

US EPA ARCHIVE DOCUMENT

**B-19J**

Dennis J. Sershen, CHMM  
Steele County XLC Pilot Proposal Contact  
Truth Hardware Corp.  
700 West Bridge Street  
Owatonna, Minnesota 55060

Dear Mr. Sershen:

This letter is being sent in response to the XL Community (XLC) Pilot Program proposal you submitted on February 3 , 1998. I would like to thank you and the other direct participants for your continuing work on your XLC proposal. The work you are doing will help the United States Environmental Protection Agency (EPA) test innovative strategies that reduce regulatory burdens and promote economic growth while achieving better environmental and public health protection. Your proposal also demonstrates an interest in the community-based approach, that we hope to foster and promote through XL for Communities pilot projects.

The Steele County XLC Pilot Program Proposal (the Steele County proposal) has been sent to relevant offices within EPA for review. Although we have not completed our review of every aspect of the proposal, I believe that we have identified the major technical issues and questions. I wanted to provide you with these results at this time. The reviewers comments revealed a need for more information about your proposal. The information is needed to enable the EPA to better understand and evaluate the Steele County proposal. The additional information needed is described below.

Superior Environmental Performance

- C We do not understand the baseline that you are using as a basis for achieving superior environmental performance. More information and explanation is needed regarding the “20% reduction of regulated effluent discharge contaminants” which you have also described as being an “overall 20% reduction of regulated wastewater effluents.” Is the 20% reduction a reduction in the actual mass loadings to the Owatonna Wastewater Treatment Facility (OWTF) or is it a 20% reduction below the maximum permitted discharges allowed for each of the direct participants added together? If the baseline is, in fact, based on a 20 % reduction in actual discharges, on a mass or concentration basis, what is the time period that you are proposing to use to determine the actual concentrations ? Are you using the discharge monitoring data for

monthly or annual averages, or some other time period in determining the baseline from which the 20 % reduction will be achieved?

- C Your proposal indicates to us that, in order to establish the baseline, you will determine the total discharge levels by mass to the OWTF, for all direct participants. However, it is unclear whether the 20% reduction will be on a pollutant by pollutant basis, or on the basis of the total of all the individual pollutants added together. Please explain that aspect of your proposal.
- C The proposal states that: “As conditions change, reduction goals will be evaluated and modified accordingly. This will provide necessary adjustments for process changes, facility expansion and/or new business development [as it] occurs in Steele County.” Please explain how these process changes, facility expansion and new business development would effect the goal of a 20% reduction of regulated effluent discharge contaminants.

#### Benefits

- C The Steele County proposal identifies financial benefits to the direct participants. The proposal also mentions that it will extend the life of the OWTF. Are there other avoided costs and environmental benefits to the community that you can easily identify with existing documents (e.g., is there an existing facility plan that includes estimates of the costs of expanding the capacity of the OWTF)?
- C The proposal states that there would be a sharing of effluent monitoring costs by the industrial users and strategic point source monitoring would replace “individual required facility analysis.” However, because your proposal appears to involve effluent trading among the proposed participants it would seem that just as much monitoring as is presently taking place, if not more, would be needed to ensure the integrity of the effluent trading system. Is our understanding of this aspect of your proposal correct ?

#### Verification

- Please explain how the proposal would monitor the direct participants to identify the source of any discharges that jeopardize the 20% reduction goal.

#### Requested Flexibility

We would like to work with you to understand how your proposal would effect compliance with specific Federal and/or State requirements. Along those lines, the following questions arise:

- C Please identify, to the extent possible, the specific regulations from which you are seeking relief and/or flexibility. The identification of those regulations would help EPA complete its internal

review and help the proposal advance. The identification of all of the regulations that would be impacted by your proposal might be a difficult task. EPA is willing to assist you in identifying the precise Federal regulations that are impacted by your proposal.

- C The Steele County proposal discusses the concept of developing mass limits for certain direct participants. It is not clear if what is being proposed is an effluent trading system whereby certain facilities would be allowed pollutant allocations above those allowed by applicable pretreatment categorical standards. Although the proposal does state that it is the intention of all direct participants to remain within established regulatory enforceable limits, it is not clear that the project would continue to ensure that participants remain in compliance with all statutorily required pretreatment categorical standards for significant industrial dischargers. Under the Clean Water Act, applicable categorical pretreatment standards cannot be replaced with an alternate scheme that would allow non-compliance with categorical pretreatment standards. We raise this issue because, although XL provides flexibility from EPA regulations, we cannot provide relief from statutorily-mandated requirements. In order for the project to go forward, we need to understand how direct participants subject to categorical pretreatment standards would remain in compliance with those standards while participating in the Steele County project.
- C We need to more clearly understand the role of the OWTF in your proposed project. Current regulations require that OWTF maintain adequate legal authority, identify Industrial Users, designate which users are Significant Industrial Users, and perform required monitoring, permitting and enforcement. How would OWTF enforce the proposed combined permit that would be issued to the group of direct participants? Would the OWTF hold the entire group of facilities responsible for permit violations that might be caused by only one of the direct participants?
- The Steele County proposal also indicates that the reduction goal commitments would be treated as voluntary, non-legally binding, commitments. Since the proposal seeks to replace required concentration based standards with mass standards for the group of direct participants as a whole, how can the voluntary reductions be treated as non-legally binding if they are to be the basis for the combined permit, which presumably will have enforceable limits?
  - We also need more information about the structure and role of the local community group which, under the proposal, will be assuming “a defined level of regulatory responsibilities.” Would this group be assisting individual facilities with compliance or be in the role of regulating individual facilities? Will the community group enforce the combined permit and, if so, how will the group deal with violations of their combined permit due to an individual discharger?

The questions outlined above are the most significant questions that EPA staff have identified up to this point. Other questions may emerge if the project advances to the Final Project Agreement stage.

I would also like to let you know that EPA's Office of Water is working on a pretreatment pilot program that would allow for the development of alternative pretreatment programs by POTWs committing to explore environmental performance-based approaches. This pilot program includes several elements that may be relevant to your proposal (e.g. mass v. concentration limits). We are hopeful that the work underway in the Office of Water's program will assist us in working with you to develop your proposal and ultimately an FPA, if that is what we agree upon.

Finally, the project you have proposed consists of two phases. The second phase is to be implemented after the first phase has made satisfactory progress. The second phase involves issues related to air pollution, hazardous waste and storage of chemicals. Because the details of the second phase of the proposal are somewhat limited at this point we have not performed a detailed internal review of the second phase of your proposal. Rather than seek answers to the many questions that would arise concerning phase two of your proposal, it may be more productive to concentrate on phase one at this point and leave the consideration of phase two for a later date. The decision on that matter is yours to make since you have proposed the project. We are very interested in both phases of your proposal, but we simply do not have enough information about phase two at this time to do an adequate review. Please let us know how you would like us to proceed at this time concerning phase two of your proposal.

If you have any questions about these comments, please call me at (312) 886-8616. If you would like to have a conference call to discuss the comments please let me know. If there is any other assistance you need in order to respond to the questions that have been raised in this letter do not hesitate to contact me. Thank you again for your work on Project XLC.

Sincerely yours,

Jeffrey Bratko, Environmental Scientist  
U.S. EPA, Region 5

cc: A. Ronchak, MPCA

Standard bcc's: Originator's File Copy  
OSEA Reading File

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*CONCURRENCES*

<i>OFFICE</i>								
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