

US EPA ARCHIVE DOCUMENT

**Model FPA November 17, 1998 (March 2,1999)**  
**City of Denton, Texas**

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**Draft Model FPA November 17, 1998 (March 2, 1999)**

**City of Denton, Texas**

**I. OVERVIEW**

This Final Project Agreement (FPA) is an outgrowth of the U.S. Environmental Protection Agency's (EPA) June 23, 1998 Federal Register Notice (Vol. 63, No. 120) requesting proposals from Publicly Owned Treatment Works (POTWs) for XL (eXcellence and Leadership) projects based on environmental performance measures for waste water pretreatment programs. The intent of this effort is to investigate ways of increasing the effectiveness of the pretreatment program and thus to obtain greater environmental benefit. EPA is willing to provide POTWs regulatory relief from programmatic requirements (e.g., specific monitoring frequencies, specific control mechanism issuance requirements, etc.), so that they can implement alternative programs that increase environmental benefits.

**Purpose of Project XL and the FPA**

**A. Purpose of Project XL**

Project XL, which stands for "eXcellence and Leadership," is a national pilot program to test the extent to which regulatory flexibility, and other innovative environmental approaches, can be used to achieve superior environmental performance and reduced economic burden. Through site-specific agreements with project sponsors, EPA is able to gather data and project experience that will help the Agency redesign current approaches to public health and environmental protection. Under Project XL, sponsors -- private facilities, multiple facilities, industry sectors, Federal facilities, communities, and states -- can implement innovative strategies that produce superior environmental performance, provide flexibility, cost savings, paperwork reduction or other benefits to sponsors, and promote greater accountability to stakeholders.

## B. Purpose of This Final Project Agreement

This FPA is intended to be a joint statement of the plans and intentions of EPA, and *[City of Denton]* (collectively the parties) and to reflect the firm commitment of each party with regard to the project approved for implementation at *[Pecan Creek Water Reclamation Plant]* (the Project). This FPA is not, however, intended to create legal rights or obligations and is not an enforceable contract or a regulatory action such as a permit or rule. Nevertheless, some provisions of this FPA will be implemented through rulemaking, consent orders and/or permitting, the terms and conditions of which will be legally enforceable. This FPA will articulate that *[City of Denton]* intends to continue to attain environmental results that are measurably superior when compared to current and reasonably anticipated regulatory standards as contemplated by EPA's Project XL criteria. This FPA will identify the means to provide for environmental regulatory flexibility as requested by *[City of Denton]* as an incentive for superior environmental results. All parties to this FPA will strive for a high level of cooperation, communication, and coordination to assure successful, effective, and efficient administration of the FPA and the Project.

### **Current Program Description**

*Provide statistical data related to the treatment works (number of treatment plants; design flow of treatment plants; population served; percent industrial flow; number of significant industrial users & categorical industrial users)*

City of Denton is permitted (TX 0047180) to discharge treated wastewater effluent from the Pecan Creek Water Reclamation Treatment Plant (design flow: 15 MGD) to Pecan Creek thence to Lake Lewisville in segment No. 0823 of the Trinity River Basin. This plant serves a rapidly expanding population of greater than 71,500 (1997). The industrial flow which enters the plant represents approximately 8.9% of the average total daily flow (0.9958 MGD/11.149 MGD). City of Denton currently provides wastewater services to seven (7) significant industrial users three (3) of which are categorical (metal finishing) industrial users.

*Summarize NPDES permit requirements related to the treatment plant and the Pretreatment Program*

The current NPDES (TX0047180) permit specifies 30-day average discharge limitations of 10mg/L CBOD<sub>5</sub>, 15 mg/L TSS, 3mg/L ammonia, and 5 mg/L dissolved oxygen. The permit also requires that the final effluent shall contain no measurable total residual chlorine (<0.1mg/L) and the performance of monthly chronic biomonitoring. Discharge Monitoring Reports are submitted to EPA on a monthly schedule.

The NPDES permit requires the pretreatment program to fulfill all six (6) of the minimum requirements for an approved pretreatment program as established by the General Pretreatment

Regulations [40CFR403.8(f)(2)(v)]. These requirements are met through the following activities: annual inspection and analysis of effluent discharged from each SIU, control the contribution to the POTW of industrial users of concern by enforceable permits which require self-monitoring and reporting by categorical industries, evaluate the need for development of a slug control plan by SIUs, the establishment, enforcement, and review of technically based local limits (TBLLs). The NPDES permit also requires the Pretreatment Program to perform the quarterly analysis for toxic pollutants of treatment facility influent, effluent, and de-watered sludge and the annual submission to EPA and TNRCC of an updated pretreatment program status report.

#### ***Summarize Pretreatment Program implementation procedures***

Implementation of the Pretreatment Program is conducted by the Pretreatment branch of the City of Denton Environmental Services Division. The pretreatment branch consists of four regular full time and one temporary position. Analytical services are provided by the City of Denton Municipal Laboratory and contract laboratories when circumstances require. Funding for pretreatment program activities is budgeted annually by City of Denton Department of Utilities Environmental Services Division . Legal authority is provided by the City of Denton Code of Ordinances. The Federal General Pretreatment Regulations and Categorical Pretreatment Standards are incorporated into the ordinance. Discharge of pollutants from SIUs to the POTW is controlled by the issuance of discharge permits. Changes in the POTW user base are monitored by review of new requests for services, monthly reports of sewer taps, Chamber of Commerce Directory of Manufacturers and Major Employers, regular monitoring and inspection activities. All permitted SIUs and a representative population of small quantity generators are inspected annually. Collection and analysis of wastewater discharged from all permitted industrial users and users of concern is conducted annually according to a schedule approved by EPA. Random samples of wastewater discharge from new or previously uncharacterized nonresidential users are collected to assess compliance with discharge ordinance requirements. Self-monitoring reports are received twice annually from categorical industries. Exceedences of permit or ordinance discharge limits are addressed according to an approved enforcement response plan. A summary of program status and compliance activities is reported annually to EPA.

#### ***4) Summarize any additional implementation procedures related to the Pretreatment Program that go beyond what is required by the NPDES permit***

Many aspects of the stormwater program and watershed protection program have been implemented by the City of Denton Environmental Services Division. In 1992, City of Denton conducted a survey and dry weather screening of the storm water drainage system. In 1997, the Environmental Services Division Pretreatment Group conducted a joint study with the University of North Texas to assess the possibility of integrating the compliance activities of the stormwater program into the Pretreatment Program. As a result of that study, a UNT PhD candidate

conducted a dry weather investigation and first flush sampling in each of three drainage basins in the City of Denton. Additionally, an Industrial Pretreatment /Stormwater Inspection checklist was developed and its use initiated in 1997 during inspections of categorical industries.

With the cooperation of City of Denton Water Communications Division, we have provided pollution prevention information to the public. For several years, information related to the proper use of pesticides has been provided to customers of the Department of Utilities in the form of bill stuffers and announcements on a local cable television station.

***Summarize historical measures that are indicators of the effectiveness of your Pretreatment Program (e.g., influent, effluent and sludge pollutant loading trends)***

The following historical measures are indicative of the effectiveness of the City of Denton Pretreatment Program. For the period 1990-1997 influent loading for heavy metals has been reduced by the following magnitudes: cadmium (76%), chromium (44%), lead (84%), and nickel (62%). Analysis of metals concentrations in treated effluent have been below the detection limit with the exception of copper which has been reduced 29% since 1995. Since 1995, concentrations of arsenic, chromium, nickel, silver and zinc in anaerobic sludge have been reduced by 74%. Concentration of metals in composted aerobic sludge currently meets the allowable limits for sale and during 1998 were reduced by the following magnitudes: arsenic (48%), chromium (32%), lead (21%), nickel (36%), and zinc (13%).

**Why Regulatory Relief?**

Some POTWs have mastered the programmatic aspects of the pretreatment program (identifying industrial users, permitting, monitoring, etc.) and want to move into more environmental performance-based processes. These POTWs have expressed an interest in being allowed to focus their resources on activities that they believe will provide greater environmental benefit than is achieved by complying with the current requirements. Some POTWs want to be able to make decisions on allocating resources based on the risk associated with the industrial contributions they receive or other factors. Others want to be able to focus more resources on ambient monitoring in their receiving waters and/or to integrate their pretreatment programs with their storm water monitoring programs. In general, these POTWs want the opportunity to redirect limited resources away from currently required activities that they do not believe are benefitting the environment and toward activities that can achieve measurable improvements in the environment. Project XL was implemented to provide the flexibility to conduct these types of innovative projects.

***City of Denton proposes to modify the approved industrial user inspection and monitoring schedule. Inspections of industrial users that have demonstrated compliance will be conducted on a biannual rather than an annual frequency. The four-day duration of monitoring site visits will be reduced to two randomly scheduled days. Duration will be***



*increased if two-day visits indicate noncompliance. Annual efforts to inspect small quantity generators will be reduced to less than 5% of the total number represented in the user survey.*

*The greatest environmental benefit which results from the proposed regulatory relief will be the reapportionment of resources toward watershed protection. We propose to continue with the integration of Phase II Stormwater Program requirements to include the use of the stormwater facility inspection checklist, coordination of BMP implementation, inspection of recycling centers/ junkyards/ salvage yards, and establishment of a remote monitoring network for creeks in the Denton watershed.*

## II. PROCESS

### Process for FPA Development/Stakeholder Involvement

In order for this project to get to the FPA development stage, the project was required to go through EPA's selection and screening process. After selection and screening, full development of this FPA occurred approximately over a [#?] month time frame. During these [#?] months, the project sponsor, EPA, the State, co-regulators, and other interested stakeholders negotiated the final language of this document.

The first step in FPA development consists of *[City of Denton]* convening all interested stakeholders through a public notice process to inform them of this pilot project proposal and to explore any issues that might have existed. The stakeholder involvement measures which will be enacted by *[City of Denton]* include the following: *[Publication of notice in the local newspaper in the vicinity of Pecan Creek Water Reclamation Plant, and notification by mail of industrial users currently documented in the approved monitoring and enforcement schedule and grassroots environmental organizations of the Project XL proposal and FPA.]* *[City of Denton]* will ensure and maintain continued stakeholder involvement over the duration of this project. The relevant stakeholders for this project included *[eighteen industrial users, Citizens for Healthy Growth, Denton Branch of the Sierra Club]*. The next step involved refining the issues and drafting a document that addressed all parties' concerns and ideas. This step encompassed several meetings. This FPA outlines the details of the project and each party's commitments. Specifically, the participants defined the innovation to be tested, what superior environmental performance must be achieved, what flexibility EPA and other co-regulators will provide, what conditions must be met, and how results will be monitored and reported. All parties were given the opportunity to review and amend the draft document, including a cross-Agency review team, consisting of, but limited to, members from EPA's Office of Enforcement and Compliance Assurance, Office of Policy, Planning and Analysis, Office of Regulatory Enforcement, Office of Reinvention, and Office of Water. The *[Texas Natural Resource Conservation Commission]* was also given the opportunity to review and amend the draft document. The draft document was sent out for notice and comment in the Federal Register and was then signed by the affected parties.



## XL PROJECT DESCRIPTION

### **I. Scope**

#### ***Describe existing Pretreatment Program requirements***

##### ***Industrial waste survey requirements***

When new users are identified, contact is usually initiated by telephone at which time a preliminary survey is conducted to assess the operation of the user. If the facility is determined to be a user of concern, a meeting is scheduled to assess the need to issue a discharge permit.

##### ***2) Permitting procedures***

Discharge permits are issued to any user classified as significant. The permitting procedure requires the significant industrial user to complete an application for permit which requests specific information such as process description, process water consumption and discharge volumes, and the potential pollutant concentration in wastewater discharged from the facility.

##### ***3) Monitoring requirements***

According to the requirements of our approved program, each permitted industrial user is inspected and its wastewater discharge is sampled and analyzed annually. Categorical industries submit self monitoring reports twice annually.

##### ***4) Enforcement procedures***

Enforcement action is initiated for all violations of applicable discharge limits or for failure to submit the self-monitoring report by the date documented in the discharge permit. Categorical users are required by permit to notify the City of Denton within 24 hours of any exceedence of discharge limits. Non-compliance is addressed according to procedures outlined in an approved enforcement response plan.

##### ***5) Reporting requirements***

In addition to the requirements that all categorical industries must submit biannual self-

monitoring reports, all significant industrial users must notify City of Denton of any slug discharge, upset or bypass of a pretreatment system, or any accidental discharges to the wastewater system or into the environment of any waste or material which may cause pollution. All new industrial users must notify City of Denton, EPA and TNRCC of any discharge to the POTW which, if otherwise disposed of, would be a hazardous waste under 40CFR Part 261. Each year during the month of March, the City of Denton is required to submit a Pretreatment Program Status Report to EPA Region VI.

### ***Local limits development requirements***

Technically based local limits (TBLLs) were developed in 1993 in compliance with NPDES permit requirement to modify the City of Denton Pretreatment Program. The local limits were developed on the basis of process inhibition criteria, sludge disposal regulations, and the protection of receiving stream water quality. As a result of the TBLL development process performed in 1993, new discharge limits established were 75% more stringent than the old limits.

As a requirement for NPDES permit renewal in 1995, an assessment of the need to revise TBLLs (40 CFR 122.21 (j) (4)) revealed that current influent loading for pollutants of concern are considerably lower than the TBLL maximum headworks allowance.

### ***Current resources (Equipment and personnel)***

The City of Denton Pretreatment Program staff consists of four (4) full time positions. This staff also performs functions related to pollution abatement, onsite sewage facility regulation and landfill groundwater and methane monitoring. The division has access to the use of two (2) 4WD pickup trucks. Monitoring and sampling equipment includes two (2) portable flow meters, six (6) automatic samplers, and field pH and dissolved oxygen meters.

### ***Quality Assurance / Quality Control***

The basis for acceptable quality assurance and quality control is comprised of all procedures associated with collection of representative industrial discharge samples, site

inspections, review of self- monitoring reports and close scrutiny of all analytical results. Sample containers are cleaned and samples are preserved and analyzed according to 40CFR Part 136. All sampling locations and sample types are clearly identified for each major industrial user. Chains of custody are prepared for all samples analyzed by commercial laboratories. Samples analyzed by the City of Denton Municipal Laboratory are clearly labeled to include location and time of collection, initials of collector, analyses required, and preservation method. The samples are stored at 4° C while en route to the laboratory and are logged in upon arrival at the laboratory. Analytical quality control follows the recommended protocol of calibration, duplication, and spike recovery, Method detection levels are dependent upon the capability of the instrumentation but protocol is designed to achieve recommended levels of analysis.

**B. *Proposed changes***

**1) *Proposed industrial waste survey requirements***

No change

**2) *Proposed permitting procedures***

No change

**3) *Proposed monitoring requirements***

Compliance monitoring and inspection schedule will be revised to biannual inspections of major industrial users that have demonstrated compliance and more random discharge sampling for periods of shorter duration.

***Proposed enforcement procedures***

No change

***Proposed reporting requirements***

No change

***Proposed local limits development requirements***

The need to revise local limits will be assessed annually or whenever conditions warrant.

***Proposed resources (Equipment and personnel)***

Remote monitoring equipment and additional assistance from graduate students from University of North Texas.

***Quality Assurance / Quality Control***

No change

***Detailed description of expected benefits as a result of the proposed changes (e.g., influent, effluent and sludge; ambient water quality)***

The City of Denton anticipates that a reapportionment of a fraction of resources currently allocated to existing program activities will provide additional environmental benefits otherwise unattainable. We will attempt to reduce the concentration of pollutants contributed to the wastewater collection system by back tracking from lift stations to potential source contributors. We will assess the quality of wastewater collected from lift stations in outlying regions of the collection system and prioritize investigation of sources on the basis of significant pollutant concentrations. Identification and control of pollutants from remotely located contributors should result in an observable improvement in influent quality. More effective control of pollutant contributions to the wastewater collection system should reduce influent loading, improve the quality of effluent discharged to the receiving stream and ultimately preserve the continued production of Biosolids compost of class AAA quality.

The most significant environmental benefit associated with this project will derive from the implementation of Phase II Stormwater compliance activities. The implementation of BMPs and measures to control the runoff of pollutants from parking lots, recycling centers, junkyards, and salvage yards will improve the quality

of receiving streams. The establishment of creekside buffer zones should result in the reduction of nutrients, pesticide and herbicide levels in receiving streams. Water samples will be collected for analysis and the visual appearance will be photographically documented in areas at which BMPs are implemented to compare measurable results of the effects of control measures.

The combined effect of the control of pollutant runoff from point and non-point sources should also result in an increase of dissolved oxygen levels and aquatic biota in receiving streams. The quality of aquatic habitat in receiving streams will be measurably improved by efforts to control erosion and runoff of sediment from construction sites. The ultimate goal of all stormwater pollution prevention measures is the protection of the aquatic environment, drinking water source and continued production of a class AAA renewable resource.

## **II. Agreement**

### A. Signatories

The Signatories to this Final Project Agreement are the United States Environmental Protection Agency (hereafter EPA), *[Texas Natural Resource Conservation Commission ]*, *[City of Denton]*, *STAKEHOLDER REPS*].

### B. Significance of Agreement

(e.g., How will this provide additional environmental benefit? How will this help other POTWs?)

### C. Definitions

(Provide any specialized definitions that will help stakeholders better understand this document)(Note - ensure that specialized definitions do not include terms defined in the statutes and/or regulations)

### D. Duration of Agreement

(Provide a realistic estimate of how long this pilot will take to complete, *or use the following language?:*)

This FPA will be in effect for the period of 5 years, unless it is terminated earlier. Prior to the end of the five-year period (at least 180 days), *[City of Denton]* may apply for a renewal or extension

of the project period. A renewal or extension of the project period will be treated as a modification of the FPA, and is addressed in Section II.F., Modification of Agreement / Reopener. If *[City of Denton]* is not able to meet the performance goals of its Local Pilot Pretreatment Program, the Approval Authority may allow the performance measures to be adjusted if the primary objectives of the Local Pilot Pretreatment Program will be met. The revised Local Pilot Pretreatment Program must be approved in accordance with the procedures in 40 CFR § 403.18.

If the primary objectives of the proposal are not being met, the Approval Authority shall direct *[City of Denton]* to discontinue implementing the Local Pilot Pretreatment Program and resume implementation of its previously approved pretreatment program by amending the NPDES permit [and/or any other implementation mechanism, site-rule, etc.] accordingly. The Approval Authority will ensure that the *[City of Denton]*'s NPDES permit includes a reopener clause with this requirement.

#### E. Enforceability of FPA

This FPA is not intended to create legal rights or obligations and is not an enforceable contract or a regulatory action such as a permit or rule. This applies to both the substantive and the procedural provisions of the FPA. Thus, for example, the FPA establishes procedures that the parties intend to follow with respect to termination under the FPA. However, while the parties fully intend to follow these procedures, they are not legally obligated to do so. Because it is not legally enforceable, the FPA is not an agency action that could be reviewable; in addition, no action or omission by any party to the FPA could give rise to any claim against the party for penalties, damages or other compensation based solely on the claim that the action or omission was at variance with a provision or provisions of the FPA.

#### F. Modification of Agreement / Reopener

The FPA may be modified by mutual agreement of all parties at any time during the minimum Project term. The parties recognize that certain modifications to the Project may necessitate modification of any existing implementation mechanisms or may require development of new implementation mechanisms, as provided in Section I.. In that case, EPA and *[Texas Natural Resource Conservation Commission]* expect to work together to identify and pursue any modifications or additions to the implementation mechanisms required, in accordance with procedures applicable to the modification of the relevant implementation mechanism. To the extent that the parties agree to make a material modification of the Project, appropriate notice of such modification, as set forth in this FPA and the implementing mechanism, and an appropriate opportunity to participate in the process will be provided to stakeholders and interested parties.

In recognition that the Project is an experiment designed to test new approaches to environmental protection, and of the uncertain nature of the environmental benefits and costs associated with the activities to be undertaken in this Project, the parties to this FPA agree to evaluate the

appropriateness of a modification or Reopener to the FPA according to the provisions set forth below.

1. During the minimum Project term, *[City of Denton]* may seek to reopen and modify this FPA in order to address matters covered in the FPA, including failure of the Project to achieve superior environmental results, or the enactment or promulgation of any environmental, health or safety law or regulation after execution of this FPA which renders the Project legally, technically, or economically impractical. To do so, *[City of Denton]* will submit a proposal for a reopener under this Section to EPA and *[Texas Natural Resource Conservation Commission]* for their consideration. EPA and *[Texas Natural Resource Conservation Commission]* will review and evaluate the appropriateness of such proposal submitted by *[City of Denton]*. EPA or *[Texas Natural Resource Conservation Commission]* may also elect to initiate termination under Section III, II, G of this FPA, which shall supersede application of this Section.

2. In determining whether to reopen and modify the FPA in accordance with any reopener proposal(s) submitted by *[City of Denton]* under this Section, EPA and *[Texas Natural Resource Conservation Commission]* will base their decision upon the following: (a) whether the proposal meets the Project XL Criteria in effect at the time of the proposal, (b) the environmental benefits expected to be achieved by the proposal, (c) the level of emissions or effluent included in the proposal, (d) other environmental benefits achieved as a result of other activities under the proposal, and (e) any net adverse environmental impacts expected to occur as a result of the proposal.

3. All parties to the FPA will meet within ninety (90) days following submission of any reopener proposal by *[City of Denton]* to EPA and *[Texas Natural Resource Conservation Commission]* (or within such shorter or longer period as the parties may agree) to discuss the Agencies' evaluation of the reopener proposal. If, after appropriate stakeholder involvement, the Agencies support reopening of this FPA to incorporate the proposal, the parties will (subject to any required public comment) take steps necessary to amend the FPA. Concurrent with the amendment of this FPA, EPA and *[Texas Natural Resource Conservation Commission]* will take steps consistent with Section I to implement the proposal.

#### G. Termination of Agreement [TO BE FILLED BY OW/OGC/OECA/OR]

##### a.) Expectations Concerning Termination

This FPA is not a legally binding document and any party may withdraw from the FPA at any time. If parties do withdraw from the FPA, the regulation and / or permit will remain enforceable until modified. However, it is the desire of the parties that this FPA should remain in effect through the expected minimum Project term, and, during that time, be implemented as fully as possible. Although EPA retains its discretion to terminate the FPA at any time, it is the intent of the parties that this Project will not be terminated unilaterally during the expected minimum Project term of this FPA unless one of



the conditions set forth below occurs:

1. Failure (taking into account its nature and duration) by any other party to (a) comply with the provisions of the implementation mechanisms for this Project, or (b) act in accordance with the provisions of this FPA;
2. Discovery of the failure of any other party to disclose material facts during development of the FPA;
3. Failure of the Project to provide superior environmental performance consistent with the expectations of this FPA;
4. Enactment or promulgation of any environmental, health or safety law or regulation after execution of the FPA which renders the Project legally, technically or economically impracticable; or
5. Decision by a party to reject the proposed assumption by a future owner or operator of the Facility of *[City of Denton]*'s rights and obligations under the Project.

Unless the parties determine, consistent with the provisions of Section III, **II**, D and G of this FPA, that continuation of the Project past the minimum Project term is warranted, this FPA will be terminated as of the end of the minimum Project term.

EPA and [INSERT NAMES] do not intend to withdraw from the FPA based on non-compliance by *[City of Denton]* with the implementation mechanisms, unless such non-compliance constitutes a material failure to comply with the implementation mechanisms, taking into account its nature and duration the non-compliance. EPA and *[Texas Natural Resource Conservation Commission]* retain their discretion to address compliance, as appropriate, through existing enforcement authorities available to the parties. As set forth in Section IV, *[City of Denton]* retains all rights to defend against any such enforcement actions.

b.) Termination Procedures

The parties agree that the following procedures will be used to terminate the project prior to the minimum project term, and further that the implementation mechanism(s) will provide for withdrawal or termination consistent with these procedures:

1. Any party desiring to terminate this FPA is expected to provide written notice of its intent to terminate to the other parties at least sixty (60) days prior to termination.
2. If requested by any one party during the sixty (60) day period noted above, the dispute resolution proceedings provided in Section III, **II**, H herein, may be initiated to resolve any dispute relating to the intent to terminate. If, following any dispute resolution or informal discussion, the party still desires to

terminate, the terminating party will provide written notice of final termination to all other parties to the FPA.

3. If any party terminates its participation in the FPA, the remaining parties will consult with *[City of Denton]* to determine whether the FPA should be continued in a modified form consistent with applicable federal and state law or terminated.

4. The termination procedures set forth in this Section b.) apply to the decision to terminate participation in the FPA. Procedures to be used in modifying or rescinding the legal mechanisms used to implement the Project will be governed by the terms of those legal mechanisms and applicable law.

c). Post-Project Compliance Period

1. *Orderly Return to Compliance in the Event of Early Termination:* In the event of any termination not based upon the end of the expected minimum Project term, there will be an Interim Compliance Period to provide sufficient time consistent with permit modification procedures set forth in 40 CFR ' 122.1 *et seq.* for *[City of Denton]* to come into compliance with the regulations deferred under the Project. By the end of the Interim Compliance Period, *[City of Denton]* will comply with the applicable standards set forth in 40 C.F.R. Part [section] [and state law/regulations]. During the Interim Compliance Period, EPA *[Texas Natural Resource Conservation Commission ]* will issue an order, permit, or other legally enforceable mechanism establishing an implementation schedule for the *[City of Denton-s]* orderly return to compliance as soon as practicable, but no later than [#?] months from the date of termination. The Interim Compliance Period is [#?] months from the date on which EPA, *[Texas Natural Resource Conservation Commission]* or *[City of Denton]* provides written notice of final termination of the Project in accordance with Section [?] of this FPA. It is *[City of Denton-s]* intent to be in full compliance with all applicable requirements above as soon as is practicable, as will be set forth in the implementation schedule.

2. *Orderly Return to Compliance in the Event of Completion of Project Term:* In the event of termination based upon the end of the Project term, *[City of Denton]* will achieve compliance with all applicable requirements by the end of the minimum Project term, unless the Project is modified in accordance with [F - Modification]. *[City of Denton]* is expected too anticipate and plan for all activities necessary to come into compliance upon completion of the Project sufficiently in advance of the end of the Project term. *[Texas Natural Resource Conservation Commission ]* may request a meeting with EPA and *[Texas Natural Resource Conservation Commission ]* to discuss the timing and nature of any actions that *[City of Denton]* will be required to take to come into compliance with regulatory requirements that have been deferred under this Project and should request such a meeting at least 60 days in advance of the anticipated completion date of the project term. The parties expect that they will meet within thirty days of receipt of *[City of Denton's]* written request for such a discussion. At and following such meeting, the parties expect that they will engage in reasonable good faith

discussions to identify the extent to which requirements deferred under this Project will apply after termination of the Project.

#### H. Dispute Resolution

Any dispute that arises with respect to the meaning, application, implementation, interpretation, amendment, termination or modification of the FPA will, in the first instance, be the subject of informal discussions. To initiate informal discussions, any party which believes it has a dispute with any other party will simultaneously notify all of the parties, in writing, setting forth the matter(s) in dispute.

If the dispute cannot be resolved by the parties within thirty (30) days of receipt of such notice (or such longer time as agreed to by the parties to the dispute), then one or both of the parties may invoke non-binding mediation by setting forth the nature of the dispute, with a proposal for its resolution, in a letter to the EPA Region [6] Administrator, with a copy to all parties. The EPA Regional Administrator or the disputants may request an informal mediation meeting. The disputants may request an opinion from the Regional Administrator in lieu of or in addition to the mediation meeting. Any opinion, verbal or written, expressed by the Regional Administrator will be non-binding.

Nothing in this section will be construed to alter the parties' expectations regarding the ability to terminate or withdraw from the FPA set forth in the provision of section III, II, G, c, Termination of Agreement / Post Project compliance Period.

#### I. Implementation

To implement the Project, the parties intend to take the following steps:

A. EPA expects to propose for public comment and promulgate (subject to review of public comment) a site-specific rule amending 40 C.F.R. Part [X] so as to defer application of the requirements of Part [X] to the [*City of Denton*] Facility. The rule will [describe project requirements and other aspects of rulemaking. Include description of any necessary permits, orders, or other actions to be undertaken by EPA or State to implement project.] It is expected that the site-specific rule will provide for Termination and a post-Project compliance period consistent with Section III, II, G, and will address the transfer procedures included in Section IV.5. The standards and reporting requirements set forth in Section I and III of this FPA will be implemented in the site-specific rule.

B. [*Texas Natural Resource Conservation Commission*] expects to propose for public comment and promulgate (subject to review of public comment and legislative approval, if necessary) a rule or rules adopting the site-specific requirements granted by EPA pursuant to Section VI.A. above. [*Texas Natural Resource Conservation Commission*] expects to propose for public comment (subject to review of public comment and applicable approval procedures) a permit or permits needed by the [*City*

*of Denton]* under this Project.

C. Except as provided in any rule(s), compliance order(s), permit provisions or other implementation mechanisms that may be adopted to implement the Project, the parties do not intend that this FPA will modify or otherwise alter the applicability of existing or future laws or regulations to the *[City of Denton]* Facility.

D. By signing this FPA, EPA, the *[Texas Natural Resource Conservation Commission ]* and *[City of Denton]* acknowledge and agree that they have the respective authorities and discretion to enter into this FPA and to implement the provisions of this Project, to the extent appropriate.

#### J. Reporting & Periodic Reviews

(Describe data that will be used to periodically measure the progress of this pilot and the frequency those data will be provided to the regulatory Agencies,

*or use the following language:?)*

*[City of Denton]* is required to periodically report the progress of its pilot program, as set forth below. *[City of Denton's]* periodic report will describe its Local Pilot Pretreatment Program activities and accomplishments, including activities and accomplishments of any participating agencies and public involvement. The report will include an analysis of all environmental data collected over the reporting period and activities conducted to reduce pollutant loadings to the environment and any other activities that address the objectives of the Local Pilot Pretreatment Program.

The report following the fourth year of pilot program implementation will also include the findings of the pilot. This report will specifically address all objectives of the pilot program and provide measures related to the effectiveness of the program, as implemented, in meeting the objectives. The report will also include recommendations concerning the implementation of the pretreatment program at the local level.

The minimum report requirements will be detailed in *[City of Denton's]* NPDES permit. This requirement will be similar to the current requirement for *[City of Denton]* to annually report to the Approval Authority the status of its Pretreatment Program. See 40 CFR 403.12(i). At the discretion of the NPDES permitting authority, the report may be required more frequently than once per year. *[City of Denton]* is required to submit regulatory reports on the non-waived requirements of its pretreatment program.

#### K. Events Preventing Project Implementation / Unavoidable Delay

This section applies to provisions of this FPA that do not encompass enforceable, regulatory mechanisms. Enforceable mechanisms, such as permit provisions or rules, shall be subject to

modification or enforcement as provided in applicable law.

An unavoidable delay for purposes of the project described in this FPA is defined as any event arising from causes beyond the control of any Party or Parties that delays or prevents the implementation of the project described in this FPA despite the Parties' best efforts to put their intentions into effect. An unavoidable delay event includes, without limitation, delay arising from fire, unusual storm events, acts of war, vandalism, or legislative or judicial bars to performance. An unavoidable delay does not include any increase in costs necessary to undertake and successfully complete the project in a timely fashion.

When any event occurs that may delay or prevent the implementation of this project, whether or not it is unavoidable, the Party with knowledge of the event will provide verbal notice to the designated representatives of the remaining Parties. Within ten (10) days of the Party providing initial notice of the event a written confirming notice will be provided. The confirming notice will include the reason for the delay, the anticipated duration of the delay, all actions taken to prevent or minimize the delay, and the party's rationale for considering such a delay to be unavoidable. The Party providing notice will include all available documentation supporting the claim that the delay was unavoidable.

If the Parties, after reasonable opportunity to confer, agree that the delay is attributable to an unavoidable delay then the time for performance of obligations that are affected will be extended to cover the period lost due to the delay. If the Parties agree, the Parties will document their agreement in a written amendment to this FPA. If the Parties do not agree, then the following provisions for Dispute Resolution in Section H will be followed.

### **III. Requirements of NPDES Permit (revisions)** [TO BE FILLED BY OW]

The pilot alternative Local Pretreatment Program will become an enforceable part of the POTW's NPDES permit. Provide a summary of the alternative program and attach a copy of the full description of the alternative program following the requirements of 40 CFR 403.9(b).

#### **IV. Analyses to Determine eligibility for a conditional variance**

A. Provide summary information demonstrating that your local Pretreatment Program meets these requirements:

The POTW is administering an Approved POTW Pretreatment Program.

***The City of Denton Industrial Pretreatment Program was approved by EPA on March 16, 1984 and modified on September 24, 1993. This approved program is operated in accordance with Section 402(b)(8) of the Clean Water Act and the general Pretreatment Regulations (40CFR Part 403).***

The POTW has a solid record of compliance. In general, this means that the POTW must not be the subject of a planned or ongoing judicial or administrative enforcement action, be in significant noncompliance with applicable requirements, or have outstanding obligations under (or be in violation of) an order or consent decree. Additionally, a POTW's history of

compliance will also be considered; POTWs most likely to be included in the pilot program would be those which do not have a history or pattern of violations, violations resulting in serious threats or harms, or have other recent significant compliance problems.

***The City of Denton Industrial Pretreatment Program was audited for the EPA by TNRCC on March 1-3, 1994. Findings indicated that there were no significant compliance problems.***

The POTW has five years of influent, effluent, and sludge quality data, as well as three years of ambient water quality measurements for its receiving water or can demonstrate the ability to collect ambient data and therefore need not have in its possession three years of ambient water data.

***The POTW has five years of influent, effluent, and sludge quality data, as well as three years of ambient water quality measurements for Pecan Creek, its receiving water.***

B. Federal Implementation Mechanisms - description of Federal requirements to be met

***In addition to the requirements of the Clean Water Act and General Pretreatment Regulations, The City of Denton Pretreatment Program must meet the requirements in Section A of Part II of NPDES Discharge Permit No. TX0047180.***

C. State Implementation Mechanisms - description of State requirements to be met  
***There are no state requirements for pretreatment Program activities in current TNRCC Discharge Permit No. 10027-003.***

## **V. Environmental Benefits**

How will project provide SEP? Baseline Assessment

This project was chosen as an XL Project because it has the potential to achieve environmental performance that is superior to what would have been achieved absent the XL Project. [INSERT PARTIES] have developed a quantitative and qualitative baseline estimate of what would have happened to the environment absent the project and have compared that baseline estimate against the project's anticipated environmental performance to determine that the anticipated environmental performance will produce a level of environmental performance superior to the baseline.

***The XL project will allow resources to be devoted to monitoring of lift stations to identify those sections of the collection system contributing higher levels of problematic pollutants. Inspectors can then back track up the system to identify sources of the***



*pollutants.*

*The City of Denton intends to utilize the flexibility granted by the XL Project to develop a watershed protection program for Pecan Creek. The initial project will focus on Pecan Creek, the information learned in the Pecan Creek watershed can be transferred to Hickory Cooper, and Clear Creeks. All of these creeks are tributaries of the Elm Fork of the Trinity River and all drain into Lake Lewisville which is the main water supply reservoir for the cities of Denton and Dallas as well as other customer cities.*

*The XL project will enable the City of Denton to develop the watershed protection program years earlier than would have normally occurred .*

*One element that we are eager to start working on is the creation of the organizational mechanism for developing buffer zones along the undeveloped watersheds in this area. We have an opportunity to protect water quality by establishing conservation easements or by purchasing strips of land along both Hickory and Clear Creeks.*

*Project flexibility will also allow staff the opportunity to allocate resources towards grant applications and project development which utilizes the capabilities of the University of North Texas. UNT has an excellent Environmental Education/Water Quality Research Program. Our ability to devote resources to work with UNT on projects greatly enhances our abilities to address local environmental problems as well as giving students hands on training with real world environmental problems. The environmental benefits that are derived and the process that is developed will be published in a professional journal such as "Water Environment Federation .*

*The City of Denton and the University of North Texas recently were awarded a \$485,000 EMPACT grant to set up an electronic monitoring program for the Pecan Creek Watershed. A satellite down link will be set up at UNT Environmental Science and Technology building which can provide real time and near real time stream data linkage to UNT's web site at the ESAT building. The goal of this monitoring program is to reduce manpower requirements yet provide superior monitoring performance. One aspect of this type of program will be the use of biosensors to alert personnel of the need to collect samples or to trigger automated monitoring equipment. A watershed monitoring plan will be developed to document location of sampling sites and drainage areas to sampling sites. Maps will also be developed to document buffer zones developed to protect drainage areas.*



*We feel the greatest environmental benefit to come from this project will be the development of an effective automated monitoring program which will keep manpower needs to a minimum. This type of program once perfected can be replicated and utilized by other municipalities.*

*The first year of the XL project will be used to establish baselines for pollutants of concern. Initially the pollutants of greatest concern are diazinon, chlorpyrifos, and suspended solids. These are the pollutants which will be targeted during the first five years. If other pollutants are detected at high levels during the baseline work then they may be added to the list of pollutants of greatest concern. We are setting our goal at a 25% reduction in the pollutants of greatest concern during the first 5 years of the project.*

- 9. Other measurable environmental benefits will include a measurable (10%) reduction of the concentration of heavy metals in the ADyno Dirt® class AAA compost produced with biosolids at the Pecan Creek Water Reclamation Plant.*

*All of the previously mentioned benefits depend on the city's ability to allocate resources to areas which will provide the greatest environmental benefits for the resources Invested. The City of Denton firmly believes that with our current organizational structure a watershed protection program can be developed that will meet the intent of the Clean Water Act and that this program can be operated at an acceptable cost to rate payers.*

*City of Denton requests exemption from development of a rigid schedule of performance measures to assess compliance with anticipated Phase II Storm Water requirements. We are anticipating that through the flexibility afforded by the XL Program, the City of Denton will be issued a modified Storm Water Permit on the effective date of the program. A modification will allow us to approach the goals of the proposal with the current team of personnel and avoid the development of an additional division. Approval of this proposal by EPA and TNRCC and the associated reduction of potential fiscal demand will facilitate receiving the support of City Council to recruit an additional full time staff member to focus on conservation easement negotiation. If significant progress in the development of effective watershed protection has not been achieved within the interim five (5) year period of the modified permit/XL pilot program, the City of Denton will revert to the more rigid Phase II Permitting approach.*

#### IV. RIGHTS RETAINED AND PROJECT TRANSFER

##### 1. Rights Retained:

Except as expressly provided in the legal implementation mechanisms, nothing in the FPA shall

be construed to affect or limit either *[City of Denton's]* legal rights or the Agencies' rights to seek legal, equitable, civil, criminal or administrative relief regarding the enforcement of present or future applicable federal and state code, rules, or regulations with respect to the Facility or *[City of Denton]*.

Although *[City of Denton]* does not intend to challenge agency actions implementing the Project (including any rule amendments or adoptions, permit actions, or other action) that are consistent with this FPA, *[City of Denton]* nonetheless reserves its right to appeal or otherwise challenge any and all agency actions implementing the Project. Nothing in this FPA is intended to limit *[City of Denton's]* right to administrative or judicial appeal or review of any modification or termination of those legal mechanisms in accordance with the applicable procedures for such review.

## 2. Transfer of Project Benefits and Responsibilities:

It is expected that the implementation mechanisms will allow for the transfer of *[City of Denton's]* rights and obligations under the Project to any future owner or operator upon request of *[City of Denton]* and such owner/operator, provided that the following conditions are met:

A. *[City of Denton]* will provide written notice of any such proposed transfer to EPA and [PARTIES] at least forty-five (90) days prior to the effective date of the transfer. The notice is expected to include identification of the proposed transferee, a description of the proposed transferee's financial and technical capability to assume the obligations associated with the Project, and a statement of the transferee's intention to sign the FPA as an additional party.

B. Within thirty (45) days of receipt of the written notice, it is expected that the Agencies will determine whether the transferee has demonstrated adequate financial and technical capability to carry out the Project and a willingness to sign the FPA. It is expected that the implementation mechanisms will provide that, as long as the demonstration has been made to the satisfaction and unreviewable discretion of the Agencies, and upon consideration of other relevant factors, the FPA will be modified to allow the proposed transferee to assume the rights and obligations of *[City of Denton]*.

In the event that transfer is disapproved by any agency, withdrawal or termination may be initiated, as provided in Section II G.

C. Upon approval of transfer under this section, EPA, *[Texas Natural Resource Conservation Commission ]*, and [LOCAL AUTHORITY] will amend the rule, permit and other implementing mechanism(s) (subject to public notice and comment) to legally transfer the rights and obligations of *[City of Denton]* under this project to the proposed transferee. The rights and obligations of this project remain with *[City of Denton]* prior to their final, legal transfer to the proposed transferee.

## APPENDIX

### 1) XL Criteria

Since this pilot program is being administered under the Project XL program, the proposals must address the Project XL criteria:

#### 1. Superior Environmental Performance

Projects that are chosen should be able to achieve environmental performance that is superior to what would have been achieved absent the XL project. EPA uses a two-part method of determining whether an XL project will achieve superior environmental performance: (1) Develop a quantitative baseline estimate of what would have happened to the environment absent the project and, then compare that baseline estimate against the project's anticipated environmental performance; and (2) Consider both quantitative and qualitative measures in determining if the anticipated environmental performance will produce a level of environmental performance superior to the baseline.

#### 2. Cost Savings and Paperwork Reduction

The project should produce cost savings or economic opportunity, and/or result in a decrease in paperwork burden.

#### 3. Stakeholder Support

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 is an important factor. Stakeholders may include communities near the project, local or state governments, businesses, environmental and other public interest groups, or other similar entities.

#### 4. Innovation/Multi-Media Pollution Prevention

EPA is looking for projects that test innovative strategies for achieving environmental results. These strategies may include processes, technologies, or management practices. Projects should embody a systematic approach to environmental protection that tests alternatives to several regulatory requirements and/or affects more than one environmental medium. EPA has a preference for protecting the environment by preventing the generation of pollution rather than by controlling pollution once it has been created. Pilot projects should reflect this preference.

#### 5. Transferability

The pilots are intended to test new approaches that could conceivably be incorporated into the Agency's programs or in other industries, or other facilities in the same industry. EPA is therefore most interested in pilot projects that test new approaches that could one day be applied more broadly.

#### 6. Feasibility

The project should be technically and administratively feasible and the project proponents must have the financial capability to carry it out.

#### 7. Monitoring, Reporting and Evaluation

The project proponents should identify 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. Also, the project sponsor should be clear about the time frame within which results will be achievable.

#### 8. Shifting of Risk Burden

The project must be consistent with Executive Order 12898 on Environmental Justice. It must protect worker safety and ensure that no one is subjected to unjust or disproportionate environmental impacts.

These criteria are described in detail in the following Federal Register documents: 60 FR 27282, May 23, 1995 and 62 FR 19872, April 23, 1997.

#### 2) NPDES Permit (Revised)

Fpa drf 2 (March 2, 1999)