

106TH CONGRESS
1ST SESSION

H. R. 3448

To improve the management of environmental information and to encourage innovation in the pursuit of enhanced environmental quality, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 18, 1999

Mr. GREENWOOD (for himself, Mr. DOOLEY of California, Mr. BOEHLERT, and Mrs. TAUSCHER) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees on Transportation and Infrastructure, and the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To improve the management of environmental information and to encourage innovation in the pursuit of enhanced environmental quality, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Second Generation of
5 Environmental Improvement Act of 1999”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) While existing environmental statutes have
2 been effective at reducing pollution even as the pop-
3 ulation and economy have grown, new approaches
4 are needed to address remaining and emerging envi-
5 ronmental problems, to make the regulatory system
6 more efficient, and to better enable communities to
7 solve their environmental problems.

8 (2) Numerous studies have recommended ex-
9 perimenting with performance-based regulatory ap-
10 proaches that provide regulated entities with greater
11 flexibility in determining how to meet environmental
12 standards and that, in return, require greater ac-
13 countability through enhanced monitoring and data
14 reporting.

15 (3) Federal performance-based approaches can
16 take advantage of many technical advances made
17 over the past 30 years, including the growth of the
18 Internet, the creation of environmental management
19 systems and the development of pollution prevention
20 strategies, such as life-cycle management and re-
21 source stewardship; and can build on successful
22 State and local initiatives.

23 (4) While the Environmental Protection Agency
24 and the States have begun to experiment with such
25 approaches, the Agency's efforts have been ham-

1 pered by an inadequate information system, and lack
2 of clear statutory authority and congressional direc-
3 tion.

4 **SEC. 3. PURPOSES.**

5 The purposes of this Act are to—

6 (1) improve the quality of, and streamline the
7 collection, management, and dissemination of envi-
8 ronmental performance measures and other environ-
9 mental information to ensure that the information is
10 a useful gauge of environmental conditions and
11 trends, is valuable to regulators and to the general
12 public, and is accurate and up-to-date; and

13 (2) provide the Environmental Protection Agen-
14 cy with additional authority and incentives to experi-
15 ment with performance-based regulatory approaches
16 in dealing with States, communities, and the private
17 sector to improve the state of the environment and
18 the efficiency of the regulatory system.

19 **SEC. 4. DEFINITIONS.**

20 In this Act—

21 (1) ADMINISTRATOR.—The term “Adminis-
22 trator” means the Administrator of the Environ-
23 mental Protection Agency.

24 (2) AGENCY.—The term “Agency” means the
25 Environmental Protection Agency.

1 (3) ENVIRONMENTAL PERFORMANCE INDI-
2 CATOR.—The term “environmental performance in-
3 dicator” means a quantitative measure designed to
4 provide data on the quality of the environment over
5 time, including measures of:

6 (A) ambient concentrations of pollutants in
7 air, water, or land;

8 (B) releases or discharges of pollutants to
9 air, water, or land from individual sources, cat-
10 egories of sources, geographic areas or industry
11 sectors;

12 (C) the viability of ecosystems and the
13 health of ecologically important microbe, plant,
14 or animal populations in ecosystems;

15 (D) the impact of the environment or envi-
16 ronmental programs on human health; and

17 (E) resource utilization per unit of output
18 including energy efficiency.

19 (4) INNOVATIVE STRATEGY AGREEMENT.—The
20 term “innovative strategy agreement” means an
21 agreement entered into pursuant to title II of this
22 Act that allows flexibility in meeting environmental
23 standards in return for greater transparency and ac-
24 countability.

1 (5) PERSON.—The term “person” means an in-
2 dividual, trust, firm, joint stock company, corpora-
3 tion (including a government corporation), partner-
4 ship, or association.

5 (6) STATE.—The term “State” includes the
6 several States, the District of Columbia, Guam, the
7 Commonwealth of Puerto Rico, the Northern Mar-
8 iana Islands, the Virgin Islands, and America
9 Samoa.

10 **TITLE I—INFORMATION** 11 **MANAGEMENT**

12 **SEC. 101. CHIEF INFORMATION OFFICER.**

13 The Administrator shall designate a Chief Informa-
14 tion Officer for the Agency at the level of an Assistant
15 Administrator. The Administrator may create an addi-
16 tional Assistant Administrator for such purposes or add
17 to the portfolio of any existing Assistant Administrator.
18 The Chief Information Officer shall be responsible for car-
19 rying out the authorities and responsibilities of the Admin-
20 istrator under this title.

21 **SEC. 102. ENVIRONMENTAL PERFORMANCE INDICATORS.**

22 (a) PRELIMINARY REPORT.—The Administrator, in
23 consultation with the States and other interested parties,
24 shall prepare a report proposing a set of national environ-

1 mental performance indicators designed for the following
2 purposes:

3 (1) Focusing Agency resources on the most
4 critical environmental problems.

5 (2) Informing the public of progress toward
6 meeting environmental goals.

7 (3) Evaluating the success of innovative envi-
8 ronmental strategies, including those conducted pur-
9 suant to title II of this Act.

10 The report shall identify which indicators will be based
11 on data the Agency will collect itself, which will be based
12 on data collected by the States directly and which will be
13 based on data reported to the States, the Agency, or other
14 governmental entities. The report shall be submitted to the
15 Congress and published in the Federal Register within 1
16 year after the date of enactment of this Act.

17 (b) NATIONAL ACADEMY OF SCIENCES.—The Ad-
18 ministrator shall contract with the National Academy of
19 Sciences to provide recommendations regarding which in-
20 dicators should be included in the report under subsection
21 (a). The Academy shall provide its recommendations no
22 later than 1 year after the date of enactment of this Act.
23 The Academy report shall identify both indicators that are
24 currently feasible and those that are not feasible without
25 additional scientific research or development of tech-

1 nologies. For those that are not yet feasible, the report
2 shall identify the necessary additional research or develop-
3 ment and the likely time needed to conduct such research
4 and development.

5 (c) FINAL REPORT.—Within 2 years after the date
6 of enactment of this Act, and after consultation with
7 States, other Federal agencies, the private sector, and
8 public interest groups, the Administrator shall publish in
9 the Federal Register a final description of the environ-
10 mental indicators to be used for the purposes specified in
11 subsection (a).

12 (d) ANNUAL REPORT.—Beginning with the first Jan-
13 uary 31 after the publication of the report required by
14 subsection (c) and at least annually thereafter, the Admin-
15 istrator shall issue a State of the Environment Report pre-
16 senting and analyzing the measured levels of each environ-
17 mental indicator described in the report required by sub-
18 section (c). The Administrator shall submit the report to
19 Congress and shall make the report available to the public
20 in print and electronic form.

21 (e) CHANGES IN INDICATORS.—After publication of
22 the first report required by subsection (c), the Adminis-
23 trator may modify, add or eliminate indicators after pub-
24 lishing a notice in the Federal Register and allowing at
25 least 90 days for comment.

1 **SEC. 103. RESTRUCTURING OF ENVIRONMENTAL REPORT-**
2 **ING.**

3 (a) PLAN.—Within 2 years after the date of enact-
4 ment of this Act, after consultation with the States, other
5 Federal agencies, and other interested parties, the Admin-
6 istrator shall submit to the Congress, and publish in the
7 Federal Register for comment, a unified plan for all of
8 the Environmental Protection Agency’s information activi-
9 ties. The plan shall be designed to provide a scientifically
10 and technically sound foundation for the Agency’s pro-
11 grams and to facilitate the development of a performance-
12 based system of environmental protection and of innova-
13 tive strategy agreements pursuant to title II of this Act.
14 The plan shall take full advantage of the capabilities of
15 available and reasonably anticipated information tech-
16 nologies. The Administrator shall also consult with the
17 Agency’s Small Business Ombudsman to ensure that the
18 plan addresses the needs of small businesses.

19 (b) CONTENT.—The plan shall—

20 (1) streamline reporting and recordkeeping re-
21 quirements by eliminating any redundant or unnec-
22 essary requirements and by adding any requirements
23 needed to fill data gaps, including those that impede
24 the development or compilation of environmental
25 performance indicators required by section 102;

1 (2) establish standard data formats to maxi-
2 mize the ability to manage and exchange information
3 between and among public and private entities and
4 the public;

5 (3) establish procedures to assure data quality,
6 timeliness, and accuracy, including the detection and
7 correction of errors both prior to and following pub-
8 lic dissemination;

9 (4) establish a system for indexing, locating,
10 and obtaining the information the Agency has so the
11 public can retrieve it sorted by industrial sector,
12 company, facility, geography, type of emission and
13 level of environmental performance;

14 (5) ensure that the public has easy access to
15 Agency information on any regulated entity along
16 with background to help the public make sense of
17 the information;

18 (6) seek to achieve maximum integration of
19 State and Agency data management systems; and

20 (7) facilitate small business compliance;

21 (8) recommend any Federal statutory changes
22 needed to remedy any of the following:

23 (A) Data gaps, particularly those that im-
24 pede the development of environmental perform-
25 ance indicators.

1 (B) Redundancy and overlaps.

2 (C) Conflicts among definitions.

3 (D) Inconsistencies or other weaknesses in
4 the required frequency and timing of reports,
5 including inconsistencies between requirements
6 imposed by the Agency's regions, its head-
7 quarters and the States.

8 (E) Requirements that are no longer rel-
9 evant or fail to contribute to public awareness
10 or Agency decisionmaking.

11 (F) Inconsistencies in the treatment of ex-
12 emptions from reporting;

13 (9) describe how the electronic collection and
14 dissemination of data will be facilitated;

15 (10) review State reporting requirements and
16 identify any State forms or procedures that could be
17 used to fulfill Federal reporting requirements;

18 (11) assess the value of voluntary industry re-
19 porting measures, including but not limited to those
20 organized by the International Organization for
21 Standardization and the Coalition for Environ-
22 mentally Responsible Economies.

23 (c) IMPLEMENTATION.—Within 3 years after the date
24 of enactment of this Act, the Administrator shall promul-
25 gate any final regulations that are needed to implement

1 the plan required by subsection (a) and shall take any
2 other steps necessary to implement the plan.

3 (d) UPDATE.—After completing the activities re-
4 quired by subsection (c), the Administrator shall, periodi-
5 cally, but no less frequently than every other year, review
6 the plan issued under subsection (a) and publish in the
7 Federal Register any changes to the plan.

8 (e) CONSISTENCY.—The Administrator shall ensure
9 that actions under this section are consistent with, and
10 assist with the compilation of the indicators required by
11 section 102.

12 **SEC. 104. INFORMATION MANAGEMENT.**

13 (a) INFORMATION MANAGEMENT PROGRAM.—Within
14 2 years after the date of enactment of this Act, the Admin-
15 istrator shall establish an Information Management Pro-
16 gram, to provide financial assistance to States, and rel-
17 evant local entities, including Publicly Owned Treatment
18 Works, through grants, cooperative agreements, or con-
19 tracts, to improve the accuracy and timeliness of environ-
20 mental reporting and to meet the goals of the plan pub-
21 lished under section 103(a).

22 (b) SMALL BUSINESSES.—Within 3 years after the
23 date of enactment of this Act, the Administrator, acting
24 through the Small Business Ombudsman, shall create a
25 program to provide technical and financial assistance to

1 small businesses (individually or through trade associa-
2 tions) to help them meet the requirements of the plan pub-
3 lished under section 103(a). The Administrator shall pub-
4 lish the guidelines for the program in the Federal Register
5 and shall publicize them widely. Any financial assistance
6 provided under this program shall require a matching re-
7 quirement of at least one-third from the small business
8 or trade association.

9 (c) PUBLIC RECOGNITION.—The Administrator may
10 establish a program to publicly recognize regulated entities
11 that most speedily and fully report accurate information
12 electronically to the Agency.

13 **SEC. 105. BUDGET REPORT.**

14 Beginning with the President's second budget sub-
15 mission to Congress after the enactment of this Act and
16 with every submission thereafter, the President shall in-
17 clude in the budget submission a comprehensive analysis
18 of the activities in each Federal agency devoted to meas-
19 uring ambient environmental conditions and trends either
20 directly or through providing funds to other entities for
21 that purpose. The analysis shall also examine the extent
22 to which the activities contribute to, and are consistent
23 with, the indicators published pursuant to section 102.

1 **SEC. 106. INCENTIVES FOR IMPROVED MONITORING AND**
2 **OTHER MEASUREMENT METHODS.**

3 (a) RECOGNITION.—The Administrator shall estab-
4 lish a program to publicly recognize persons who—

5 (1) develop environmental monitoring tech-
6 nologies, and other measurement methods that sub-
7 stantially improve the ability to track ambient envi-
8 ronmental conditions, facility emissions, or other
9 measures of environmental performance; or substan-
10 tially improve the accuracy, accessibility, or reli-
11 ability of such data;

12 (2) deploy, or promote the use of, existing mon-
13 itoring technologies and other measurement methods
14 that have not been adequately deployed or commer-
15 cialized;

16 (3) utilize monitoring technologies, and other
17 measurement methods that are able to increase the
18 precision, timeliness and accuracy of environmental
19 performance data; and

20 (4) develop technologies and other methods that
21 reduce the costs of collecting or disseminating moni-
22 toring data.

23 (b) MONITORING.—Within 6 months of the date of
24 enactment of this Act, the Administrator shall submit to
25 the Congress a report analyzing the length of time the

1 Agency has taken over the 10 prior years to approve moni-
2 toring technologies and recommending ways—

3 (1) to reduce that time to more quickly get reli-
4 able monitoring information to the Agency and the
5 public; and

6 (2) to increase the deployment of existing moni-
7 toring technologies, particularly those that would en-
8 able the Agency to make determinations about better
9 environmental performance under section 203(c).

10 (c) IMPLEMENTATION.—Not later than 6 months
11 after the submission of the report required by subsection
12 (b), the Administrator shall implement the recommenda-
13 tions in that report.

14 **SEC. 107. SAVINGS PROVISIONS.**

15 (a) IN GENERAL.—Nothing in this title shall be con-
16 strued to alter the authority of the Administrator to ob-
17 tain or make available information.

18 (b) CONFIDENTIAL BUSINESS INFORMATION.—Noth-
19 ing in this title shall be construed to change the definition
20 of, or require the public release of confidential business
21 information.

22 (c) PAPERWORK REDUCTION.—The actions under
23 this Act shall be consistent with the Paperwork Reduction
24 Act.

1 (d) GPRA.—The Agency’s plans under the Govern-
2 ment Performance and Results Act of 1993 (Public Law
3 103–62; 107 Stat. 285) shall include agency activities
4 under this title.

5 **SEC. 108. REPORTS TO CONGRESS ON THE MODERNIZA-**
6 **TION OF REPORTING.**

7 Within 1 year after the date of enactment of this Act,
8 the Administrator, in consultation other Federal agencies
9 and interested parties, shall submit to the Congress a re-
10 port analyzing whether the Administrative Procedures Act
11 (5 U.S.C. chapters 5 and 7) should be amended to apply
12 to information reporting requirements and the use of ex-
13 isting information to create new information products. In
14 the report, the Administrator shall analyze whether the
15 Act could be amended to require more public comment and
16 involvement in the setting of reporting requirements and
17 the development of new information products and to en-
18 sure that information disseminated by the Agency is wide-
19 ly available, accurate and presented in a form that is use-
20 ful to the general public. The report shall include any spe-
21 cific recommendations the Administrator may have for
22 amending the Act and any other statute to promote a
23 more open and accurate information system.

1 **SEC. 109. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated such sums
3 as may be necessary in each fiscal year through fiscal year
4 2005 to carry out the activities in this title.

5 **TITLE II—INNOVATIVE**
6 **STRATEGIES**

7 **SEC. 201. INNOVATIVE STRATEGY AGREEMENTS.**

8 (a) **AUTHORITY.**—The Administrator is authorized to
9 enter into innovative strategy agreements under this title
10 to experiment with new approaches to regulation.

11 (b) **ELIGIBLE APPLICANTS.**—The Administrator may
12 enter into innovative strategy agreements with any person,
13 State, Indian tribe, commission, political subdivision of a
14 State, interstate body, or department, agency or instru-
15 mentality of the United States that the Administrator de-
16 termines has a good overall record of meeting statutory
17 environmental standards.

18 (c) **TIME FOR SUBMISSION.**—Applicants may submit
19 proposals to enter into innovative strategy agreements be-
20 ginning 270 days after the date of enactment of this Act.

21 **SEC. 202. PROCEDURES.**

22 (a) **GENERAL GUIDANCE.**—Within 180 days after the
23 enactment of this Act, the Administrator, in consultation
24 with the States and other interested parties, shall publish
25 in the Federal Register each of the following:

1 (1) A list of environmental concerns that will be
2 given priority when reviewing proposed innovative
3 strategy agreements and ensure that the list gives
4 priority to environmental problems—

5 (A) for which conventional approaches to
6 regulation have already proven to be less than
7 fully successful, such as nonpoint source pollu-
8 tion or reducing pollution from small sources
9 that have a large cumulative effect;

10 (B) that present significant public health
11 or ecological risks that have not yet been ad-
12 dressed by regulation; or

13 (C) that are of particular concern to an in-
14 dividual community.

15 (2) Guidelines specifying the form and require-
16 ments for submitting a proposal to enter into an in-
17 novative strategy agreement, including the appro-
18 priate points of contact within the Agency. At a
19 minimum a proposal submission shall—

20 (A) identify its expected environmental
21 benefits and any other expected benefits to the
22 public;

23 (B) identify any Agency rule, requirement,
24 policy, or practice for which a modification or

1 waiver is sought and any alternative require-
2 ment that is proposed.

3 (3) Guidelines as to how the Administrator will
4 determine whether the eligible applicant has con-
5 sulted adequately with interested national, State,
6 and community groups and the general public in de-
7 veloping the proposal.

8 (b) INITIAL REVIEW.—No later than 90 days after
9 the submission of a proposal to enter into an innovative
10 strategy agreement, the Administrator shall complete an
11 initial review of the proposal to determine if the proposal
12 meets the criteria in section 203 and is sufficiently likely
13 to accomplish its objectives to merit further review. If the
14 proposal is rejected, the Administrator shall clearly state
15 the reasons for the rejection in writing to the applicant.
16 Any decision the Administrator makes during the initial
17 review under this subsection shall be within the Adminis-
18 trator's sole discretion.

19 (c) REVIEW TIMETABLE.—Immediately upon comple-
20 tion of the initial review, if the Administrator determines
21 the proposal merits further review, the Administrator
22 shall—

23 (1) enter into negotiations with the applicant
24 with the intent of bringing the agreement to comple-
25 tion within 120 days; and

1 (2) publish a notice in the Federal Register re-
2 questing public comment on the proposal.

3 If negotiations are continuing beyond 120 days, the Ad-
4 ministrator shall issue to the applicant a 1-page summary
5 of the progress of negotiations and a revised schedule for
6 the completion of negotiations.

7 (d) FINAL DECISION.—If, after negotiations, the Ad-
8 ministrator and the applicant decide to enter into an inno-
9 vative strategy agreement, the Administrator shall publish
10 the text of the agreement in the Federal Register no later
11 than 7 days after the agreement has been signed. If the
12 Administrator terminates negotiations at any point, the
13 Administrator shall provide an explanation in writing to
14 the applicant and to the committees of jurisdiction in the
15 Congress as to why negotiations were terminated.

16 **SEC. 203. CRITERIA.**

17 (a) APPROVAL.—The Administrator may enter into
18 a proposed innovative strategy agreement only if the Ad-
19 ministrator determines that the agreement—

20 (1) can reasonably be expected to produce bet-
21 ter environmental results as defined in subsection

22 (c);

23 (2) includes a detailed, feasible monitoring plan
24 that will be used to determine if the agreement is
25 meeting its environmental goals as detailed pursuant

1 to section 204(b)(2) and will provide the Agency and
2 the public with better data to gauge the state of the
3 environment; and

4 (3) reflects the results of a stakeholder process
5 in conformance with the guidelines issued under sec-
6 tion 202(a)(3) that demonstrates that the proposal
7 has broad support and that its environmental impli-
8 cations are fully understood by all interested parties.

9 (b) PREFERENCE.—

10 (1) PRIMARY FACTORS.—In reviewing proposed
11 innovative strategy agreements, the Administrator
12 shall give preference to those that address priorities
13 listed in the guidelines issued under section
14 202(a)(1) and that are most likely to produce better
15 environmental results as defined in subsection (c)(1)
16 or (2).

17 (2) ADDITIONAL FACTORS.—After the Adminis-
18 trator has determined that a proposed innovative
19 strategy agreement meets the criteria in paragraph
20 (1), the Administrator shall also weigh factors set
21 forth in this paragraph in determining the degree of
22 preference to grant to that proposal. The Adminis-
23 trator shall consider whether the proposed
24 agreement—

1 (A) is designed to demonstrate the efficacy
2 of new methods of regulation, pollution preven-
3 tion or abatement, reducing the use of land,
4 water, or other resources, or monitoring that
5 are most likely to have wide applicability;

6 (B) would provide enhanced accountability
7 through such means as monitoring systems that
8 will provide data for the environmental perform-
9 ance indicators issued pursuant to section 102;

10 (C) is likely to result in greater cost sav-
11 ings for the Federal Government, States, and
12 the applicant;

13 (D) has the broadest community support
14 as demonstrated through an inclusive and thor-
15 ough stakeholder process; or

16 (E) is proposed by applicants with effective
17 environmental management programs.

18 The Administrator shall give the greatest preference to
19 proposals that meet the criteria of paragraph (1) and have
20 the greatest number of characteristics enumerated in this
21 paragraph.

22 (c) BETTER ENVIRONMENTAL RESULTS.—The Ad-
23 ministrator shall consider that an innovative strategy
24 agreement can reasonably be expected to produce better

1 environmental results only if the Administrator determines
2 the innovative strategy agreement is likely to—

3 (1) in the case of a facility, reduce the actual
4 emissions per unit of output of any pollutants cov-
5 ered by the agreement;

6 (2) in the case of an applicant for which the
7 condition in paragraph (1) is inapplicable, reduce
8 the actual level of emissions of a pollutant or set of
9 pollutants; or

10 (3) in the case of any applicant, demonstrate
11 effective new—

12 (A) methods of pollution prevention, con-
13 trol of nonpoint source pollution, or resource
14 conservation; or

15 (B) monitoring and reporting measures
16 that would provide greater certainty and public
17 information about the actual levels of emissions
18 in a more timely manner.

19 **SEC. 204. CONTENT.**

20 (a) **AUTHORITIES.**—(1) Under innovative strategy
21 agreements, the Administrator may—

22 (A) modify, waive, or replace otherwise applica-
23 ble agency rules, requirements, policies, or practices;

24 (B) allow a tiered approach under which moni-
25 toring and reporting requirements are loosened ini-

1 tially when emissions are significantly below those
2 allowable under the agreement and then those re-
3 quirements increase as actual environmental per-
4 formance gets closer to the emission, discharge, and
5 other limitations stipulated in the agreement;

6 (C) extend permit terms, expedite permit re-
7 views, or provide multi-media permits;

8 (D) establish facility-wide limitations on overall
9 allowable emissions and discharges;

10 (E) allow third-party or self-certification in lieu
11 of frequent inspection, provided the sponsor has a
12 credible environmental management program in
13 place; and

14 (F) employ market-based strategies, including
15 pollution trading credits.

16 (2) In entering into innovative strategy agreements,
17 the Administrator shall require stricter monitoring, or
18 take other appropriate steps, for proposals with greater
19 uncertainty of meeting their stated environmental goals.

20 (b) PROHIBITIONS.—The Administrator shall not
21 enter into any innovative strategy agreement that would—

22 (1) violate or waive any specific statutory provi-
23 sion;

24 (2) waive any rule or regulation under title IV
25 of the Clean Air Act or under subtitle B of the

1 Emergency Planning and Community Right to Know
2 Act of 1986;

3 (3) result in an increase in emissions, dis-
4 charges, or other releases above those allowable
5 under the otherwise applicable regulatory require-
6 ments; or

7 (4) address past or ongoing violations or non-
8 compliance by a participating entity.

9 (c) SPECIFICATIONS.—A final innovative strategy
10 agreement approved under section 202(d) shall specify—

11 (1) any otherwise applicable rules, require-
12 ments, policies, or practices modified, waived or re-
13 placed;

14 (2) the specific environmental goals of the
15 agreement and the criteria for determining whether
16 the agreement is meeting those goals;

17 (3) a description of how compliance with the
18 agreement will be monitored and enforced, including
19 any penalties that may be imposed for failure to
20 carry out the terms of the agreement;

21 (4) the duration of the agreement and terms for
22 renewal or extension;

23 (5) a transition plan for returning to otherwise
24 applicable rules, policies, requirements, or practices
25 if the agreement is terminated by the applicant for

1 any reason or by the Administrator for failure to
2 meet the agreement's stated environmental goals,
3 despite good faith efforts;

4 (6) a plan for integrating into the agreement
5 any relevant regulations that are promulgated dur-
6 ing the duration of the agreement; and

7 (7) a plan for integrating the innovations in the
8 agreement into the Agency's standard practices to
9 the extent practicable, if the agreement accomplishes
10 its environmental goals.

11 **SEC. 205. ENFORCEMENT.**

12 (a) ENFORCEMENT.—

13 (1) ENFORCEABILITY OF TERMS OF AGREE-
14 MENT.—Compliance with the terms of an innovative
15 environmental strategy agreement shall be enforce-
16 able as provided in the agreement in provisions in-
17 cluded pursuant to section 204(c)(3).

18 (2) TRANSITION.—If the Administrator deter-
19 mines that, despite compliance with the terms of the
20 agreement, the environmental goals of the agreement
21 cannot be met, the Administrator shall allow for an
22 orderly transition back to the otherwise applicable
23 rules, policies, requirements, or practices, in accord-
24 ance with section 204(c)(5).

1 (3) FAILURE TO COMPLY.—The Administrator
2 may terminate an innovative environmental strategy
3 agreement, after 30 days' notice to all parties to the
4 agreement, if the Administrator determines that
5 there has been noncompliance with the terms of the
6 agreement. Upon termination, the parties to the
7 agreement shall be subject immediately to all Agency
8 statutes and regulations, including their enforcement
9 provisions.

10 (b) CIVIL ACTION.—

11 (1) IN GENERAL.—Any person may commence
12 a civil action in the United States District Court for
13 the District of Columbia against any party who is in
14 violation of an innovative strategy agreement to re-
15 quire compliance with such agreement.

16 (2) TIMING.—No action may be commenced
17 under paragraph (1) before the date that is 60 days
18 after the date on which the plaintiff gives notice to
19 the Administrator of the intent of the plaintiff to
20 commence the action.

21 **SEC. 206. JUDICIAL REVIEW.**

22 A person other than a signatory to an innovative envi-
23 ronmental strategy agreement may bring an action in the
24 appropriate United States Court of Appeals for judicial
25 review of a decision by the Administrator to enter into

1 an innovative strategy agreement in any case in which the
2 agreement was entered into in violation of any provision
3 of this Act. Such an action must be brought no later than
4 90 days after the publication of the agreement pursuant
5 to section 202(d). A decision by the Administrator not to
6 enter into an agreement shall not be subject to judicial
7 review.

8 **SEC. 207. GENERAL PROVISIONS.**

9 (a) EFFECT OF DECISIONS BY THE ADMINIS-
10 TRATOR.—A decision by the Administrator to enter into
11 an agreement under this Act shall not—

12 (1) affect the validity or applicability of any
13 rule, requirement, policy, or practice, that is modi-
14 fied or waived in the agreement with respect to any
15 entity other than the entity which is subject to the
16 agreement;

17 (2) be used as a legal or equitable defense by
18 any entity not party to the agreement, or by a party
19 to the agreement as a defense in an action unrelated
20 to any requirement imposed under the agreement;

21 (3) limit or affect the Administrator's authority
22 to issue new generally applicable regulations or to
23 apply regulations to the entity that is the subject of
24 the agreement;

1 (4) give rise to any claim for damages or com-
2 pensation in the event of a change in statutes or ap-
3 plicable regulations; or

4 (5) be admissible for any purpose in any judi-
5 cial proceeding other than a proceeding to challenge,
6 defend, or enforce the agreement.

7 (b) OTHER AUTHORITY.—Nothing in this Act shall
8 be construed to affect any authority the Administrator has
9 through other statutes to experiment with innovative ap-
10 proaches to regulation. Nothing in this Act shall be con-
11 strued to affect any innovative approaches in place prior
12 to the enactment of this Act, including those approved
13 pursuant to the agreement between the Agency and the
14 Environmental Council of the States and any rules pro-
15 mulgated under Project XL.

16 (c) OTHER FEDERAL AGENCIES.—Nothing in this
17 Act affects the regulatory or enforcement authority of any
18 other Federal agency under the laws implemented by the
19 Federal agency except to the extent provided in an agree-
20 ment to which the other Federal agency is a party.

21 (d) GPRA.—The Agency’s plans under the Govern-
22 ment Performance and Results Act of 1993 (Public Law
23 103–62; 107 Stat. 285) shall include agency activities
24 under this title.

25 (e) CONSULTATION.—

1 (1) IN GENERAL.—The Administrator shall con-
2 sult with States, and other interests, in carrying out
3 each provision of this Act.

4 (2) SHARING OF INFORMATION.—For purposes
5 of this Act, Federal documents that are otherwise
6 privileged may be shared with State co-regulators
7 without losing their privilege under the Freedom of
8 Information Act (5 U.S.C. 552).

9 (3) REGIONAL OFFICES.—Provisions for the
10 handling of innovative strategy agreements shall be
11 incorporated into memoranda of agreement between
12 Agency regional offices and headquarters.

13 (f) CONFIDENTIALITY.—Information may be shared
14 in stakeholder discussions, including those with non-
15 governmental members, subject to an enforceable con-
16 fidentiality agreement providing that such information can
17 still be claimed as confidential business information in
18 other contexts.

19 **SEC. 208. ANNUAL REPORT.**

20 (a) TIMING.—No later than the first January 31 oc-
21 curring after the issuance of guidance under Section
22 202(a), and no later than January 31 in every year there-
23 after, the Administrator shall submit to the Congress a
24 report evaluating innovative strategy agreements entered
25 into under this Act.

1 (b) CONTENT.—At a minimum the report shall—

2 (1) briefly describe and evaluate the success of
3 all innovative strategy agreements in effect at the
4 time of the report’s submission;

5 (2) list any innovative strategy agreements ter-
6 minated during the year prior to the report and the
7 reasons for those terminations;

8 (3) describe how the regulatory and monitoring
9 strategies being used in the innovative strategy
10 agreements are being incorporated into the Agency’s
11 other programs;

12 (4) recommend any statutory changes that
13 would be needed to allow promising innovative strat-
14 egy agreements to be completed or would be needed
15 to incorporate or expand regulatory and monitoring
16 strategies being proved successful in existing agree-
17 ments; and

18 (5) assess the degree to which innovative strat-
19 egy agreements are improving the nation’s environ-
20 mental performance and ability to monitor that per-
21 formance as measured by the environmental indica-
22 tors developed pursuant to section 102.

23 **SEC. 209. INCENTIVES.**

24 (a) EMPLOYEE INCENTIVE AWARDS FOR SUP-
25 PORTING INNOVATION.—Within 120 days after the enact-

1 ment of this Act, the Administrator shall implement an
2 employee incentive awards program that rewards employ-
3 ees and organizational units that demonstrate leadership
4 in the planning, design, implementation, and evaluation of
5 innovative environmental strategies and other activities
6 that result in better environmental performance, greater
7 economic efficiency in the public and private sectors, and
8 expedited delivery and improved quality of public services.

9 (b) FUND FOR INNOVATIVE STRATEGIES.—(1) The
10 Administrator shall retain any permitting or other fees the
11 Agency collects from entities that have entered into inno-
12 vative strategy agreements and such retained amounts
13 shall be available to the Agency without further appropria-
14 tion for compliance assistance and enforcement.

15 (2) Fees received by the agency under this subsection
16 shall be deposited in a special fund in the United States
17 Treasury. Amounts in such fund shall remain available
18 until expended. The Administrator shall submit an annual
19 report to the Congress regarding the sums deposited in
20 the fund, the sources thereof, and the actual and proposed
21 uses thereof.

22 **SEC. 210. STAKEHOLDER PARTICIPATION.**

23 To promote a participatory process that will conform
24 to the guidelines issued pursuant to section 202(a)(3), the
25 Administrator is authorized to—

1 (1) provide travel stipends for nongovernmental
2 participants in stakeholder processes occurring out-
3 side their communities;

4 (2) provide technical support to nongovern-
5 mental participants in stakeholder processes; and

6 (3) provide grants to nongovernmental partici-
7 pants in stakeholder processes to enable them to
8 consult with technical experts.

9 **SEC. 211. AUTHORIZATION OF APPROPRIATIONS.**

10 There are authorized to be appropriated such sums
11 as may be necessary in each fiscal year through fiscal year
12 2005 to carry out the activities in this title.

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