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Part IV

Environmental Protection Agency

Project XL Final Project Agreement for Molex Inc., and Response to Comments on Withdrawn Direct Final Rule for Project XL Lincoln, NE; Availability of Massachusetts Environmental Results Program Project XL Draft Umbrella Final Project Agreement; Notices

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6143–2]

Project XL Final Project Agreement for Molex Inc, 700 Kingbird Road Facility, Lincoln, Nebraska

AGENCY: Environmental Protection Agency.

ACTION: Notice of Project XL Final Project Agreement.

SUMMARY: The EPA is implementing a project under the Project XL program for the Molex, Inc. (Molex) facility located at 700 Kingbird Road, Lincoln, NE. The terms of the project are defined in a Final Project Agreement (FPA) which is being made available in its final form today by this document. Also, with this document, EPA is notifying the public for informational purposes that the Nebraska Department of Environmental Quality intends to sign a temporary variance necessary for implementation of the project. A draft project agreement and proposed site specific rule were published in the **Federal Register** on November 3, 1997 (FRL–5916–3; 62 FR 59287). EPA received adverse comments. As a result of the comments, EPA decided to withdraw the site specific rule and proceed under the authority of the Nebraska RCRA program. The Withdrawal of the Direct Final rule was published in the **Federal Register** on December 30, 1997 (FRL 5942–5; 62 FR 67736). A summary of the comments and the changes to the Project that EPA undertook as a result of receiving the comments is included in the Rules and Regulations Section of today's **Federal Register**.

The Molex Project XL provides flexibility to the facility in managing their waste sludges. The facility has decided to segregate waste streams which had previously been co-mingled into a single waste stream. By changing the process lines to generate separate waste streams (nickel, copper, tin/lead), the facility can optimize the precipitation of each metal more effectively before the effluent is sent to the Publicly Owned Treatment Works (POTW).

The environmental benefit results in a substantial reduction in the mass loading of metals entering the City of Lincoln's POTW. In addition, the resultant mono-metal sludges will be commodity-like materials suitable for recycling by reclaimers. A secondary environmental benefit will be an increase in recycling and a reduction in the amount of material that would otherwise be landfilled. The Nebraska Department of Environmental Quality is giving Molex a temporary variance from classifying as solid waste nickel, copper, and tin/lead non-precious metals containing sludges.

DATES: The actions are effective August 13, 1998. Additional information is provided in the section entitled **ADDRESSES.**

ADDRESSES: The complete administrative record is maintained at EPA Region VII. Questions and comments should be submitted to: Mr. David Doyle, U.S. Environmental Protection Agency, Region VII, Air, RCRA & Toxics Division, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7667.

Docket. A docket containing supporting information used in developing this final rulemaking is available at U.S. EPA Headquarters US EPA, 401 M Street SW (1802), Washington, DC 20460, (202) 260–7434; or EPA Region VII, Air, RCRA & Toxics Division, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7667. File information is available from the Nebraska Department of Environmental Quality, Lincoln, NE, (402) 471–4217.

FOR FURTHER INFORMATION CONTACT: Mr. David Doyle, U.S. Environmental Protection Agency, Region VII, Air, RCRA & Toxics Division, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7667.

SUPPLEMENTARY INFORMATION:

Outline of This Document

I. Background
  A. Overview of Project XL
  B. Overview of the Molex XL Project
II. Summary of Final Project Agreement
III. Summary of state-issued Variance

I. Background

A. Overview of Project XL

Project XL—for ''eXcellence and Leadership''—was announced on March 16, 1995, as a central part of the National Performance Review's and EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). In addition, on April 22, 1997, EPA modified its guidance on Project XL, solicited new XL proposals, clarified EPA definitions, and described changes intended to bring greater efficiency to the process of developing XL projects. See 62 FR 19872 (April 22, 1997). Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to the Agency's ability to test new regulatory strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection. The Agency intends to evaluate the results of this and other Project XL projects to determine which specific elements of the project, if any, should be more broadly applied to other regulated entities to the benefit of both the economy and the environment.

In Project XL, participants in four categories—facilities, industry sectors, governmental agencies and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements, on the condition that they produce and demonstrate superior environmental performance. To participate in Project XL, applicants must develop alternative pollution reduction strategies pursuant to eight criteria—superior environmental performance; cost savings and paperwork reduction; local stakeholder involvement and support; test of an innovative strategy; transferability; feasibility; identification of monitoring, reporting and evaluation methods; and avoidance of shifting risk burden. They must have full support of affected Federal, state and tribal agencies to be selected. The XL program is intended to allow EPA to experiment with untried, potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow EPA to proceed more quickly than would be required to undertake changes on a nationwide basis. As part of this experimentation, EPA may try out approaches or legal interpretations that depart from or are even inconsistent with longstanding Agency practice, so long as those interpretations are within the broad range of discretion enjoyed by the Agency in interpreting statutes that it implements. EPA may also modify rules that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute. Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative

approaches prematurely on a widespread basis without first finding out whether or not they are viable in practice and successful in the particular projects that embody them.

Furthermore, as EPA indicated in announcing the XL program, the Agency expects to adopt only a limited number of carefully selected projects. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative interpretation again, either generally or for other specific facilities.

EPA believes that adopting alternative policy approaches and interpretations, on a limited, site-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (so long as the Agency acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing reevaluation of environmental programs, is reflected in a variety of statutory provisions, such as sections 101(b) and 103 of the Clean Air Act. In some cases, as in this XL project, such experimentation requires an alternative regulatory approach that, while permissible under the statute, was not the one adopted by EPA historically or for general purposes.

B. Overview of Molex Project

Molex is a multinational company that operates several electroplating facilities worldwide. Molex as part of its XL proposal has upgraded its facility in Lincoln, Nebraska by changing its waste water treatment system to allow it to optimize the recovery of metals used in the electroplating processes. The primary environmental benefit will be the reduction of metals loading in the effluent discharges into the publicly owned treatment works (POTW). A secondary environmental benefit will be increased recycling and reducing the amount of material that would otherwise be disposed.

The facility generates several metals-bearing wastewater streams that formerly were brought together for combined treatment. Metals recovery in such a system is limited because each metal has its own optimal set of treatment conditions. At its new facility Molex is operating a segregated treatment system that separately treats each metal waste stream to optimize the precipitation of each metal contaminant to more effectively remove metals from the effluent to the POTW. Molex has made its investment in the system in anticipation of its participation in the XL program and the regulatory relief it will provide. At the new facility Molex changed the process lines to generate separate treatment sludges for nickel, copper, and tin/lead. The environmental benefit will be a substantial reduction in the mass loading of metals entering the City of Lincoln's POTW. In addition, the resultant mono-metal sludges are more suitable for direct recycling by reclamation facilities. However, the segregated system costs more to operate than a combined treatment system. Additionally, the segregated system will result in increased costs from compliance with the current regulations for handling the resultant sludges. Currently, Molex is handling the sludges as hazardous wastes. The regulatory flexibility provided by this project helps Molex financially justify the continued operation of the segregated system.

The NDEQ hazardous waste program has been authorized by EPA pursuant to the Resource Conservation and Recovery Act (RCRA) § 3006(b), to carry out the Nebraska program in lieu of the Federal Program. Sludges from the former combined treatment system contain copper, nickel, tin, lead, and gold. The gold content of the materials has allowed Molex to handle the combined treatment sludge as ''recyclable materials'' from which precious metals are reclaimed under Title 128, Rules and Regulations Governing Hazardous Waste Management in Nebraska, Chapter 7, Section 010.

The sludges at the new facility do not contain precious metals and therefore will not qualify as ''recyclable material'' from which precious metals are reclaimed. As such, in the absence of this proposed regulatory relief, the materials will be subject to the NDEQ Title 128 generator requirements for storage and shipment of hazardous wastes, at considerably greater expense for storage, shipment and disposal/recycling as compared to the precious metals exemption. With the proposed regulatory relief, including a variance granted by NDEQ, Molex will be allowed to handle the non-precious mono-metals sludges with substantially reduced regulatory compliance costs.

The Final Project Agreement (FPA), and the Nebraska Department of Environmental Quality temporary variance have been developed by the Molex XL stakeholder group, namely Molex, Inc. (Molex), EPA, Nebraska Department of Environmental Quality (NDEQ), Lincoln/Lancaster County Health Department and the City of Lincoln, NE. The FPA and NDEQ variance are maintained in the docket are also available on the world wide web at http://www.epa.gov/ProjectXL. The FPA outlines how the project addresses the eight Project XL criteria, in particular how the project will produce, measure, monitor, report, and demonstrate superior environmental benefits. The NDEQ temporary variance is the implementation mechanism for the project.

II. Summary of Final Project Agreement

The Project XL Final Project Agreement (FPA or Agreement) is entered into by the United States Environmental Protection Agency (EPA), the Nebraska Department of Environmental Quality (NDEQ), and Molex, Inc. (Molex). The Agreement states the intentions of the parties to undertake certain actions necessary to implement an alternative strategy for environmental compliance at the Molex electroplating facility located at 700 Kingbird Road, Lincoln, Nebraska. The FPA is intended to be a joint statement of the parties' plans and intentions with regard to the Molex, Inc. XL Project. The FPA is intended to clearly state the plans of the various participants to carry out the project. The agreement is not, however, intended to create legal rights or obligations and is not a contract, or a regulatory action such as a permit or rule, although some provisions in this Agreement will be implemented through a state variance which will be legally enforceable. This agreement does not give any of the parties a right to sue other parties for any alleged failure to implement its terms, either to compel implementation or to recover damages.

The project is an alternative environmental compliance strategy that encompasses technical changes to the facility's wastewater treatment system, environmental improvements in the effluent to the POTW, regulatory relief for the facility for storage and shipment of wastes, and documentation of the technical, environmental and economic impacts of the alternative strategy. The full and signed Final Project Agreement is available on the EPA Project XL website at http://www.epa.gov/ProjectXL. It is also on file at EPA Region VII with Mr. David Doyle, U.S. Environmental Protection Agency, Region VII, Air, RCRA & Toxics Division, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7667.

III. Summary of Nebraska Department of Environmental Quality Temporary Variance

The Nebraska Department of Environmental Quality is authorized to

grant a variance to Molex, Inc. pursuant to Title 128, Rules and Regulations Governing Hazardous Waste Management in Nebraska, chapter 5, section 001.04. The variance for this XL project grants a temporary exemption from the classifying as solid waste of segregated sludges generated during wastewater treatment at the Molex Upland facility located at 700 Kingbird Road, Lincoln, Nebraska. The purpose of the temporary variance is to allow Molex sufficient time to collect information to demonstrate that segregation and separate treatment of various wastestreams at its facility results in a significantly reduced metals content in its wastewater effluent discharge to the City of Lincoln's publicly owned treatment works (POTW) and produces a readily recyclable sludge with market value. The variance is necessary to remove a regulatory barrier which would otherwise classify the sludges generated from the segregation and treatment of wastewater from Molex's electroplating operation as a solid waste and a listed hazardous waste. The sludge generated from wastewater treatment at the Molex facility, prior to the implementation of process changes to segregate and separately treat wastestreams, was considered a recyclable material utilized for precious metals recovery subject to reduced management requirements under title 128, chapter 7, section 010. The Director of NDEQ has investigated the claims made by the applicant and the interests of others likely to be affected and the general public and has decided to proceed with the temporary variance which is posted on the Project XL website at http://www.epa.gov/ProjectXL. It is also available from the Nebraska Department of Environmental Quality, 1200 N Street, Suite 400, Lincoln, Nebraska 68509, (402) 471–2186.

Dated: August 6, 1998.

Lisa Lund,

Deputy Associate Administrator, Office of Reinvention Programs, Office of Reinvention.

[FR Doc. 98–21672 Filed 8–12–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–6143–4]

Project XL Response to Comments on Withdrawn Direct Final Rule for Project XL for Molex, Inc., 700 Kingbird Road Facility, Lincoln, Nebraska

AGENCY: Environmental Protection Agency.

ACTION: Response to Comments.

SUMMARY: The EPA is implementing a project under the Project XL program for the Molex, Inc. (Molex) facility located at 700 Kingbird Road, Lincoln, NE. On November 3, 1997 EPA published a draft project agreement and proposed site specific rule (FRL 5916–3, 62 FR 59287) for this project. EPA received adverse comment. This notice today summarizes the comments on the Direct Final Rule and the follow up actions taken on this project as a result of the comments. Also published in today's **Federal Register** is a notification of the Final Project Agreement and the State-issued temporary variance. That notice can be found in the Notices Section of today's **Federal Register**. As a result of the comments, EPA decided to withdraw the site specific rule and proceed under the authority of the Nebraska RCRA program. Notification of the withdrawal was published in the **Federal Register** on December 30, 1997 (FRL 5942–5; 62 FR 67736).

The Molex Project XL provides flexibility to the facility in managing their waste sludges. The facility has decided to segregate waste streams which had previously been co-mingled into a single waste stream. By changing the process lines to generate separate waste streams (nickel, copper, tin/lead), the facility can optimize the precipitation of each metal more effectively before the effluent is sent to the Publicly Owned Treatment Works (POTW).

The environmental benefit of this project is a substantial reduction in the mass loading of metals entering the City of Lincoln's POTW. In addition, the resultant mono-metal sludges will be commodity-like materials suitable for recycling by reclaimers. A secondary environmental benefit will be an increase in recycling and a reduction in the amount of material that would otherwise be landfilled. The Nebraska Department of Environmental Quality is giving Molex a temporary variance from classifying as solid waste nickel, copper, and tin/lead non-precious metals containing sludges.

DATES: This action is effective August 13, 1998. Additional information is provided in the section entitled **ADDRESSES.**

ADDRESSES: The complete administrative record is maintained at EPA Region VII. Questions and comments should be submitted to: Mr. David Doyle, U.S. Environmental Protection Agency, Region VII, Air, RCRA & Toxics Division, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7667.

Docket. A docket containing supporting information used in developing this final rulemaking is available at U.S. EPA Headquarters, US EPA, 401 M Street SW (1802), Washington, DC 20460, (202) 260–7434; or EPA Region VII, Air, RCRA & Toxics Division, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7667; file information is available at the Nebraska Department of Environmental Quality, Lincoln, NE, (402) 471–4217.

FOR FURTHER INFORMATION CONTACT: Mr. David Doyle, U.S. Environmental Protection Agency, Region VII, Air, RCRA & Toxics Division, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7667.

SUPPLEMENTARY INFORMATION:

Response to Public Comment—Project XL, Molex (Lincoln, Nebraska)

EPA received several comments on the Molex Direct Final Rule, and the Proposed Rule. One of the commenters suggested additional data was needed to support the administrative record for the project. EPA agrees, and has gathered additional data in support of the project. Based on that data and additional analysis, we have determined that existing RCRA regulations (40 CFR 260.31) provide adequate authority and flexibility to allow Molex to proceed with its proposal to segregate waste streams. Therefore, it was decided that there is no need to promulgate a site-specific rule at the federal level to implement this XL project. As a result, EPA decided, rather than proceeding with a site specific rule, to proceed under Nebraska's authorized RCRA program, which has an existing, equivalent variance provision comparable to 40 CFR 260.31.

The first commenter expressed concern that certain wording in the November 3, 1997, **Federal Register** notice and in the draft Final Project Agreement required that Molex ship their wastewater treatment sludges directly to smelters. The commenter asked that EPA clarify this issue by stating that Molex would be allowed, under the terms of the project, to ship their wastewater treatment sludges directly to any legitimate reclaimer, not just to smelters.

EPA agrees with the first commenter that Molex be allowed to ship its sludges to any legitimate reclaimer and did not intend in its proposal to require that Molex ship its sludges only directly to smelters. EPA has made the appropriate wording changes to the Final Project Agreement to address this issue.

The second commenter raised three issues. The first issue concerned the