neutral, local third-party facilitators);
- Decide and document how the project development process will reach out to educate *commentors* and the *general public* beyond the means discussed in this notice (e.g., when and how to notify these groups of the significant milestones in project development, beyond the specific points for notification discussed in this document); and
- Establish procedures for participation and involvement of the general public in the process.

Because XL projects and the circumstances that affect them (e.g., stakeholder, demographic, geographic, ecosystem, economic, community concerns) differ, there can be no single model stakeholder involvement process that is appropriate for all projects. Attention to the ground rules by all participants is vital to ensuring that the project development process is appropriate to the circumstances.

Ground Rules on Authority of Direct Participants With Respect to the Project Sponsors

As discussed above, the authority of *direct participant* stakeholders should be determined at the outset by the stakeholders themselves, along with the project sponsors. In some cases, the authority of stakeholders will be consultative in nature. In others, there will be a desire to provide *direct participant* stakeholders with greater authority over project sponsor's decisions. Project sponsors and *direct participant* stakeholders should agree at the outset on whether stakeholders, individually or as a group, have the ultimate ability to veto project sponsors' plans.

Importance of Stakeholder Views in EPA's Decision to Approve or Disapprove a Project

EPA maintains its authority to ultimately approve or disapprove an XL project. However, EPA wishes here to offer guidance on the influence that final stakeholder decisions on a project's desirability have on its own decisions to approve or disapprove an XL project.

As stated in the May 23, 1995, **Federal Register**, an XL final project agreement must be approved by EPA, the state environmental agency, and the project sponsors in order to be implemented. EPA's own decisions are very directly affected by the views of *direct participant* stakeholder groups. These individuals, more so than other members of the *general public* or even *commentors*, will have examined the project in all its detail. The expression of support for a project by its *direct participant* stakeholder group is among the strongest possible indicators of broad community support for that

project. Where a *direct participant* stakeholder group has the ability to veto a project sponsor's plans, and exercises its veto, EPA will generally conclude that the project has not achieved broad community support, and thus will not approve the project. Even in cases where the ground rules vest a *direct participant* stakeholder group with strictly consultative authority over the project sponsor's plans, or where the views of the group are not expressed in terms of acceptance or rejection, EPA will give significant weight to the views of these *direct participants* in determining whether the project has broad community support.

However, as stated above, EPA will not delegate its authority to approve or disapprove an XL FPA. That is to say, EPA will not approve or disapprove an FPA based solely on the support of a *direct participant* stakeholder group or other party.

Ground Rules for Communicating to Commentors and the General Public

EPA encourages project sponsors and *direct participant* stakeholders to develop ground rules that promote an open and inclusive project development process. For example, EPA encourages an approach in which all meetings are accessible in some form to members of the general public who express an interest in observing the process. For its part, EPA will:

- Make available updated drafts of the FPA and related documents on its Web site and in the administrative record (the comprehensive record maintained by EPA to document the history of all input and decisions impacting the project since it was submitted as a proposal);
- Make available any other materials requested by the project sponsors, *direct participants*, or state environmental agency, except confidential business information, on its Web site and in the administrative record;
- Notify *commentors* directly of the availability of this material;
- Convey to the project sponsors, *direct participants*, and the state environmental agency any comments it receives during the project development process, and post pertinent comments on its Web site and in the administrative record; and
- Respond, on its own behalf and for the record, to significant comments (those comments specifically impacting EPA management or decision-making).

Access to Information

All documents provided to EPA in the context of Project XL, with the exception of confidential business information, are in the domain of the *general public*. Readers should note in these guidelines EPA's intent to use its Project XL Web site on the Internet as the primary but not sole means of disseminating information for which it is responsible. The Web site is not only a repository of information, but has the capability to notify interested stakeholders electronically when new information of relevance to them is posted.

These guidelines specifically identify points where use of local media and/or the **Federal Register** is appropriate. For those who do not have Internet access, the information maintained on the Web site is available in several other formats. As noted above, EPA maintains an administrative record that includes hard copies of all materials referenced in these guidelines. (The record can be accessed by contacting Lutithia Barbee of EPA at 202–260–2220). Most materials referenced in these guidelines are also available through the Project XL fax-on-demand line (202 260–8950). EPA will make every effort within the constraints of available resources to provide interested citizens with the easiest possible means of access to XL-related documents.

Closure

The final stage in the project development process is closure. An FPA is not approved until signed by EPA, the state environmental agency and the project sponsor, and by direct participants where provided for in the ground rules.

The first step in EPA's own closure process is an internal concurrence. To make *commentors* and the *general public* aware that the project has reached this stage, EPA will:

- Make the final draft available through its Web site and in the administrative record; and
- Indicate on the Web site that this draft is being circulated within EPA for formal concurrence; and
- Convene—at the request of a project sponsor, *direct participant* stakeholder, *commentor*, or the state environmental agency—a meeting of these groups to discuss the project, hear views of individual direct participants or commentors, and provide feedback.

As stated in the May 23, 1995, **Federal Register** notice, EPA will not approve a project that does not have the support of the relevant state environmental agency. EPA also recognizes the possibility that it might disapprove of a project that has the support of the state environmental agency. In either case, EPA and the state environmental agency will consult with each other prior to making their final decision, in an effort to reach consensus among regulators at all levels of government.

Where formal concurrence within EPA has been achieved, and where the project has gained the support of the state environmental agency, project sponsors, and *direct participants* (as discussed above), the agreement is known as a ''proposed'' FPA. At this stage, EPA will:

- Make the proposed FPA available through its Web site and in the administrative record;
- Notify *commentors* of the availability of reviewable material;
- Issue the FPA for a thirty-day local notice and comment period for the *general public;*
- Publish in the **Federal Register** a notice of availability, briefly describing the project, and providing instructions for receiving a copy of the proposed FPA; and
- In appropriate situations, publish in the **Federal Register** for notice and comment any proposed site-specific rulemaking associated with an FPA, or conduct public notice as appropriate for any permitting action associated with an FPA.

As part of its final decision to approve (or disapprove) an FPA, EPA will respond for the record to all significant comments received during the notice process. In developing its response to comments, EPA will:

- Share comments received with the project sponsor, state environmental agency, and *direct participants;*
- Discuss with those parties the changes made to the FPA, permit, site-specific rule, or other documents to address public comments;
- Consider fully the public comments and changes made to the FPA and other documents to address public comments in making its final decision to approve (or disapprove) an FPA; and
- Post on the Web site the changes made to the FPA and other documents to address public comments, its own response to comments, and any additional responses prepared by the project sponsors, state environmental agency, or *direct participant* stakeholders.

Implementation and Evaluation

Once approved, a project enters its implementation stage. During this stage, the project is monitored for compliance with the terms of the FPA and associated documents, and evaluated for lessons that can be transferred to the more generally applicable system of environmental regulation and applied to improve the XL program itself. While

this notice does not provide substantial guidance on the role of stakeholders in project implementation and evaluation, EPA wishes to emphasize points that were made on this topic in the **Federal Register** notice that originally announced Project XL.

As stated in the May, 23, 1995, **Federal Register** notice,

> project proponents should identify [in the FPA] how to make information about the project, including performance data, available to stakeholders in a form that is easily understandable. Projects should have clear objectives and requirements that will be measurable in order to allow EPA and the public to evaluate the success of the project and enforce its terms. (60 FR 27282, May 23, 1995)

EPA recommends that the FPA delineate the intended role of stakeholders during the implementation and evaluation of the project. The FPA may, for example, provide for re-examination or periodic evaluation of the project by *direct participant* stakeholders.

Independent Technical Assistance to Direct Participant Stakeholder Groups

EPA has recognized its responsibility to ensure meaningful participation in the stakeholder process, and, in some cases, has provided support (e.g., by making available facilitation services, and by distributing and making available information about project development).

EPA wishes to offer here guidance on its ability to support technical assistance. Beyond making available its own technical expertise, EPA looks to project sponsors to provide assistance in understanding and evaluating technical issues surrounding a specific project. EPA recognizes that, in some cases, there will be a need for the Agency to offer some additional support for technical assistance to *direct participant* stakeholder groups. To that end, the Agency is committing to provide up to $25,000 per project in order to assure that necessary technical assistance is available to support meaningful stakeholder involvement. These funds will be made available on a task-specific basis and will not be in the form of grants to direct stakeholder groups. These funds may be used in project development, implementation or evaluation.

Technical assistance needs must be determined within the *direct participant* stakeholder process described in this notice. Stakeholder needs should be examined carefully and fully. The best means of meeting those needs should be identified by the *direct participant* stakeholder group as a whole. Project sponsors as well as regulators should participate in these discussions and have the chance to provide input on how the necessary technical services can be provided. Requests for technical assistance must come from the *direct participant* stakeholder group rather than from individuals. Technical assistance funds are not available to address strictly individual needs. In order to build trust and local capacity, local resources should always be explored as both the source of expertise and the financial means of obtaining technical services. These options should be explored before EPA funds are sought for the provision of technical assistance.

When it is necessary to utilize EPA funds to obtain assistance, appropriate financial management controls must be in place to assure the most focused, cost effective and accountable use of taxpayer dollars. Resources for assistance will not be given directly to stakeholder groups, but will be made available to identified experts for a specific assistance activity. The Agency may choose to utilize a variety of approaches to access either local expertise or experts agreeable to the *direct participant* stakeholder group. These include cooperative agreements to local and state regulators or other procurement options available to the federal government.

As an example of an innovative approach to providing technical assistance, EPA is exploring the creation of a public/private partnership to handle technical assistance requests from *direct participant* stakeholder groups. In this partnership, EPA, other regulatory agencies, potential project sponsors, trade associations, non-profit organizations and other interested parties would provide resources to a neutral third party which would in turn manage and fulfill technical assistance requests. This neutral third party would be guided by a partnership of EPA, state environmental agencies, national stakeholder groups, and other parties that provide resources to the partnership, in terms of what type of assistance should be available, who could provide assistance when no local experts are known, and at what cost.

Regardless of the mechanism used by EPA to fund technical assistance requests, the goal will always be to ensure that specific, objective expertise is available, when necessary, and is provided in a credible fashion that preserves and fosters the integrity of a meaningful stakeholder involvement process.

Proposal and Project Development Process

The May 23, 1995, **Federal Register** notice that announced Project XL included a brief description of the XL process. The notice described four stages: solicitation and selection of XL proposals, project (or FPA) development, project implementation, and evaluation. The notice contained additional information, including time frames, for the first two steps. In today's notice, EPA offers information on changes to the process of creating XL proposals and developing XL projects for implementation, to assist future applicants, stakeholders and those evaluating the program.

Pre-Proposal Activities

Today's notice encourages project sponsors to do significantly more to improve proposal ideas prior to formal submission of an XL proposal to EPA. First, EPA and its state partners stand ready to discuss project ideas at any time. Second, EPA encourages project sponsors to have substantive discussion with stakeholders prior to submission of a formal proposal. The Agency encourages the development of co-sponsorship relations among facilities and non-governmental organizations. Third, this notice envisions that proposals themselves will be much more substantive and detailed. While addressing the eight XL criteria, a proposal should include a more detailed analysis of superior environmental performance consistent with the principles included in this notice; a description of pre-proposal stakeholder activities and fully developed stakeholder plan; and a discussion of the specific regulatory flexibility sought and barriers to providing that flexibility in otherwise applicable requirements. In addition, EPA encourages all potential applicants to meet with EPA and the affected state prior to submission of any proposal to clarify the XL program, principles, expectations, and guidance provided in this notice.

Proposal Development

After proposals submitted to the XL program are received in EPA's Regulatory Reinvention Docket, they will proceed through a proposal intake process. EPA will briefly evaluate the proposal with input from potentially affected offices and states in order to determine whether the proposal appears to consist of environmental and regulatory concepts worth testing in Project XL. If EPA determines that the proposal should continue through the proposal development process, a cross-

agency proposal team will be established. The team—consisting of representatives from EPA headquarters XL Staff and each affected headquarters office, EPA region, and state—will review the proposal, discuss it throughout their respective offices as necessary, and together establish specific questions or outstanding items in the proposal that may hinder a thorough understanding of the proposal. Along with any feedback received from interested stakeholders, EPA will communicate its own feedback to the project sponsors.

At this stage, responsibility for the timing of the proposal process shifts to the project sponsors. The sponsors may consider EPA's appraisal and determine the next step: to provide additional information requested by EPA, to submit a revised proposal, or to withdraw the proposal. In responding, the project sponsors are strongly encouraged to raise important issues to any stakeholders who have been identified at this point.

With complete information, EPA will develop an assessment of the merits of the proposal relative to the Project XL decision criteria. The decision to advance or reject the proposal will be made by the Associate Administrator for Reinvention in consultation with other members of EPA's senior leadership team. Such decisions will be made in close consultation with the relevant state environmental agency, and no XL project will proceed without its approval.

Project Development Process

Proposals that advance are at this point described as XL projects in development. This is the stage in which FPAs are developed. Once a project enters the project development phase, the Agency, in consultation with the state, will expand or modify its staff team as needed to ensure coordination and continuity throughout development of an FPA. Guidance on some of the details of the project development process is contained in the stakeholder involvement portion of this notice.

Closure

Once a draft FPA has been developed, EPA will conduct a final internal review of the project and solicit formal notice and comment. The decision to approve or disapprove an FPA will be made by the Associate Administrator for Reinvention and the relevant EPA Regional Administrator, in consultation with other members of EPA's senior leadership team.

Paperwork Reduction Act

The information collection provisions in this notice, including the request for proposals, have been approved by the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been approved (ICR No. 1749.01). Additional copies may be obtained from Sandy Farmer, Information Policy Branch, US EPA, Mail Code 2136, 401 M Street, SW., Washington, DC 20460, or by calling (202) 260–2740.

Dated: April 16, 1997.

Fred Hansen,

Deputy Administrator.

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