

US EPA ARCHIVE DOCUMENT

June 4, 1999

Mr. Juan Mariscal,
Director for Planning, Policy and Regulation
Narragansett Bay Commission
235 Promenade St. Suite #500
Providence, RI 02908

RE: DRAFT Comments on Narragansett Bay Commission Project XL Proposal

Dear Mr. Mariscal:

Thank you for your Project XL proposal dated February 1999. Your ideas for the Narragansett Bay Commission (NBC) Project XL proposal includes many interesting possibilities in the areas of pollution prevention and regulatory alternatives for high performing industrial users. We have identified some areas where additional information and clarification are necessary to complete our review of your application. In addition, we would like to provide comments on other possible improvements to the XL proposal.

Overall, the project as described needs to be revised so that all the various concepts are tied into one single cohesive proposal. All aspects of the proposal should revolve around a single nexus - as written the proposal has a number of good ideas but they are not always interrelated. As discussed in greater detail in the attached comments, the proposal needs to include:

- A clear intent of what NBC would like to test within the project XL framework;
- Goals -what does NBC hope to achieve? What is the desired outcome?
- Who are the affected parties - will the proposal be directed to "Teir 1" companies or a larger group of industries?
- Specific regulatory flexibility - what are the specific regulations that NBC would like to change? Provide citations;
- Benefit -Quantify and describe how will this project benefit the environment (Superior Environmental Performance)
- Baseline -What are the current conditions?
- Measurement - How will NBC measure performance and success?

While these points should be addressed in your revised proposal, for purposes of meeting the minimum requirements of Project XL the proposal must clearly identify the regulatory flexibility sought and must clearly establish the projected environmental benefits (SEP). General and specific comments are included as an enclosure to this letter.

Again the proposal has a great deal of potential in the areas of pollution prevention , regulatory streamlining and recognition for high performing companies and EPA looks forward to working with NBC in exploring these possibilities. However, the comments will need to be incorporated into the proposal prior to EPA making a complete evaluation. Also, there is a great deal of information within the proposal but only a limited amount of it is directly related to the specifics of the proposal. NBC may want to consider reducing the background information and increasing the discussion of the specifics of the proposed project. Finally, please see the attached additional comments.

We look forward to receiving the revised proposal. Our desire is for NBC to address the comments, complete the revisions and submit them to EPA as soon as possible, please consider July 1, 1999 as the target date. Please feel free to call me at (617) 918-1834 if you need any assistance in responding to the comments.

Sincerely,

Chris Rascher,
Office of Assistance and Pollution Prevention

Enclosure

cc: EPA Project Team
Angelo Liberti, RI DEM
Joan Serra, EPA

COMMENTS ON NBC PROJECT XL PROPOSAL

General Comments

1. Overall the project needs to be more cohesive. The various elements such as: who are the affected parties, what benefits they may receive, what regulatory flexibilities are being sought, and how will success be measured, all need to be tied together. NBC needs to show how all the things are interrelated. The fourth paragraph of the introduction provides some of this but it needs to be expanded. There needs to be a greater linkage between the concept and how it will be implemented. This comment will likely require NBC to examine all portions of the proposal as written.
2. The proposal needs to quantify and describe the environmental benefits (or Superior Environmental Performance) that will be derived from the project. NBC must state (or estimate) what the measurable pollutant reductions that will be achieved through implementation of this project.
3. The regulatory flexibility requested must be described as clearly as possible, citing the portions of the specific regulations where flexibility is being sought.
4. NBC must identify how performance will be measured throughout the project. How will NBC track progress? How will success be defined?
5. NBC must clearly define what the current conditions are prior to implementing the project. A clear description is needed of how the project baseline will be established and what the baseline is.
6. There is a great deal of information in the proposal that does not tie in directly to the actual project. As an example, the Introduction is four paragraphs long but only one paragraph discusses the actual project. NBC may want to revise the proposal to provide more detail on the project and less detail on items not directly related to the project.
7. Under Project XL regulatory flexibility can only be granted from regulations found in 40 CFR, but not to statutory requirements specified in the Clean Water Act. As an example, new source categorical industries must comply with their categorical standards (it is "*unlawful for any owner or operator of any new source to operate such sources in violation of any standard...*" See 306(e) of the Act). While a categorical facility must comply with the categorical standards, through Project XL the frequency of their self monitoring (specified in 40 CFR 403.12(e)) may be reduced if such reductions make sense (i.e., for constituents not used).
8. Some possible regulatory changes that may be within the goals of the NBC proposal may include the following alternatives. As an example, if NBC were to provide incentives to "Tier 1" companies as part of the proposal, the alternatives below may be applicable. Note that NBC must identify their own potential regulatory flexibility needs. The alternatives presented below are examples of what NBC

may be interested in but NBC would have incorporate these examples into the proposal for further EPA review.

A. Change the definition of Significant Industrial User (SIU) at 403.3(t) so that categorical users would not automatically be included in the definition of SIU. Possible exclusion for CIUs might include having effluent concentrations less than 75% of the categorical standard.

B. Revise the definition of SIU in 40 CFR 403.3(t) to include an exemption for NBC's "Tier 1" companies.

C. Substituting pollution prevention audits for enforcement inspections for "Tier 1" companies, see 40 CFR 403.8(f)(1)(v).

D. Include a definition of a "Tier 1" facility in 40 CFR 403.3 (note that this could be include a larger universe than that provided in MF2000).

9. One issue of concern to EPA relates to the elimination of monitoring requirements for waste constituents that are not being discharged at a facility. EPA is concerned about the potential of a constituent creeping back into the wastestream, and potentially not being detected as a result of the decreased monitoring. A possible way to address this concern may be found in the metal finishing regulations - a Toxic Organic Management Plan (TOMP) and certification statement in lieu of periodic self monitoring to assure that Total Toxic Organics (TTOs) perhaps could be applied to pollutants other than TTO, (See 40 CFR 433.12). (This is only a thought and does not have EPA approval.)

10. As discussed previously NBC must describe the environmental benefits the project will achieve. What mechanisms does NBC propose to ensure that Superior Environmental Performance (SEP) will occur? A note on accountability: XL Projects should have clear objectives and requirements that will be measurable in order to allow you, EPA, and the public to evaluate the success of the project. The more information you can provide in your proposal on the enforceable commitments you are willing to make, the more efficiently it will move through the XL process. There are three levels of commitment which you as a project sponsor can make:

- **Enforceable commitments**--project sponsor is legally bound to meet commitment.
- **Voluntary commitments**--not legally enforceable, but the project sponsor can be held accountable through other means, such as termination of the project.
- **Corporate aspirations.** These are not commitments you should expect to be held accountable for through government action or citizen enforcement. Corporate aspirations can be contained in your proposal and in the Final Project Agreement, but should be clearly distinguished from accountable commitments.

The proposal should explain the different ways NBC is willing to be held accountable for commitments to superior environmental performance.

11. If the project is meant to apply to Tier 1 companies, the proposal will have to clearly define the criteria for what constitutes Tier 1 performance. Reference to Metal Finishing 2000 and CLEAN P2 will not be sufficient. Since this project, if approved, will likely include additions or modifications to the pretreatment regulations the proposal must include the exact definitions and criteria used to establish what a Tier 1 company is. The potential regulatory changes associated with this project could not simply site other EPA programs or initiatives for its definitions or requirements.

Specific Comments

1. Page 3, Section C, *Industrial Wastewater Control*; “an PT” should be “a PT”.
2. Page 6 Section A, Paragraph 2, *Project Overview*; Clarify what “limited enforcement relief” is. EPA needs more specificity to identify any potential regulatory/ statutory issues (see comments above).
3. Page 8, Paragraph 3, (Bullet #1); Clarify which Industrial Users will participate in the project. Will only “Tier 1” facilities in MF2000 receive any benefit from this project? Would other top performing companies that are not metal finishers also be able to participate?
4. Page 9, Paragraph 1, sections i-v *Superior Env Performance*; Since this section discusses measurement of environmental improvements/performance it should be listed under *Section G., Evaluation, Monitoring and Accountability*. Perhaps more important, it should be much more specific about what parameters/criteria are being measured. While the sources of environmental performance information are listed (databases, reports, BMR’s etc.), this section never identifies the criteria that these reports will provide to establish a program baseline and to measure environmental performance and success.
5. Page 13 Paragraph 4 *Paperwork Reduction*, and page 17 and 18 *Requested Flexibility*; Categorical standards are a specific statutory requirement in the Clean Water Act and cannot be replaced by local limits (except when they are more stringent than categorical standards). Categorical standards are independently applicable and directly enforceable. This is an area where EPA has not statutory flexibility.
6. Page 13, Paragraph 2, first sentence; Is this flexibility intended for all IU/SIUs in the NBC jurisdiction, or is it limited to those participating in the Clean P2 and Metal Finishing 2000 programs.
7. Page 13, Section B, *Fewer Regulatory Inspections*; This section needs to be more specific. At a minimum, it should specify the inspection frequency being requested. (i.e. Biennial, Semi-Annual etc.....), and which IU/SIUs will be inspected less frequently. Reducing inspection frequency is not a statutory issue unless the absence of inspections means the program can’t demonstrate compliance.

8. Page 13, Paragraph 2, second sentence *Fewer Regulatory Inspections*; Define “technical assistance.” The proposal does not describe what activities are associated with a technical assistance visit, nor does it state how these visits will encourage IU/SIUs to install P2 technology.
9. Page 16, Section G, *Evaluation, Monitoring & Accountability*; This section should state in more detail what will be monitored. NBC should elaborate on what parameters will be evaluated in establishing the baseline pollution prevention levels discussed in Section D of this Proposal and also for performance evaluation. The Performance Measurement section of Section D should be included in this section.
10. Page 16 Section G, paragraph 2, *Evaluation, Monitoring & Accountability*; Quantification of expected improvement (or Superior Environmental Performance) is required. Estimations in lieu of actual calculations may be acceptable.
11. Page 17, Section IV ii, *Requested Flexibility*; This section should specify how frequently inspections should be performed.