

US EPA ARCHIVE DOCUMENT

**FINAL**  
**July 12, 1999**

FINAL PROJECT AGREEMENT  
Project XL For Public Utilities

This Final Project Agreement (THE AGREEMENT or FPA) between the United States Environmental Protection Agency (EPA) and the New York State Department of Environmental Conservation (DEC) states the intention of DEC to carry out a pilot project as part of EPA's Project XL Program.

This Agreement addresses the roles, responsibilities, and obligations of EPA and DEC (collectively THE PARTIES), as well as the obligations of participants and conditions for participation. The Agreement creates no legal rights or obligations and is not a contract or a regulatory action, such as a permit or a rule. Therefore, this Agreement simply provides a framework to implement the Project XL proposal.

DEC has applied to be and been accepted as a participant in EPA's Project XL, part of President Clinton's National Performance Review Regulatory Reinvention Initiative. Appended to this Agreement are Appendix A, EPA's July 29, 1996 acceptance letter, and Appendix B, EPA's September 4, 1996 letter, which clarifies the conditions of acceptance. Project XL gives regulated entities an opportunity to demonstrate excellence and leadership by allowing them the flexibility to develop alternative strategies that will replace or modify specific environmental regulatory requirements on the condition that the strategies produce superior environmental performance.

DEC is proposing flexible implementation of certain specific regulations, promulgated pursuant to the Resource Conservation and Recovery Act (RCRA) and Article 27, Title 9 of the New York State Environmental Conservation Law (ECL), with respect to the management of certain hazardous wastes generated by utilities in New York State. Some of this hazardous waste may contain polychlorinated biphenyls (PCBs); waste(s) which contain PCBs in concentrations of 50 ppm or greater remain regulated by the Toxic Substances Control Act (TSCA) and its

implementing regulations set forth in 40 C.F.R. Part 761. Nothing in this Agreement shall be read to alter any requirements under TSCA or 40 C.F.R. Part 761.

I. Description of this Pilot Project

Utilities maintain rights-of-way, such as oil and gas pipelines, telephone lines, and electric power distribution systems, in some cases extending hundreds of miles. Frequently, hazardous wastes will be generated at remote locations along these rights-of-way where there are no utility-owned or staffed facilities where the wastes may be stored and otherwise managed. The collection of hazardous waste is sometimes planned in advance, but often is not, particularly in cases where there has been a sudden, unexpected loss or interruption of service.

In the case of electric power and telephone systems, the locations involved are usually access manholes and street vaults, which are most often located in the middle of public roads. In order to access conduits and service the system, considerable amounts of drainage and infiltration water must be removed, which sometimes includes sediment. When sediments are included, these materials commonly fail the Toxicity Characteristic (TC) for lead, particularly in urban areas. For electric power systems, PCB contamination is also possible. At many of these locations, the quantity of hazardous waste collected will exceed 1,000 kilograms.

In the case of oil and gas pipelines, the waste may consist of pipeline condensate which collects in "drip" pipes downstream of pressure regulating stations. These wastes commonly exhibit ignitability, fail the TC for benzene and will, at times, contain PCBs. The quantity collected will often qualify for conditional exemption under RCRA and the ECL, but, on many occasions, will fall into the small quantity generator category.

Since no staffed facility exists at these remote locations, it is very difficult to store hazardous wastes there and secure them against releases through accidents

or vandalism. Moreover, the disruption of normal traffic patterns while the system is being serviced endangers public safety by increasing the probability of vehicular collisions and vehicular/pedestrian accidents. Forced merging of high-volume traffic lanes, if necessary, is extremely dangerous. To effectively and adequately protect public health and safety, and the environment, these wastes should be transported to a secured location as soon as the hazardous waste has been collected from the remote location. However, if the wastes must be transported directly to a permitted treatment, storage and disposal facility (TSDF), the Utility must await authorization from the TSDF prior to including the TSDF on the manifest and transporting the waste. This causes a delay in the removal of the waste.

Utilities would prefer to transport hazardous wastes immediately from remote locations to a utility-owned central collection facility (UCCF) (to which they are connected by a right-of-way, such as a pipeline, that the utility controls) so that hazardous waste does not remain susceptible to releases through accidents or vandalism. At staffed, secured UCCFs the utilities could safely consolidate compatible types of hazardous wastes collected from different remote locations to achieve important efficiencies in transportation. By consolidating hazardous waste in this manner, vehicles transporting wastes from a utility-owned UCCF to a commercial TSDF would then be carrying relatively full loads. On the other hand, if hazardous wastes must be transported to a TSDF directly from remote locations, more vehicle trips would be required, each carrying smaller loads. The same would be true if hazardous waste is consolidated at a transfer facility, since temporarily holding hazardous waste at a transfer facility is limited to ten days. This would allow very little time for effective consolidation.

Consolidation at secure facilities is a common sense approach. However, RCRA hazardous waste regulations generally do not allow shipment to, or consolidation of hazardous waste at, off-site facilities other than a permitted or interim status TSDF or other designated facility.

In addition, each remote location that is not

conditionally exempt is issued an EPA identification number and a record file must be opened, both in state-only databases and in the federal database RCRIS. Furthermore, for each remote location that generates in excess of 1,000 kilograms per calendar month, the utility must prepare and submit a Hazardous Waste Report/Biennial Report. The RCRA-authorized state must process each report and enter the data into state-only databases and also into RCRIS. As a result, both state and federal databases list "sites" which are actually only drip pipes or manholes.

Thus, unless utilities have UCCFs permitted as TSDf, the present handling of hazardous wastes from remote locations results in potentially unsafe storage and hazardous conditions, inefficiencies in transportation increasing direct costs, and unnecessary paperwork and expenditure of time and labor. The indirect costs also affect environmental regulatory agencies.

The participants in this Project intend to explore alternative requirements for hazardous waste generated at remote locations by utilities. This includes the following:

1. Allowing such wastes to be transported to utility-owned UCCFs within their right-of-way network immediately after collection of all hazardous waste at the remote location is complete or when the staff collecting the hazardous waste leave the remote location, whichever comes first.
2. Not requiring a separate EPA identification number for each remote location and not requiring the submission of a Hazardous Waste Report for each one, when such wastes could all be fully accounted for in the Hazardous Waste Report, submitted for the UCCF.

To accomplish this, EPA proposed a temporary, specific regulation set forth in Subpart I of 40 C.F.R. Part 262. The proposed regulation would allow participating New York State utilities to consolidate hazardous waste, which they generate at remote locations, at designated UCCFs for up to 90 days subject to specified requirements

to ensure that the transportation and consolidation of this hazardous waste is protective of human health and the environment.

By modifying the above-referenced regulations for New York State utilities participating in this XL project, the problems discussed above would be resolved. Remote locations will utilize the same EPA identification number as the designated UCCF to which the wastes will be brought. Utilities will be able to immediately transport remote location hazardous waste to the UCCFs and may consolidate them for up to 90 days, thereby allowing time for consolidation of wastes that are compatible. Hazardous waste generated at remote locations that is consolidated at a UCCF can be accounted for in a combined Biennial Report submitted by the Utility, instead of the Utility having to submit a Biennial Report for each remote location.

The activities that a Utility will carry out include, collecting hazardous waste from multiple remote locations, transporting the collected hazardous waste to a designated UCCF, keeping that hazardous waste at the UCCF for up to 90 days, and combining, where feasible and appropriate, physically and chemically similar hazardous waste.

This solution will enhance the protection of public health and the environment by facilitating and requiring the expeditious removal of hazardous wastes that cannot be properly secured at remote locations. Such wastes will be moved to a secured location immediately after collection of all hazardous waste at the remote location is complete or when the staff collecting the hazardous waste leave the site, whichever comes first. Hazardous traffic conditions that endanger public safety would end simultaneously. Utilities will realize considerable savings in direct costs through efficiencies in transportation by consolidating essentially identical hazardous wastes. Reducing the number of lengthy trips by waste transporting vehicles also reduces mobile source emissions. Elimination of the need to identify remote locations as separate "sites" will bring about a very significant reduction in paperwork and savings in time and labor, both for utilities and environmental regulatory agencies, who can then redirect such resources

to other environmental needs.

## II. Definitions

In order to implement the project, the parties agree as follows:

- A. For the purposes of this agreement, the term, "utility" is any company that operates wholesale and/or retail oil and gas pipelines, or any company that provides electric power or telephone service and is regulated by New York State's Public Service Commission, or the New York Power Authority,
- B. For the purposes of this agreement, a "right-of-way" is a fixed, integrated network of aboveground or underground conveyances, including land, structures, fixed equipment, and other appurtenances, controlled or owned by a utility, and used for the purpose of conveying its products or services to customers.
- C. For the purposes of this agreement, a "remote location" is a location in New York State within a utility's right-of-way network that is not permanently staffed.
- D. For the purposes of this agreement, a "central collection facility" (UCCF) is a utility-owned facility within the utility's right-of-way network to which hazardous wastes, generated by the utility at remote locations within the same right-of-way network is brought.
- E. For the purposes of this agreement, a "project year" shall coincide with the calendar year, beginning annually in January.

## III. Scope and Applicability

The parties agree that this project addresses the consolidation of hazardous waste, generated by a utility solely at remote locations within that utility's right-of-way network, including requirements applicable to transportation of such wastes to utility-owned UCCFs and

standards applicable to the consolidation of such wastes at UCCFs.

The parties agree that participation in this project is limited to utilities, as defined in Section II(A) herein, operating in New York State. Utilities that maintain interstate service networks, such as interstate oil and gas pipelines, may participate but only with respect to remote locations and UCCFs located within New York State.

#### IV. Regulatory Modifications

This FPA explains modifications that will be made to EPA and New York State regulations incorporating the elements of this FPA. The FPA itself does not modify any existing federal or state regulations.

In order to implement the terms of this project, the EPA has proposed regulations incorporating the terms of this project, including those explained in this Section and Sections VI-IX of this FPA. Based on comments received during the public notice process, EPA plans to promulgate a final rule. The new federal regulations will be set forth in Subpart I of 40 C.F.R. Part 262.

Similarly, the NYSDEC intends to propose and (subject to public comment) promulgate an equivalent state regulation. This state regulation will be set forth in 6NYCRR Part 372. In addition, with regard to wastes that are State-hazardous only due to PCB content, the State shall also modify 6NYCRR 372.1(e)(9)(Exemption for Public Utilities) to:

"(i) Hazardous waste, generated by a public utility and transported by a vehicle, owned or operated by that utility, is exempt from regulation under this Part if the following conditions are met:"

Promulgation of the new federal regulations and the state counterpart will allow each New York State utility that receives approval to participate in this project to consolidate at the Utility's central collection facility (UCCF) hazardous waste generated by that Utility at remote locations (such as manhole or drip pipes) within New York State which are connected to the Utility's UCCF by Utility owned rights-of-way (such as oil and gas



pipelines) for up to 90 days without a permit or without interim status. However, specific requirements set forth in the regulations must be complied with in order to maintain the exemption. These specific requirements will include those conditions explained in Sections VI-IX of the FPA.

V. Federal and State Implementation Procedures

A. Federal

Implementation of the modifications to the regulatory requirements explained in this Agreement shall be accomplished through the promulgation of a specific rule. This specific rule was published in the Federal Register as a proposed rule, subject to notice and comment. Based on the comments received, EPA expects to promulgate a final rule.

B. New York State

Implementation of the modifications to the regulatory requirements explained in this Agreement shall be accomplished through the promulgation of a specific rule. This specific rule will be published in the State Register as a proposed rule and will be subject to notice and comment. Depending on the comments received during the notice and comment period, NYSDEC will either promulgate the rule in final form, modify the rule subject to public notice and comment as necessary or decide not to go final with a rule implementing the proposed regulatory modification.

However, to facilitate the implementation of this project in advance of a final and effective state rule, NYSDEC may initiate implementation of this project through the adoption of an "Enforcement Directive" (ED). As discussed in Section XII, Effective Date and Duration of Agreement, NYSDEC may initiate an ED and implement the project after EPA has an effective final federal project-specific rule. While the ED is in effect, the EPA will also be exercising its discretion not to enforce for violations of currently applicable state

requirements that will be replaced by the final state project-specific rule under this project. If a utility fails to comply with any provision of the federal project-specific rule, the utility shall be subject to the existing requirements set forth in 6NYCRR Part 372 and 373 and subject to State or Federal enforcement under ECL and RCRA. This limited exercise of enforcement discretion is intended to establish a temporary "bridge" between the effective dates of the federal and state project-specific rules needed to legally implement this project. Therefore, NYSDEC must also initiate its own equivalent state project-specific rulemaking as a condition for the use of enforcement discretion by both EPA and NYSDEC for this project. In order to qualify for enforcement discretion, NYSDEC and the utilities participating in this project must be in compliance with the final federal project-specific rule and the proposed state project-specific rule. Enforcement discretion by EPA will terminate one year from NYSDEC's adoption of an ED or upon finalization of the state project-specific rule, whichever comes first. Enforcement discretion will also terminate upon failure of the proposed state project-specific rule to reach finalization or continue to make progress towards finalization. The procedures for adopting an ED are and will be to place a draft notice in New York State's Environmental Notice Bulletin and State Register, announcing NYSDEC's intent to implement the terms of the project and providing for a 30-day public comment period. At the conclusion of the comment period, consideration of all comments received must precede final action on the ED.

#### VI. Conditions for Participation

The parties agree that participants will be required to comply with the following requirements:

A. This project is designed to address hazardous waste generated at remote locations. It cannot be used to allow hazardous waste generated at one staffed, operating facility to be stored, consolidated, or managed at another facility, owned

by the same utility. All sites owned by a utility that are staffed, operating facilities must maintain separate EPA identification numbers.

B. In the case of utilities which provide interstate services, such as interstate oil and gas pipelines, only remote locations and UCCFs that are within New York State may participate in this project.

C. Utilities must comply with hazardous waste manifesting and pretransport requirements for all hazardous waste shipments greater than 100 kilograms sent from a remote location to a UCCF.

D. All vehicles transporting hazardous wastes from a remote location to a UCCF must comply with all applicable requirements of 40 C.F.R. Part 263, 49 C.F.R. Parts 171 - 180 and 6NYCRR Part 364.

E. Hazardous wastes generated at remote locations shall be transported from such locations as soon as the collection of the waste at the remote location is completed or when the workers leave the remote location, whichever is sooner. The waste shall be brought to either a designated UCCF owned by the same utility or to an authorized TSD facility.

F. Hazardous wastes brought from remote locations to utility-owned UCCFs, in accordance with the terms and conditions of this Agreement, shall be consolidated at such facilities in accordance with all hazardous waste and TSCA (40 C.F.R. Part 761) requirements that would be applicable if the wastes had actually been generated at the UCCFs. All waste at the UCCF shall be treated as if the UCCF is a large quantity generator despite the amount of waste generated at, or brought to, the UCCF.

G. The UCCF shall comply with standards for secondary containment of containers that are based on New York State requirements currently applicable to all generators (i.e., requirements that are not currently federal requirements). This requires that participating Utilities operating a UCCF that holds liquid hazardous waste in containers must provide

secondary containment for those containers under two sets of circumstances: 1) if the UCCF is consolidating 8,800 gallons or more of liquid hazardous waste at any time; and 2) if the UCCF is consolidating 185 gallons or more of liquid hazardous waste at any time and is located in an area designated by New York State that overlays a sole-source aquifer (this would include, for example, areas in Brooklyn, Queens, and Long Island).

H. The UCCF shall comply with the closure requirements for containers set forth in 40 CFR 264.178.

I. Hazardous Waste Reports submitted by UCCFs would include hazardous waste generated at remote locations and received at a UCCF under the terms explained in this Agreement.

J. It is expected that each participant will realize direct and indirect savings from participation in this project. Direct savings will be realized since the utilities will not have to obtain identification numbers and submit reports on individual remote locations. There will be indirect savings in terms of diminished need for non-liquid resources, such as personnel time, labor, equipment use, equipment time (e.g., computer time), etc. It shall be the obligation of each participant to reinvest one-third of its direct savings into other environmental remediation, or pollution prevention activities which are above and beyond what is legally required and which were not previously planned.

Participating utilities must estimate their expected direct cost savings based on project participation. Expected savings shall be compared to costs incurred prior to implementation of this project. At a minimum, the estimated direct savings shall include relief from any of the following applicable requirements which the facility expects to be relieved from due to project participation:

1. EPA ID Number acquisition process costs;

2. Database management for each remote location as an individual generator;
3. Annual Hazardous Waste Report preparation costs;
4. Biennial Report preparation costs;
5. Cost savings realized from consolidation of waste for economical shipment (i.e., not shipping waste to a TSD directly from the remote locations); and/or
6. Costs for temporary storage of hazardous wastes at remote locations.

Participating utilities are required to identify, in annual Project XL Progress Reports, the direct cost savings due to project participation and the environmental activities in which they have been reinvested.

#### VII. Procedures for Participation

The parties agree that utilities shall comply with the following procedures in order to participate:

##### A. Public Notice for Designated Central Collection Facilities

Prior to the submission of a Notification of intent to participate, described in subsection B of this section, a utility must identify to local communities and governments, and to all parties who commented on the proposed rule implementing this project, the specific facilities the utility intends to designate as UCCFs. The utility must ensure that local communities and governments and all parties who commented on the proposed rule implementing this project are adequately notified and advised that, pursuant to the terms of this XL project, the utility will be seeking DEC approval to consolidate hazardous waste, which it has generated at remote locations, at designated UCCFs for 90 days or less.

This notification must solicit public comment on the utility's proposed plan and must include a brief description of the XL project, the intended new use of the facility, and a request for comments on the proposed UCCF.

Utilities shall notify local communities and local governments of their intent to designate specific UCCFs by employing the following methods. First, utilities must publish a notice in a newspaper of general circulation within the area in which each designated facility is located. Second, utilities must employ at least two of the following additional methods: 1) a radio announcement in each affected community during peak listening hours; 2) mailings to all citizens within a five-mile radius of any proposed UCCF; 3) well-publicized community meetings; 4) presentations to the local community board; 5) placement of copies of this FPA in the local public library nearest the designated UCCF, with the name and address of the library included in the newspaper notice; and 6) placement of the FPA on a utility's web site, with the web's site address included in the newspaper notice. Third, utilities must notify by mail the parties who commented on the proposed rulemaking for this project of its intent to designate specific UCCFs. All outreach efforts shall at a minimum include the following information (in English and any other language spoken by a large number of persons in the community of concern):

1. A brief description of the project and the intended new use of the facility.
2. The name, if any, and address of the facility and its current status under the RCRA Subtitle C program (e.g., is it currently a fully regulated generating site; a permitted treatment, storage and disposal facility, etc.?).
3. The intended duration of the project (i.e., approximately how long will the designated facility be used for the intended additional purpose?).

4. Names, addresses, and telephone numbers of contact persons to whom questions or comments may be directed. The designated contacts shall represent the utility and DEC respectively.

5. Notification of when the comment period will close (30 days from the date of the public notice).

Prior to publication, copies of each notice, announcement or mailing shall be sent directly to local governments and to the designated DEC contacts.

At the close of the comment period, the utility shall compile all comments and questions received as a result of its outreach efforts and the utility's responses to all comments.

B. Notification/Acceptance of a Participating Utility or Designated UCCF

At any time after the effective date (see Section XII) of this Agreement, an eligible utility that intends to participate in this project must submit to DEC a Notification of such intent. The Notification shall be addressed to:

Director  
Division of Solid & Hazardous Materials  
New York State Department of Environmental Conservation  
50 Wolf Road  
Albany, New York 12233-7250

A copy of the Notification shall also be sent to the Director, Division of Enforcement and Compliance Assistance at EPA-Region II. Each Notification shall be signed in accordance with the signatory requirements of 6NYCRR 373-1.4(a)(5)(I)('a'), equivalent to 40 C.F.R. 270.11(a)(1), and shall contain the information required by subsection C of this section.

The notifier is deemed accepted as a participant upon the receipt of written acknowledgment from DEC that the Notification has been received and found to

be complete and in accordance with all terms and conditions of this Agreement, including the Notification requirements stated in this section. Based on information provided by the utility and comments received during or after the public notice and comment period for the designation of the UCCF, DEC shall prepare a response to the comments received. The response to comments shall be attached to the acknowledgment. Both the acknowledgment and the response to comments shall be sent to all persons who commented on the designation of the UCCF(s) that are the subject of the acknowledgment. However, based on information provided and comments received during or after the public notice and comment period, designated UCCFs may be rejected for the intended use, or conditions may be imposed on such use, and the acknowledgment from DEC will so state. If DEC determines that a site-specific informational public meeting is warranted prior to determining the acceptability of a designated UCCF, the acknowledgment will so state. Again, subsequent to any public meeting and prior to receipt of approval to participate, DEC may reject or prohibit designated UCCFs from participating in this project based on information provided or comments received during or after the public notice process or any other reason.

C. Contents of Notification

Each Notification of intent to participate in this project must contain the following information:

1. The name of the company, corporate address, and corporate mailing address, if different.
2. The name, mailing address, and telephone number of a corporate-level contact person to which communications and inquiries may be directed with regard to the company's participation in this project.
3. A list of the names, addresses, and EPA identification numbers of all company-owned facilities in New York State that are intended to serve as UCCFs, along with the names and telephone numbers of a designated contact person at each



facility.

4. A commitment that one-third of the direct savings outlined in Section VI.I. shall be reinvested into one or more environmentally beneficial projects which are above and beyond what is legally required and which was not planned prior to the UCCF's receipt of approval to participate in this project.

5. Summary of public outreach efforts undertaken (with copies of any documents that were part of such efforts), pursuant to subsection A of this section, the compilation of comments received as a result of such notices, as well as copies of all written comments, and utility responses to such comments.

6. An acknowledgment that the signatory is personally familiar with the terms and conditions of this Agreement and has the authority to obligate and does obligate the company to comply with all such terms and conditions.

D. Amendments to the Notification

At any time, a signatory may amend a Notification in order to, for example, add or delete a designated UCCF or change the names of contact persons. Such a Notification amendment shall be submitted to DEC and EPA, in the manner indicated previously in subsection B of this section. The addition of one or more UCCFs shall further require compliance with subsections A and B of this section. DEC may reject these additional UCCFs or place conditions on their use based on information received during the public comment process or for other reasons.

Upon acknowledgment of receipt by DEC, the amendment will be deemed complete and in accordance with the terms and conditions of this Agreement, unless the acknowledgment specifies to the contrary.

E. Commencement of Participation

Implementation of this project shall begin upon the Project XL implementation date (see section XII),

which shall be the effective date of the ED that DEC must adopt to implement this project.

F. Prohibitions

1. No company may participate in this project unless it has filed the required Notification of intent to do so and received acknowledgment from DEC that the Notification is deemed complete and in accordance with the terms and conditions of this Agreement.
2. No facility may serve as a UCCF in accordance with this project without prior designation as such in a Notification, acknowledged by DEC, or without the public notice requirements of subsections A and B of this section having been satisfied. DEC may reject, or terminate, designated UCCFs based on information received during or after the public notice period regarding that specific UCCF.

VIII. Reporting Key Result Measurements

In order to evaluate the success of the project, the parties agree as follows:

A. Annual Project XL Progress Report

Within 90 days after the end of a project year, as defined in Section II(F), each participating company must submit an Annual Project XL Progress Report. Submission shall be made to DEC, with a copy to EPA, in the same manner as specified for the Notification in Section VIIB.

The data and information contained in the Project XL Progress Report shall be for the preceding project year.

Certification requirements, as contained in 6NYCRR 373-1.4 (a)(5)(iv), equivalent to 40 C.F.R. § 270.11(d), shall apply.

B. Contents of Annual Project XL Progress Reports

Each Project XL Progress Report shall contain the following information:

1. The number of remote locations statewide for which hazardous wastes were handled in accordance with this Project (i.e., where the EPA identification number for a UCCF was also used for the remote location and hazardous wastes were transported to the UCCF).
2. The total tonnage of each type of hazardous waste handled by each UCCF.
3. The number of remote locations statewide that generated in excess of 1,000 kilograms of hazardous waste per calendar month.
4. The number of remote locations statewide that generated between 100 and 1,000 kilograms of hazardous waste per calendar month.
5. An estimate of the monetary value, on a corporation-wide basis, of the direct savings realized by participation in this project. Direct savings at a minimum include applicable savings outlined in Section VI.I.
6. The addresses and EPA identification numbers for all company facilities that served as UCCFs for hazardous wastes from remote locations.
7. Descriptions of the environmental remediation, or pollution prevention projects or activities into which one-third of the direct savings, described in paragraph 5 of this subsection, have been reinvested, with an estimate of savings reinvested in each. Any such projects must consist of activities over and above legal requirements and may not consist of plans initiated prior to the UCCF's receipt of approval to participate in this project.

C. Statewide Project XL Annual Progress Report

Within 180 days following the end of each project

year, DEC will prepare and submit to the EPA Region II Administrator a Statewide Project XL Annual Progress Report. This will include statewide summaries for Items 1-6 and highlights for Item 7 in Subsection B above.

IX. Record Keeping

The parties agree that the following records shall be maintained at each designated UCCF for a minimum period of three years and shall be made available for inspection, upon request, by authorized DEC or EPA personnel:

- A. Copies of all manifests for hazardous wastes, transported to or from the facility.
- B. Copies of the facility's annual Hazardous Waste Reports.
- C. Any PCB test results for hazardous wastes brought to the facility from remote locations.

X. Suspension or Revocation of Participation Privileges and Enforcement

In order to implement the project, the parties agree as follows:

A. Significance of Non-Compliance

If any participating facility or company fails to comply with the terms and conditions of this Agreement, or with regulatory requirements, applicable under this Agreement, such non-compliance may be grounds for terminating a facility's or a company's participation in this project or suspending such participation.

The parties recognize that a facility's or a company's compliance record is an important factor in determining whether participation in this project does lead to superior environmental performance. In determining whether to terminate or suspend participation in this project, EPA and/or DEC will consider the nature, severity, persistence, and

recurrence of non-complying conditions, as well as whether non-compliance appears to be limited to a particular facility or is pervasive among a company's participating facilities. Lead responsibility for making the determination shall rest with DEC.

B. Enforcement

Where hazardous waste requirements or standards, are violated, enforcement action, as well as termination or suspension of participation privileges may occur.

Classification of violators or violations, lead responsibility for enforcement, and EPA oversight shall be in accordance with RCRA and TSCA statutory and regulatory provisions, the RCRA Enforcement Response Policy and any State/EPA Enforcement Agreement in effect at the time of the violation.

XI. Inspections

The parties agree that a RCRA inspection shall be conducted by DEC at each designated UCCF at least once per New York State Fiscal Year during the term of this Agreement.

XII. Effective Date and Duration of Agreement

The parties agree that the Effective Date of this Agreement will be the effective date of EPA's final specific rule for this project. After EPA has an effective final rule, NYSDEC may initiate implementation of this project through the adoption of an Enforcement Directive (ED). The procedures for adopting an ED are and will be to place a draft notice in New York State's Environmental Notice Bulletin and State Register, announcing NYSDEC's intent to implement the terms of this project and providing for a 30-day public comment period. At the conclusion of the comment period, consideration of all comments received must precede final action on the ED.

The duration of this Agreement will be 60 months from the effective date of EPA's final rule implementing the terms

of this project.

Either party may terminate this Agreement at any time. Before such termination may become effective, the terminating party must provide a minimum of 30 days written notice to the other party and to all companies participating at that time in the project, and must publish its decision in the Federal Register or New York State Register, as appropriate.

XIII. Signatories

Signatories to this Agreement are representatives of EPA and DEC. Each undersigned representative certifies that he or she is fully authorized to bind such party to the terms of this Agreement.

\_\_\_\_\_  
 - Regional Administrator  
 U.S. Environmental Protection  
 Agency - Region II

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 - Commissioner  
 New York State Department of  
 Environmental Conservation

\_\_\_\_\_  
 Date



## Memorandum in Support of NYSDEC XL Project

The following memorandum sets forth the criteria for XL Projects and explains how each of these criteria is met in this particular project.

### Project XL Criteria Summary

#### A. ENVIRONMENTAL RESULTS

The implementation of this proposal will allow hazardous waste, generated by utilities at "remote" locations where there is no staffed, utility-owned facility, to be transported more immediately to a staffed or secured location. At the present time, particularly when the collection of hazardous waste is unplanned, it may take several days to make arrangements for removal of the material directly to a

TSD facility. In the meantime, if the material remains at the "remote" location, it may endanger public health and the environment because the utility has no means to provide secure storage for the material, safe from releases through accidents or vandalism. Moreover, if the material is left at a street location where it continues to disrupt normal traffic patterns (vehicular and/or pedestrian), public safety is threatened, even if there are no releases. Particularly in urban settings (e.g., New York City), the disruption of traffic patterns can lead to a substantial risk of vehicular collisions or vehicle/pedestrian accidents.

Forced merging of high-volume traffic lanes, if necessary, is an extreme safety hazard. Prevention of endangerment to human health and the environment and enhanced public safety are direct environmental benefits of this project.

There are also direct environmental results to be realized from the consolidation of compatible wastes at UCCFs. By minimizing the number of vehicle trips that must be made to the ultimate TSD facility,



emissions from mobile sources are reduced, as well as vehicular fuel consumption and the possibility of an accident involving a vehicle transporting these wastes.

There are also indirect environmental benefits from reduced need for human resources, time and paperwork. More utility and regulatory agency resources are made available to address high-priority environmental issues.

Participating utilities will reinvest one-third of the direct cost savings accrued due to participation in this project into environmentally beneficial projects which are above and beyond what is legally required by law and which were not planned prior to the UCCF's receipt of approval to participate in this XL project.

B. Reinvestment of Monetary Savings into Environmentally Beneficial Projects

Participating utilities will have direct monetary savings due to project participation. One-third of these savings must be reinvested into environmentally beneficial projects which are over and above legally existing requirements and which were not planned prior to the UCCF's receipt of approval to participate in this XL project.

Participating utilities are required to identify, in annual Project XL Progress Reports, the monetary value of the direct cost savings which they have experienced as a result of the project and the environmental activities in which one-third of these direct cost savings have been reinvested.

C. COST SAVINGS AND PAPERWORK REDUCTION

Utilities will realize direct cost savings and, through the need for reduced resources, time and paperwork, indirect savings. DEC and USEPA will also realize indirect savings through reduced resource demands, time saved (including computer time), and reduced paperwork.

Utilities will realize direct cost savings in many ways, including the following:

1. EPA ID Number acquisition process costs;
2. Database management for each remote location as an individual generator;
3. Annual Hazardous Waste Report preparation costs;
4. Biennial Report preparation costs;
5. Cost savings realized from consolidation of waste for economical shipment (i.e., not shipping waste to a TSD directly from the remote locations); and/or
6. Costs for temporary storage of hazardous wastes at remote locations.

Indirect cost savings, including paperwork reduction, will be achieved in two ways. First, utilities will not need to expend any resources, time, or paperwork to secure temporary or permanent EPA identification numbers for remote locations. Likewise, Region II of EPA will not need to issue such identification numbers and there will be no need to create a new data file on RCRIS for each new EPA identification number issued. Second, utilities will realize indirect savings in resources, time, and reduced paperwork by not having to submit Hazardous Waste Reports for remote locations that generate in excess of 1,000 kilograms of hazardous waste per calendar month. Instead, the hazardous waste generated at remote locations would be included in the Hazardous Waste Reports of the utility-owned UCCFs to which they are brought. All such hazardous wastes will still be fully accounted for without increasing the number of Hazardous Waste Reports that the utility must prepare and submit. DEC and USEPA will also realize indirect savings in human resources, time (including computer time), and reduced paperwork. Hazardous Waste Reports for non-facilities would no longer need to be processed and

entered in State-only databases and in RCRIS. As long as the quantities and types of hazardous waste from these locations are accounted for, these excess Hazardous Waste Reports serve no useful purpose to environmental regulatory agencies. There are no "facilities" at these locations to inspect and no utility staff at these locations to train or contact.

D. STAKEHOLDER SUPPORT

The utility industry in New York State and EPA-Region II have been involved in the development of this project through a two-stage review of draft proposals and both support this project. NYNEX acted as lead for the telephone industry. Consolidated Edison acted as lead for the electric power industry, with assistance from the New York State Power Pool. Brooklyn Union Gas acted as lead for the oil and gas pipeline industry (intrastate and interstate). Consolidated Edison and the New York State Power Pool solicited comments from other electric power companies in New York State which were then funneled through Consolidated Edison. Brooklyn Union Gas provided the same service to other intrastate and interstate oil and gas pipelines.

The development of the Final Project Agreement was accomplished through implementation of the Public Participation and Outreach Plan, contained in Appendix C. This Plan provided opportunity for participation by potential industrial participants, environmental organizations, the general public and other interested parties. The Plan also provides for public participation in the designation and approval of UCCFs by participating utilities, subsequent to the signing of the Final Project Agreement. The Plan also provides for the availability of each participant's Annual Project XL Progress Report to interested parties.

E. INNOVATION/MULTI-MEDIA POLLUTION PREVENTION

The proposal represents an attempt to enable and establish innovative management practices to deal rationally and safely with the problem of hazardous wastes that are generated at remote locations at which there is no "facility" where the wastes can be securely stored until arrangements for transportation and disposal can be made.

With regard to multi-media pollution prevention, the wastes that this project deals with do not lend themselves easily to waste reduction/pollution prevention. Pipeline drips are generated by the natural condensation of petroleum and natural gas components "downstream" of pressure regulating stations. The generation of these drips is determined, therefore, by the pressure requirements of the distribution system. In the case of manhole and street vault wastes, these materials are generated primarily by runoff and infiltration, which are also caused, in part, by aging infrastructure.

F. TRANSFERABILITY

It is believed that utilities all over the country face similar problems to those described in this proposal. The solution described and the environmental, cost and paperwork benefits that are attainable through its application should be transferable anywhere.

G. FEASIBILITY

The project is technically and administratively feasible, as it simplifies both compliance and regulatory oversight. Financial capability is not an issue. Most utilities that would be participating in this project already have permanent sites that are equipped and staffed to meet hazardous waste generator regulations and are, therefore, capable of serving as UCCFs.

#### H. MONITORING, REPORTING, AND EVALUATION

The Agreement contains key result measurements and identifies when and how these should be reported for purposes of project evaluation. By requiring each utility that participates to identify its UCCFs, RCRA inspections can be conducted at these facilities by DEC's regional offices as a special component of the normal RCRA inspection program.

Among the most significant results will be events that do not take place. Due to elimination of the need to secure or provide EPA identification numbers for remote locations and elimination of the need to prepare or process Hazardous Waste Reports for a remote location whenever more than 1,000 kilograms of hazardous waste are collected per month, certain current reporting requirements are eliminated.

#### I. SHIFTING OF RISK BURDEN

This project would diminish risk burden, not shift it. Moreover, the greatest reduction of risk to human health and the environment and public safety would be achieved in congested urban areas where many of these remote sites are located. This will be achieved by transporting hazardous waste to a secured location as soon as the collection of hazardous waste has ended, thereby also restoring normal traffic patterns. The public is protected from the risk of exposure to unsecured hazardous waste, even though the danger of release or exposure may only last for a few days per event. The public is also protected from the physical dangers of extended disruption of normal traffic patterns. This project also allows utilities to eliminate situations that, presently, must be regarded as potential sources of serious liability.