

US EPA ARCHIVE DOCUMENT

Comments from Citizens for a Better Environment on the MWRD's Pilot XL Program

General Comments

- The initial Project proposal appears to have been drafted in early 1998. Can the information that's included be updated, so it contains data more recent than 1997?

The lengthy quotation from the District's Pretreatment Program Annual Report will be deleted from the FPA when it is revised to address stakeholder comments. Annual Program data will be made available on request separately.

- The tables need to be renumbered. There are two Table 2s, two Table 3s, etc.

The duplicate table numbering is an artifact of the inclusion of a quotation within draft FPA. As indicated above, this will be deleted from the revised FPA.

- The intent of TRAPs needs to be clarified. Is it to target pollutants that are problematic for the District, as outlined on page 2 of the MWRD's letter to USEPA dated January 5, 2000, or is the District going to take an ecosystems approach to targeting pollutants of more general interest, as inferred throughout the Project proposal.

The District's intent is to look at both areas. Clearly, pollutants that are problematic for the District will be given higher priority, but the target list will consider wider, ecosystem issues.

- The District includes information regarding the various potential categories of CIUs in that same letter to USEPA, dated January 5, 2000. Are the reduced monitoring/inspection/reporting requirements the District is proposing meant to apply to both DeMinimus and Non-Significant CIU's? I'm not sure it's clear to me? Are DeMinimus CIUs already deregulated?

The District is proposing a three-tier approach to regulating CIUs. This approach does not deregulate any CIUs in the sense that they are no longer required to comply with Categorical Pretreatment Standards. Rather, this approach seeks to reduce both the CIU's and the District's burden in demonstrating compliance with the applicable standards.

- How will the lessons learned from this Project be transferred to other POTWs and/or industrial sectors? How will a determination be made that any or all of the components of the Project were successful enough to be incorporated into future laws and/or regulations?

The manner in which the lessons learned from this project will be transferred to other POTWs is an issue for USEPA. One approach is to incorporate successful strategies into the General Pretreatment Regulations (40 CFR 403) through a rulemaking.

- An important element in the public's willingness to support this reinvention proposal is its belief that the District, IEPA and USEPA are capable of developing, implementing and enforcing their existing environmental programs. However, the District's NPDES permits for the vast majority of its facilities are long past the date when they should have been revised and reissued. If the District, IEPA and USEPA can work effectively together on regulatory reinvention initiatives such as this (and implementation of the SGP), why can't they work together just as effectively to resolve any outstanding issues regarding implementation of the current regulatory system and get those NPDES permits finalized after nearly nine years!

The issues that have delayed reissuance of the various NPDES permits are not part of this Project XL. The District, the USEPA and the IEPA have all agreed that the Pretreatment Program revisions necessary to carry out the Project XL components can be incorporated into the District's approved Pretreatment Program by modifying an existing NPDES permit for one of the District's smaller facilities.

Page 1, paragraph 2, fourth line. If the intent of this Project is simply to incorporate "many of the regulatory reinvention initiatives undertaken by the USEPA, AMSA and others, why do we need it? I'd suggest substituting "recommended" for "undertaken."

The suggested revision will be incorporated into the revised FPA.

Page 1, paragraph 3. It's a bit disturbing that the emphasis here is on *costs*. There are many other "fundamental principles" that ought to be driving the District's participation in XL. (Editorial comment: why do cleaner and smarter always seem to take a backseat to cheaper?)

The District does not believe that it can or should seek a budget increase to provide for this voluntary project. It is also the District's understanding that Project XL allows implementers to forego some regulatory obligations in favor of other activities that have the potential for greater environmental benefit. With these points in mind, it is the District's position that its Project XL activities must not result in an increase in the District's overall operating budget. Rather, the resources for the District's Project XL activities will come from reductions in areas with lesser environmental benefit.

Page 1, paragraph 4. Simply "maintaining" current environmental performance is not good enough. The goal of XL and other reinvention initiatives is to achieve "superior" environmental performance, as the MWRD, itself, acknowledges in its letter of invitation to participate in the Advisory Stakeholder group for the Project.

CBE appears to have taken the first sentence out of context. The full paragraph is actually a clear anti-backsliding commitment by the District that its Project XL activities cannot result in degradation of current environmental performance.

Page 3, second paragraph. Why are only government regulators involved in the task force that identifies and plans strategies under the TRAP component of the Project? Why not the entire stakeholder group? Why, in particular, are NGO's not included? (USEPA's letter dated March 2, 2000 indicates that the TRAPs interagency task force will include local stakeholders.)

Additionally, in the middle of this paragraph, why be so vague about your intentions: As resources "would" become available . . . the District "could" commit to specific reductions? Are you going to do this part of the pilot or not?

The District believes that an interagency Task Force will have sufficient technical knowledge and focus to perform the identification and planning activities for the TRAPs. Involving all of the stakeholders in the pollutant identification process has the potential to fragment the process due to individual stakeholder interests. However, the full stakeholder group would be involved in the planning and goal setting activities of the TRAPs. [See comments to CMFI.]

Page 3, paragraph 4. You need to briefly address the nature of the additional detailed information about performance that's to be included in the Annual Report.

The details of the additional information will need to be worked out with the full stakeholder group, but will be based on the 18 performance measures indentified in the AMSA study.

Pages 12 (last paragraph) and 13 (first paragraph). It seems very awkward to discuss the problems found in April 1988 at the bottom of page 12 and immediately skip to the District continuing to "enforce categorical pretreatment standards" in 1997, with nothing in-between. You could resolve this problem by combining Program Elements 2 and 3, so you incorporate the 1991 rewrite of the District's Ordinance.

The text is taken from the District's Annual Report Summary. This text will be removed from the revised FPA.

(Note: on page 14, first paragraph, you state that the District amended its ordinance in 1990. Was the Ordinance amended in both 1990 and 1991?)

Yes.

Page 13, paragraph 5. How does the information in this paragraph relate to the data in Table 6 on page 25?

This information will be removed from the revised FPA.

Page 14, first full paragraph. You state that NOVs were eliminated in 1990, when the District amended its ordinance and implemented the issuance of Cease and Desist orders. However, Table 5 on page 23 references notices of non-compliance for several types of violations. It's not until page 45 that you finally explain that NONs are informal and used for non-significant non-compliance. You need to include what they are and how they're used here in order to avoid confusion later in the document.

This discussion will be removed from the revised FPA.

Page 14, last paragraph. You state that GCP3 helps the District target those facilities which most seriously impact the District or are recommended by the agency partnerships. Can you correlate the District's targeting effort to the number of site visits per industry sector that are shown in Table 1 on page 16, i.e. has the District's targeting effort worked? If so, please elaborate. The District's ability to target and effectively work with companies whose pollutants are problematic is critical to the implementation of the TRAPs element of this Project.

This information will be removed from the revised FPA. The GCP3 is targeted generally at all IUs, as well as those experiencing noncompliance issues.

Page 18, paragraph 3. Is the District also looking at stormwater pollution prevention plans? If so, please indicate that they are included on your checklist.

Stormwater issues in the separate sewer areas of the District are under the jurisdiction of the IEPA through the NPDES permit system. To the extent that stormwater issues impact sanitary sewer discharges in the combined sewer area, the District looks at stormwater issues.

Page 19, fifth full paragraph. Are you saying here that sampling, alone, reduced cadmium concentrations in sewage sludge from 71 mg/kg to 18.5 mg/kg? If so, that *infers* that the two electroplaters that were the target of the automatic samplers were out of compliance and suddenly came into compliance because they thought they were likely to be caught. If they were not out of compliance, how did the sampling alone lead to such dramatic results? Finally, while the District expanded its sampling as a result of this initiative, is it possible that even more sampling is warranted?

The District admits that it installed continuously operated automatic samplers at the two known users of cadmium tributary to the Calumet WRP in late June and early July 1992. By the close of 1992, the cadmium concentration in digester draw was approximately 18.5 mg/kg. The District sampling data obtained by the District after the installation of the automatic samplers did not indicate that either facility was in significant noncompliance. The District is unaware of the compliance status of the two companies when their discharges were not monitored. Finally, the District expanded its monitoring program substantially in 1993. Since that time, the District has been generating biosolids that meet the 40 CFR 503 Exceptional Quality criteria. Therefore, the District sees no need to expand this program.

Page 20, Table 3 indicates that inspection and sampling of categorically regulated industrial users and nonregulated SIUs actually went down between 1996 and 1997 by a little over 6%. Has this trend continued? If so, it could – over time – lead to a significant decrease in the District’s ability to detect violations.

The overall level of continuous monitoring has decreased further since 1997. However, the District retains the capacity (personnel and resources) to increase monitoring if needed. Because the District monitors sludge quality as a more sensitive measure of Pretreatment Program performance, it is confident that it can detect shifts in IU discharge patterns that result in substantially increased loadings of pollutants. Such shifts would provide the District with a warning signal that monitoring activities may not be at a level sufficient to provide deterrence.

Page 22, Table 4. It appears that there were significant reductions in cadmium, copper and zinc discharges between 1995 and 1997. To what does the District attribute these reductions? Also, is it relevant that cadmium and copper are the only two metals for which there is a *consistent* downward trend? Finally, why is this table one of the few to include data for 1995, in addition to 1996 and 1997?

The District attributes the reduced levels of metals discharges between 1995 and 1997 to improved performance on the part of the industrial community. The consistent cadmium reduction likely represents the substantial reduction in cadmium electroplating being performed by the sector. We do not have an answer with regard to copper. For the other metals, we may now be at or near the background levels attributable to non-point and non-industrial sources. Other tables do not contain 1995 data because of space limitations on the page.

Page 27, Table 7. At our Stakeholder meeting on April 6th, the District indicated that the dramatic reductions in the number of significant violators between 1995 and 1997 noted in this Table were the result of its ongoing efforts to improve enforcement. However, the numbers in Table 7 represent a 24% decrease between 1995 and 1996 but a whopping 78% between 1996 and 1997. While it’s at least conceivable that the 24% decrease was, as the District claims, the result of improved enforcement, it strains credulity to believe that the 78% decrease in significant violators between 1996 and 1997 is attributable just to this one single factor. More has to have been going on and perhaps some additional evaluation and explanation is warranted.

The numbers as reported are accurate.

Page 28, first paragraph. The narrative here says that the identities of SIU’s having exemplary compliance records for 1997 are supposed to be included in Table 7, but I don’t see them. Additionally, I question whether just one year without any enforcement actions relating to significant noncompliance really constitutes “exemplary performance.”

Along with its annual list of Significant Violators, the District also publishes the identities of good performers. For publication purposes, the District has identified two classes of "Good Guys." These are (1) "consistent performers," defined as SIUs not in significant noncompliance during the reporting year; and (2) "exemplary performers," defined as not being the subject of any enforcement action during the reporting year. Since the report clearly covers one calendar year, the District believes it appropriate to limit the analysis for the report to one year.

Page 28, last two paragraphs. The analysis of PIMS began in 1990 but implementation of recommendations was still continuing in 1997. Why so long?

The District's upgrading of its PIMS is a major undertaking (likely the largest in the United States). Because of the substantial investment, we wish to do it right.

Pages 30 and 31, Table 3. Are both acute and chronic whole effluent toxicity testing going on at every one of the District's facilities?

Pages 33 to 38, Table 4. What's the difference between 0.000 and non-detect? Additionally, for purposes of comparison, it would be helpful to include current maximum allowable discharge criteria for such facilities.

For the purposes of this table, 0.000 means that the allowable loading for a de minimis CIU would be 0.000 pounds. For pollutants that are not detected in the WRP influent determination of neither headworks loadings nor pollutant loading cutoffs is possible.

Page 39, first full paragraph. What conditions would trigger review and reissuance of a de minimus CIU's discharge authorization?

A de minimis CIU's DA would be subject to review or revision if its operations had changed substantially (new processes or increased discharge loadings or flow rates that exceed de minimis cutoffs). Independent of the de minimis or non-significant CIU criteria, the District's Sewage and Waste Control Ordinance already requires SIUs (and CIUs) to report changes in operations or discharge practices to the District.

Page 39, last paragraph. The District says it's seeking regulatory flexibility with regard to oversight of CIUs that are participating in SGPs for their respective industrial sectors with EPA. At the current time, are there any industrial sectors with SGPs other than metal finishers? Are any anticipated? Practically speaking, is this regulatory relief only for metal finishers who have completed all of their individual facility goals under the GoalsChicago program?

The District strongly supports the USEPA's sector-based performance initiatives, and seeks to increase industry support by clearly establishing this Project XL as accessible to any sector that constructively engages the USEPA in its sector-based initiatives.

Page 40, first paragraph. The Project proposal indicates that alternative measurement systems “may” include sampling and analytical protocols that differ from those currently required. Isn’t a major part of this Project to test such systems? If so, why use the word “may”? Shouldn’t it be “will” ?

Additionally, isn’t the District allowing SIUs to “test” rather than “use” such systems, or is the District anticipating that SIUs will test for a period of time and then use? Further, isn’t the system described in this paragraph – the use of statistical process control data as a surrogate for effluent discharge monitoring – the only one the District plans to test? Finally, how long does the District anticipate that the “development” phase of this will last, i.e. how long will it work with the SIU to collect and analyze both process control data and effluent discharge data to determine whether there is, in fact, a statistically valid correlation between the two?

The Strategic Performance Partnership (SPP) component is intended to engage top sector performers in “Blue Sky” thinking about demonstrating environmental performance. The District specifically wishes to encourage innovation in the SPPs. Therefore, we do not seek to limit the alternative approaches that industry may wish to test. The statistical process control model was identified as one possible approach that could be tested, but it isn’t the only approach that could be tested. With regard to the length of the “development phase,” the District has not set any specific timeline. Rather, the development and testing would continue at least until the stakeholder group was satisfied that a statistically valid correction was established.

Page 40, second paragraph. While the District is seeking relief from modified or new categorical pretreatment standards that might conflict with the environmental performance strategy of a Partnership participant, USEPA has not committed to waive such standards – only to support the efforts of the Office of Water to incorporate whether or how certain facilities would be required to comply. Shouldn’t the USEPA’s position on this be included in the Project proposal?

The impact of future regulations on SPP participants will be discussed with USEPA and addressed in the revised FPA. USEPA staff will address this issue.

Page 41, top of page. Again, you need to include some brief description of the new “detailed information about environmental performance” that’s to be part of the Annual Report.

Page 42, 2nd full paragraph. Do interested stakeholders only get to negotiate the “language” of the Project proposal? What about its substance?

Page 41, last paragraph. If, indeed, this Project is going to affect industrial sectors other than metal finishers, you need to work a bit harder to get additional stakeholders at the table. (USEPA’s letter of March 2, 2000 also makes the point that other stakeholders need to be involved.)

The District has invited each of the potential stakeholder groups identified by the USEPA and through the District's contacts with industry sectors and trade associations. It remains the District's belief that it lacks the statutory authority to command participation in these meetings from non-willing persons.

Page 43, Table 4. You mentioned at our April 6th Stakeholder meeting that a number of additional groups had been invited to participate in the XL stakeholder group. If so, this table needs to be updated. Additionally, while I may be wrong, I don't believe the Back of the Yards Neighborhood Council is a non-governmental environmental interest group. (I thought it was a business/economic development group.)

They are considered an NGO. Admittedly, their focus may not be environmental but economic.

Page 44, last paragraph. You discuss your monitoring requirements for SIU's here. However, Table 3 on page 20 lists (inspection) and sampling of both categorically regulated industrial users and nonregulated SIUs. Are all categorically regulated industrial users SIUs? (For the person who's not steeped in them, these terms do get confusing!!!)

Yes. All CIUs are, by definition SIUs.

Page 45, end of first paragraph. You mention that the District has the authority and established policy for referral of potential criminal actions to the State's Attorney's Office. How often does the District actually refer cases? It appears from earlier tables that it doesn't happen often.

The criteria for criminal prosecution are substantially more stringent than for administrative enforcement action and civil litigation. Therefore, far fewer cases are referred for criminal prosecution. In a number of instances, cases that the District considered potential causes of action were declined by criminal prosecutorial agencies.

Page 49, first paragraph. Here you finally state that the additional information to be included in your Annual Report will be based on the 18 Pretreatment Program performance measures identified by AMSA in its 1997 POTW report. This simple statement should be included on pages 3 and 41 (mentioned above); but here you need to actually list those performance measures and provide some indication of how the public will benefit from this information. Will the District provide data in the report to substantiate its claims of performance against these measures?

The District will discuss the 18 performance measures earlier in the revised FPA, and will list them out.

Page 49, last paragraph. You state here that the cost of administering TRAPs will not be included in the Pretreatment Program cost recovery component applicable to SIUs. Yet

page 1 of this proposal states that savings from the pretreatment program will be reallocated to support other Project XL and SGP initiatives. This is confusing.

The District recovers its operating costs through a combination of ad valorem property taxes and User Charges. Because TRAPs are not mandated activities under the Pretreatment Program, it would be inappropriate to recover the costs associated with TRAPs strictly from SIUs. Therefore, the District expects to recover the costs of these activities through the ad valorem tax component.

Page 50, first bullet. Has the District done a thorough analysis that actually shows a 50% reduction in the costs of demonstrating compliance for qualified CIUs, as well as a 50% reduction in the District's oversight costs? Or is this just a "guesstimate," based on the District's intention to halve monitoring/reporting/inspection requirements? Additionally, if not TRAPs, on what other "environmentally beneficial activities" will the District be spending its savings?

Guesstimate based on actual activity reductions. Other activities include SPPs.

Page 51, bottom of the page. Here you state that the Project "will result in . . . environmental benefits". This conflicts with the language on page 53, which points out the uncertain nature of the environmental benefits – and costs – associated with the Project.

Page 52, first bullet. The District says this Project will provide a greater understanding of the nature and quantity of pollutants discharged into its sewerage system and the environment. Given that there will be less actual monitoring as well as new reporting methods that have yet to be tested, how is this likely to happen? Are you referring to the information to be derived from the TRAPs analysis?

The District is referring to both SPPs and TRAPs.

Page 55, top of page. What regulation will remain enforceable if certain parties withdraw from the FPA?

This is standard USEPA boilerplate.

Page 58, top of page. Under what circumstances might certain requirements deferred under this not apply after its termination? Shouldn't stakeholders also be included in discussions about these kinds of issues?

This is standard USEPA boilerplate.

Page 59, C. This section states that it is not the intention of the parties that this FPA will modify or otherwise alter the applicability of existing or *future* laws and regulations; but isn't that what XL is all about? Finding new ways of doing things that can, in fact, be

incorporated into future laws and regulations because they're cleaner, cheaper and smarter?

This is standard USEPA boilerplate.

Page 60, first full paragraph. How will stakeholders be involved in evaluating the results of the Project?

The stakeholder group will have the opportunity through the length of the project.

Page 63, last half of the page. Who could possibly implement this Project if a decision was made to "transfer" the District's rights and obligations? Practically speaking, why is this section included? Should such a transfer occur, what role would stakeholders play in the approval process discussed on the top of page 64?

This is standard USEPA boilerplate.