

US EPA ARCHIVE DOCUMENT

May 27, 1998

Jeffrey Bratko
Environmental Scientist
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Dear Jeffrey,

Attached please find the responses to EPA's response request of May 6, 1998. The Steele County XLC Executive Committee has attempted to respond as appropriate.

The format I used was to follow each of your original questions with a response following that question. Hopefully, this will work out best.

In response to EPA's Office of Water working on a pretreatment pilot program, we think that is great! I feel that our proposal will parallel their efforts.

As far as the Phase Two portion of our proposal, we agree that to address this portion at this time would not be productive. It is our intent to concentrate on Phase One, work out any difficulties, then proceed with a Phase Two Proposal.

Hopefully, these responses will satisfy some of the questions that your people may have. Please give this a priority for review and make a decision as to the status of the Steele County XLC Proposal in a timely manner.

We appreciate the time you have invested to-date and look forward to becoming a partner with EPA as we head into the next century!

Have A Great Day! J

Sincerely,

Dennis J. Sershen, CHMM
Steele County XLC Pilot Proposal Contact

cc: Andy Ronchak, MPCA

Steele County XL Community Pilot Proposal Response Letter from EPA, April 20, 1998.

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.

A. Superior Environmental Performance

1. 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?

- SC XLC Response:

- The 20% reduction is based on a 20% reduction below the maximum permitted discharges allowed for each of the direct participants cumulatively added together, on a per pollutant total, based on the Owatonna Public Treatment Facility's permitted levels of discharge as allowable by City of Owatonna Ordinance, in pounds discharge per day.
 - It is our intent to base the reduction on a mass basis, and after one year, reduce the pollutant discharge another 20%, which would result in a 40% overall reduction in pollutant effluent discharge after two years.
 - Discharge monitoring data will be based on annual monitoring data.
2. 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.
- SC XLC Response:
 - 20% pollutant discharge reduction will be based on a cumulative discharge of all direct participants on a pollutant by pollutant basis.
3. 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.
- SC XLC Response:
 - In the event that new businesses develop in the area or existing direct participants expand, the existing reduction window would have to be re-evaluated to represent a true picture of local discharge. For example, a new business could develop locally, let's say, that has discharge capacity of flow volume and potential pollutant discharge that equals the flow and pollutant discharge of the existing XLC partners. If we did not adjust baseline levels to address increased flow and pollutant levels, our reduction goal could not possibly be met, unless the XLC program reflected the fact that if new business came in, or existing facilities expanded, then they would be expected to follow the same goals as originally proposed, without regard to additional pounds of pollutants being discharged.

Benefits

1. 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)?
 - SC XLC Response:
 - Other avoided costs would include, at a minimum: reduction of biomass metal concentration, less water to treat and a reduction in O & M costs on a per gallon basis.
2. 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 ?
 - SC XLC Response:
 - Due to the complexities involved with this aspect of the proposal, we have considered and decided that we will not pursue “sharing of effluent monitoring costs by the individual users and strategic point source monitoring would replace “individual required facility analysis.”” at this time.

C. Verification

1. Please explain how the proposal would monitor the direct participants to identify the source of any discharges that jeopardize the 20% reduction goal.
 - SC XLC Response:
 - As part of direct participant involvement, it is our intent to have all direct participants develop an on-site environmental management system that would reflect actual operating processes on-site which would include process monitoring procedures in place that would alert facility operations that something is causing the existing system to be failing, with corrective actions or procedures in place to maintain compliant effluent discharge.

Requested Flexibility

1. 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:
 - a. 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.
 - SC XLC Response:
 - It was not our intent to cite specific regulations from which we seek relief and/or flexibility at this point, rather it was our intent to give EPA a proposal that would not only benefit business and industry, but our community as well. It then should be your responsibility to tell us if what we are proposing fits within the scope and intent of the XLC concept when this program was created by President Clinton. Once the Steele CountyXLC Proposal is recommended for acceptance into this program by EPA, it is our hope that EPA will not say you cannot do this or that because the existing regulations will not allow that, but partnership with us, help and work with us to find a way that will allow our program to be implemented and used as a template for the rest of the country to follow.
 - b. 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.
 - SC XLC Response:
 - It is the intent of this program for all direct participants to remain in applicable categorical pretreatment standards compliance. The only thing

we are asking for is to remain in compliance using an alternate method, i.e., mass rather than concentration for effluent pollutant level controls.

It is not the intent of this proposal to allow a company to continuously operate outside the existing regulatory parameters subject to categorical pretreatment standards. Rather, if a spike does occur, we would expect that the resultant efforts to expediently correct the non-compliance status by process evaluation and corrective action implementation would justify non-penalty action.

Yes, non-compliance documentation would still exist as required in the existing statutes, but mandatory monetary penalties and immediate public notification would be replaced by: "Look what this company did, and look at the efforts it put forth to correct the problem voluntarily, rather than being forced to do it through potential enforcement action. We are very fortunate to have a class of businesses in this community that are a model for positive corporate environmental citizenship."

As we near the turn of the century, the regulatory command and control structure, which has historically had limited success, needs to be replaced by a regulatory partnership system. With common environmental protection goals both for business and regulatory agencies.

- b. 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?
- SC XLC Response:
 - As described under D. 1. b., enforcement of non-compliance would remain the same, with the exception that given this is a community partnership program, the primary intent of any enforcement action would be to work together as a team to determine what is causing the non-compliance activity locally, use local resources to find a solution, and set up a local control procedure to minimize the risk of reoccurrence of this same problem. This is considered a much more effective and productive means rather than a "command and control" method that seems rather ineffective and counterproductive under existing regulatory controls.
 - With environmental management systems in place at all direct participant facilities, then the question of who gets the hit for non-compliance - the individual violator or the XLC group as a whole may be a moot issue. This program is unique, in that a major component of environmental excellence and leadership is trust. Trust that the parties in a XLC are doing their utmost

to make this program work. Mistakes will happen, accidents will happen. But the degree or severity of any non-compliance occurrence will need to be evaluated on an individual occurrence basis.

- c. 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?
- d.
 - SC XLC Response:
 - The legally enforceable baseline for this program is the established regulatory limits, as written in statute. If Steele County XLC Participants voluntarily commit to significant effluent pollutant reduction limits that are not statutory in nature, how can this be a legally binding enforceable limit?

The intent of our proposal is to create a system of local partnerships and work together as a team for environmental protection improvements. If we establish reduction guidelines, we would expect all participants to diligently make an effort to attain that goal. If they cannot attain established goals, but remain in statutory compliance, they will be dropped from the XLC program.

On one hand EPA states it can only do so much with existing statutory regulations with congressional change, yet on the other hand it sounds that EPA can create enforcement limits as deemed necessary. Maybe a specific list of what can and cannot be done is appropriate. It is my understanding that any reinvention program has to have the flexibility to change the existing way of doing something. If something cannot be changed, then why put forth the effort to begin with.

To include some type of command and control system with enforcement parameters that parallel existing regulations seems quite counterproductive to any type of voluntary program.

- d. 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?
 - SC XLC Response:
 - The stakeholder group (community group) would be offered training on environmental management system development and become familiar with the goals and objectives of the XLC proposal. As such, their role will

become that of a local team partner and be part of the evaluation and solution implementation process. Responsibilities would include site specific facility auditing as part of an audit team that would review potential facility areas of concern and make recommendations.

- Any established enforcement action for this XLC program will be considered by both the direct participants and group stakeholders.

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