

US EPA ARCHIVE DOCUMENT

**AN ABBREVIATED CONVENING REPORT
FOR THE
XL FOR COMMUNITIES (XLC) PROJECT IN STEELE COUNTY, MN --
PHASE 1**

(Contract no. 68-W4-001, Delivery Order No. 182)

A. INTRODUCTION

Project XL is a program created by the U.S. Environmental Protection Agency (“EPA”) to promote “Environmental Excellence and Leadership.” It is designed to encourage companies, communities and state and local agencies, among others, to work together to develop cleaner, cheaper and smarter ways to protect the environment. Project XL for Communities (XLC) is the part of Project XL that focuses specifically on local communities. EPA will, after careful evaluation of both XL and XLC proposals, consider replacing or modifying regulatory requirements, policies or procedures if the proposed approach will produce superior environmental benefits and promote accountability to the public.

A critical part of an XL or XLC project is the “stakeholder involvement plan.” EPA has defined “stakeholders” as “ ‘communities near the project, federal, state, tribal or local governments, businesses, environmental . . . and other public interest groups or other similar entities.’ ”¹ The stakeholder involvement plan identifies the process by which various stakeholders will work together to create a “Final Project Agreement,” (FPA). The FPA is the implementing agreement for an XL or XLC project that describes the regulatory or other flexibility needed for implementation in addition to outlining the tasks and timelines necessary for meeting project goals.

¹ See EPA Publication 100-F-99-001, *Project XLC Stakeholder Involvement: A Guide for Project Sponsors and Stakeholders*, p.2 (March 1999), available at EPA’s Project XL website (<http://www.epa.gov/ProjectXL>).

EPA requested, under its contract with RESOLVE, Inc. (Contract No. 68-W4-0001), the services of a neutral convenor to (a) facilitate two organizational meetings of initial Project Sponsors (“sponsors”) and other Direct Participants (“participants”) for the Steele County XLC Project and (b) draft a proposed stakeholder involvement plan. Although time did not permit the convenor to interview all participants, EPA asked the convenor to interview as many as possible and to draft an *abbreviated* convening report that would include a set of recommendations for the contemplated process in Steele County. RESOLVE, Inc. retained the services of Denise R. Madigan, at ENDISPUTE, Inc., to serve as the neutral convenor for this project.

Pursuant to EPA’s request, this *abbreviated* convening report outlines a Proposed Stakeholder Involvement Plan for *Phase 1* of the XLC Project in Steele County, Minnesota. Phase 1 represents the first phase of a two-phase project that is described in (a) the February 3, 1998 proposal submitted by Dennis Sershen of Truth Hardware on behalf of the initial sponsors² and EPA’s March 1999 response³. More specifically, Phase 1 will focus on ways to reduce both regulated wastewater effluent and overall water usage within Steele County, Minnesota.

This report also outlines additional procedural recommendations applicable to Phase 1 of the Steele County XLC Project, based on informal conversations conducted in person and more formal interviews by telephone between the neutral convenor and a number of participants in the process.

B. METHODOLOGY FOR THIS REPORT

The convenor reviewed several public documents in preparation for this report. This included materials available at both the EPA and Minnesota Pollution Control Agency (MPCA) web sites⁴ that describe the proposed

² Letter and Proposal to EPA from Dennis Sershen, Truth Hardware, February 3, 1998, available at EPA Project XLC website (<http://www.epa.gov/ProjectXLC>).

³ Letter from David A. Ullrich, Acting Regional Administrator for EPA, March 8, 1999, available at the MPCA website described in footnote 4.

⁴ For EPA website address, see footnote 1. MPCA website can be found at <http://www.pca.state.mn.us>. Select “Hot Topics,” then “Environmental Innovations” to locate Project XL-related materials online.

Steele County XLC Project and other innovative environmental projects at the federal and state levels. In addition, the convenor reviewed a collection of local newspaper clippings describing some of the history of the project since the project's initial conception over two years ago.

The convenor also facilitated two meetings for the sponsors in May 1999, aimed at outlining a clear timeline and process in which XLC negotiations can proceed. The first meeting, on May 5, 1999, was held at the Owatonna, Minnesota Wastewater Treatment Plant, and included representatives of the sponsors, MPCA and EPA. (See attendance sheet, *Attachment 1*.) This group reached agreement on a timeline and proposed process that was subsequently reflected in a "Draft Process Agreement" prepared by the convenor later that day, after the meeting. (See *Attachment 2*.) A second, larger meeting, on May 6, 1999, was held at the Owatonna Fire Department training facility. (See agenda and attendance sheet, at *Attachments 3 and 4*, respectively.) Presentations were made by the lead organizers for this project, Dennis Sershen of Truth Hardware, Andrew Ronchak of MPCA and Jeffrey Bratko of EPA. The convenor also outlined the overall contours of the negotiation process, circulated the Draft Process Agreement and invited attendees to pose any questions or comments.

Both before and after the May 1999 meetings, the convenor conducted in-person and telephone interviews with a number of direct participants. The convenor committed to keep the details of these interviews confidential, but obtained the consent of those interviewed to incorporate their comments, without attribution, in this convening report. The convenor's interviews were suspended for a period of time while contracting issues with EPA were resolved. However telephone interviews were completed with individuals listed at *Attachment 5*. Attempted -- but not completed -- interviews are also identified in that attachment.

C. CONCERNS AND RECOMMENDATIONS

ENDISPUTE recommends that the Steele County XLC Project proceed in accordance with the Proposed Stakeholder Involvement Plan attached at

Attachment 6. This plan is very similar to the Draft Process Agreement circulated for review and comment at the May 6, 1999 meeting. No one interviewed for this convening report offered any criticisms or proposed changes to the Draft Process Agreement. And all those interviewed expressed an interest in participating in the negotiation process, with responses ranging from cautious willingness to genuine enthusiasm.

Nevertheless, some participants voiced concerns that merit consideration as the negotiations get underway. Four principal concerns surfaced in informal conversations and more formal interviews:

- Potential domination of smaller companies. Some participants expressed concern that the larger companies involved will dominate the negotiations. In particular, they expressed concern that proposals will be advanced that would work to the detriment of smaller companies with fewer resources to invest in the XLC process.
- Potential impact on wastewater treatment plant operations. Federal and state officials have been supportive of this XLC initiative, but expressed concern that treatment plant operations not be burdened too much by any proposals that emerge from this process. Some dischargers also echoed this same concern, noting that “the devil will be in the details.” The tone of these concerns reflects respect for the current head of the wastewater treatment plant, and acknowledges that at times he may have to serve as the lone voice for potentially unpopular but appropriate feasibility concerns.
- EPA’s ability to participate in a timely and meaningful fashion. Local companies and state agency representatives have expressed almost universal concern about EPA’s ability to participate in a timely and meaningful fashion. In particular, they have expressed concern that EPA officials not at the table will withhold detailed feedback on proposals until the “eleventh hour,” after Drafting Workgroup and other CNC members have invested substantial time and effort in developing detailed technical approaches. This is based, in part, on perceptions a number of people have of EPA’s involvement in an earlier XL project in Minnesota involving the 3M Company.

Several participants also expressed a more generalized concern that EPA historically has taken “far too long” to respond to issues related to this proposed project. They are now somewhat cautious about committing themselves to an ambitious timetable if EPA, itself, will be unable to honor the timetable. They respect the sincerity and commitment of EPA’s lead contact for this project, but fear that EPA officials not at the table will delay meaningful progress.

- Representation by environmentalists. The convenor had some difficulty locating individuals within Steele County to represent environmental interests. This may have been due to time constraints. However, several participants also indicated it could be difficult identifying someone outside various industry groups to represent local environmental concerns.
- Representation of employee interests. The convenor had difficulty identifying potential representatives of employee or labor interests. This was due, in part, to time constraints, and also due, in part, to the absence of organized labor at most of the companies interviewed. Representatives from the companies involved have explained that employees will be consulted during the drafting process, because their input on technical issues will be essential. But EPA and MPCA, to the extent they have concerns about employee support for any proposals, may wish to encourage and attend employee information sessions at each of the sponsoring companies to solicit direct employee input.
- Administrative and Facilitation Support. Most people with whom the convenor spoke felt the project would proceed more efficiently if (a) administrative support and (b) neutral facilitation support were available. To date, the burden of administrative support has been borne primarily (and impressively) by the lead industry sponsor, Dennis Serphen of Truth Hardware. However, many people believe it would be unfair to expect him to continue to bear the logistical burden alone.

Most people also felt it would be helpful to have someone available to help facilitate the negotiation process, especially the public meetings.

They would prefer someone with experience in facilitation, but without a stake in the outcome of the XLC negotiations.

However, despite these concerns, most interviewees were not willing to contribute financially to retain either an administrative support person or a neutral facilitator.

In light of the concerns expressed by those with whom the convenor spoke, ENDISPUTE makes the following additional recommendations for the Steele County XLC project:

1. Obtain the services of a neutral, experienced facilitator. This individual should have some experience working with large groups of people on complex technical issues and some experience dealing with the public. In addition, this individual should be “neutral” with respect to the subject matter. The involvement of a neutral facilitator could help address at least two of the concerns identified above. First, the facilitator could provide additional focus and direction to enable participants to adhere to the timeline proposed. Second, the neutral facilitator could work with the parties both at and between various meetings to ensure that no one entity or collection of entities is “dominating” the process to the exclusion or disadvantage of other participants.

EPA has indicated that it will not be able to fund the services of a facilitator for this project going forward. (It did fund the services of the convenor for the facilitation of the May meetings and the preparation of this report.) And in light of the participants’ reluctance to contribute sums for this type of assistance, ENDISPUTE recommends that a representative subgroup of the participants be charged with recruiting a potential volunteer for this function. Local companies not involved in wastewater discharge may be one source of potential volunteers, especially if they have staff who are trained in facilitation techniques. Community and four-year colleges nearby may have faculty willing and able to provide this service as well. And the Hubert Humphrey School at the University of Minnesota may have public policy graduate students and/or faculty willing to contribute their time and expertise to the Steele County XLC Project.

2. Identify local sources of administrative support for this project. A representative subgroup of participants should be charged with exploring potential low-cost sources of administrative support. Options might include: (a) an individual provided by a local company, law firm, agency or other organization on a *pro bono* basis, or (b) a local college or graduate student willing to “intern” as the logistical support person for this project.
3. Identify at least one or two people to articulate and represent environmental concerns at the table. A representative subgroup of participants should be charged with identifying and recruiting potential environmental representatives. This may require contacting individuals outside Steele County, if necessary, and structuring a role for them that accommodates their geographic distance from the county. (The Minnesota Center for Environmental Advocacy has indicated a willingness to suggest possible sources of environmental representation.)
4. EPA should clarify for the other participants the role it intends to play in this project. At present, several people believe EPA should be participating as a “partner” in this project with the sponsors. However, a recent EPA decision not to author invitations soliciting stakeholder participation has confused a couple of sponsors and caused them to question just how involved EPA will be in this project. EPA should take care to articulate as soon as possible how its role may differ from those of the sponsors of this project. This should minimize confusion and possible distrust of EPA’s role in the future.
5. EPA should minimize, to the extent possible, the turnover in personnel it assigns to this project. It has taken over two years for this project to move from conception to a formal convening, and the state and private sector participants perceive the delay as largely due to slow responsiveness by EPA. They have uniformly expressed a “now or never” attitude with respect to this project: if the project does not make substantial progress soon, private sector and state agency enthusiasm may dissolve before the project is completed. Thus, if EPA decides at some future time to replace key people on this project with new

- individuals, it will no doubt delay progress on this project. And further delays will only serve to confirm existing fears about EPA's willingness and ability to see this project through to completion.
6. Similarly, turnover among the other participants should be avoided, if at all possible. When turnover occurs, the Drafting Workgroup should help educate replacements in the project as soon as possible.
 7. Participants should articulate any concerns they have about the details of evolving regulatory proposals as soon as possible. It is clear that the Drafting Workgroup will bear the brunt of the initial research and drafting work, but it will be able to work far more efficiently if other participants communicate any criticisms or concerns to its members earlier -- rather than later -- in the process. This also means that participants should be consulting regularly with their own colleagues, employees, supervisors or constituents, to be sure they are accurately reflecting the views of these people at the negotiation table.

One final caveat should be noted in this report. Although the convenor tried to make contact with all the initial sponsors and other direct participants in this project, contract-based time constraints prevented her from doing so. In some cases, she and the parties traded voice mail messages; in other cases her calls were not returned (or were returned too late for inclusion in this report). The convening analysis in this report reflects input only from those with whom the convenor was able to speak. Consequently, several initial sponsors and other direct participants are omitted from this report.⁵

Consequently, the convenor makes one additional recommendation: Someone should complete the contacts attempted with those entities listed as "attempted, but not completed" interviews in Attachment 5, to ascertain whether these entities remain interested in supporting the Steele County XLC project. In addition, someone should determine whether these entities have any *additional concerns* about the proposed scope of negotiations or the

⁵ Although most of the potential industry sponsors at one time submitted letters of support for the XLC project, these letters are now over two years old. The convenor was not able to ascertain the current level of support for the XLC project among companies not interviewed for this report.

Stakeholder Involvement Plan before others invest too much time in this process.

D. CONCLUSIONS

The Steele County Community XLC Project should proceed, subject to the recommendations outlined above.