

US EPA ARCHIVE DOCUMENT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

August 19, 1999

Mr. Mark Haley, Director
Hopewell Regional Wastewater Treatment Facility
P.O. Box 969
Hopewell, Virginia 23860

Dear Mr. Haley:

Thank you for your letter of August 9, 1999, regarding the issue of compliance screening for the HRWTF pretreatment proposal under Project XL. We remain committed to working with you to develop an innovative XL pretreatment project, and appreciate your thoughtful efforts to work through the compliance screening issue. In that respect, your letter raised several points regarding the Agency's compliance screening process, about which there appears to be some confusion or misunderstanding, and which this letter is intended to address.

First, your letter seems to indicate that EPA is setting a standard for this pretreatment project that is different from other XL projects. Let me assure you that this is not the case. EPA's application of the Project XL compliance screening guidance ("Guidance for Compliance Screening for Project XL", September 1998) to HRWTF's significant industrial users (SIUs) is consistent with the tenets of Project XL and the purpose of the compliance screening guidance. In every XL project, EPA applies the screening guidance to any XL participant that would directly receive regulatory flexibility as part of the project. You should be aware that the Agency has taken this approach in other XL projects involving multiple participants who receive regulatory flexibility. As applied to this particular project, it means that both the POTW project sponsor and any SIUs participating in the project would be screened. This is because under HRWTF's Project XL proposal, at least four of the major SIUs discharging wastewater to HRWTF stand to gain regulatory relief and/or flexibility resulting from the need to revise the categorical standards for these industries.

Second, your letter discussed the guidance's exception for enforcement matters that are "integrally related" to the project, suggesting that because the noncompliance problems faced by some of HRWTF's SIUs are not pretreatment related, they are therefore not affected by the project. This is not quite accurate, however, and apparently confuses two different situations. The guidance's discussion of "integrally related" applies only to situations in which the enforcement action has been completed, but there remain additional compliance obligations to be fulfilled (such as actions required under a consent order or decree). If the actions to be undertaken during the course of a proposed XL project are not "integrally related" to the

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injunctive relief required under an enforcement order, for the reasons articulated in the screening guidance the Agency could proceed with the project. However, situations in which there is outstanding, unresolved, and significant noncompliance are handled differently by the Agency. The compliance screening guidance expresses EPA's judgment that it is inappropriate to offer regulatory relief or flexibility to a facility that is currently in noncompliance – regardless of the environmental media in which the violation(s) occur – and participation by that facility would be temporarily deferred. Once the noncompliance is resolved, however, the affected facility would then be able to participate, so long as any actions required under the enforcement order or decree resolving the noncompliance are not “integrally related” to actions to be undertaken as part of the project.

With respect to HRWTF, the screening conducted for this project indicated significant, unresolved and outstanding noncompliance concerns with two of the SIUs -- AlliedSignal (Hopewell) and Smurfit-Stone Container. This should be understood as indicating a problem with these two SIUs only, and is not intended to reflect negatively on HRWTF's record of environmental compliance, or of its environmental performance generally. However, because of the outstanding and unresolved noncompliance problems at AlliedSignal (Hopewell) and Smurfit-Stone Container, their participation would have to be temporarily deferred. Upon resolution of any outstanding or impending enforcement actions, it is possible that Stone and Allied would be eligible to participate in the HRWTF XL Project.

Because EPA remains interested in giving this proposal every possible consideration, we are continuing to conduct our technical review of HRWTF's proposal and will provide HRWTF with a list of detailed comments/questions related to the project in the near future. However, given that the participation of AlliedSignal (Hopewell) and Smurfit-Stone Container would be temporarily deferred at this time, EPA seeks further direction from HRWTF on how to continue the technical review of the proposal. EPA is still interested and willing to work with HRWTF on certain aspects of the project as they relate to other SIU facilities without noncompliance problems. EPA encourages HRWTF to participate in Project XL by considering alternatives to the proposed project, a scaled-down version of the project, or perhaps a phased-in approach to the project. EPA would be happy to work with HRWTF to develop any of these options. As stated earlier, AlliedSignal (Hopewell) and Smurfit-Stone Container could be eligible to participate in the project once the outstanding noncompliance concerns have been resolved, in accordance with the criteria set forth in the screening guidance.

EPA regrets that the discovery of the significant and unresolved noncompliance problems of these SIUs did not surface during pre-proposal discussions. We hope HRWTF will consider alternative means in participating in Project XL and we look forward to discussing project options with you. If you wish to discuss these issues further, please contact Kristeen Gaffney of our Office of Reinvention at (215) 814-2092.

Sincerely,



Thomas C. Voltaggio
Deputy Regional Administrator

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