

US EPA ARCHIVE DOCUMENT

**Comments on the
PRELIMINARY DRAFT (PROJECT XL) DOCUMENT:
FOR REVIEW AND DISCUSSION PURPOSES ONLY
CIRCULATED JUNE 1, 2000**

Generally, this document is clearer and more concise – and this is probably a plus. However, it should be noted that, in the process of refining and streamlining the document, potentially useful background information is lost to the reader who simply reviews the latest draft.

Please note that CBE realizes that some of the following comments may be able to be addressed during the editing process. Others may be more appropriate for discussion at our meeting next week.

Specific Comments:

II. Executive Summary

Page 2, paragraph 2. While the District's Pretreatment program has clearly improved over the past few years, CBE questions the use of the term "effective" in describing its 30 year history. Given the problems detailed under Program Element 2 of an earlier draft¹ of this Project XL proposal and the fact that as recently as 1995, some 40% of the District's SIUs were in significant non-compliance (see page 11 of the current draft, 2nd full paragraph), its use seems inappropriate. CBE believes "effective" should be removed and the sentence should simply state that the "District has maintained an industrial waste Pretreatment Program for more than 30 years."

Page 2, last two paragraphs. We continue to be concerned that there is no stated commitment to achieving superior environmental performance in the important Executive Summary of this Project XL proposal. Instead, there is a statement that the District's participation is contingent on there being no net increase in Pretreatment program costs and some general language about maintaining current environmental performance. While we have no problem with either of these (though the anti-backsliding commitment should actually be a given), we believe that this introductory section needs to clearly indicate that a goal of this Project is to achieve superior environmental performance. Further, superior environmental performance should be *the* guiding principle which is articulated first, before concerns about cost and anti-backsliding.²

¹ According to that earlier draft, USEPA found that the District had allowed IUs who had submitted unacceptable BMRs additional time to revise those BMRs or submit additional information. During these extension periods, the District did not require the IUs to comply with applicable categorical pretreatment standards

² The issue of "superior" environmental performance is a critical one for environmentalists who are involved in so-called reinvention projects. All too often, we have found that government and industry are committed only to reducing costs and regulatory burden – not improving environmental performance, i.e. cheaper and smarter always win out over cleaner. While we do not believe that is the intent of this Project XL proposal, it is important to us and those to whom we are accountable that this explicit commitment be made up front – in the Executive Summary, which may be all that some people read.

Page 4, end of the first full paragraph. The language about failure to attain anticipated pollutant reductions not constituting regulatory noncompliance infers that TRAPS is expected to fail. Perhaps it might sound less negative if the Project proposal simply acknowledged that non-regulatory approaches may not initially achieve *significant* reductions but the lessons learned could provide future direction and opportunity for the District (or the interagency task force).

Page 6, Section F. It appears that the District's locally based limits were initially developed nearly 30 years ago. While this section indicates that they are reviewed every year, there is nothing to indicate that any of them have ever been changed as a result of the review process. If they have, CBE would suggest including just enough detail (how often have they been revised or how many have changed over the years) to show that the review is, in fact, a serious one which takes into account the most recent data available. It might also be useful to include a list of the current local limits in an Appendix.

IV. Project XL Pilot Project Description

Page 7, Section 1, paragraph 1. Here you specifically reference two categories of small CIUs: de minimis and non-significant. However, criteria are offered only for non-significant CIUs, even though pages 8 and 9 contain references to "de minimis and non-significant CIUs" in combination, as well as references to "non-significant CIUs", alone. This is confusing.

Page 9, 3rd and 4th full paragraphs. It would be very helpful if you could include a simple chart comparing current self-monitoring, reporting and inspection requirements with those that are being proposed under this Project.

Page 11, paragraph 1. Can you include a definition of what the District considers to be "significant non-compliance?"

Pages 11 and 12. It would be useful to include the table from the earlier draft, which compared self-monitoring of end-of-pipe effluent with the collection of statistical process control data

Page 12, last full paragraph. This paragraph seems to say that the site-specific revision EPA intends to propose will give the District, IEPA and USEPA authority to use Alternative Performance Expectations beyond the life of this Project. It seems to us that it would make more sense for any site-specific revision to authorize their use only for the duration of the Project. Then, if it's determined that they can, in fact, satisfactorily demonstrate compliance with categorical standards, EPA could consider a legislative or regulatory initiative that would allow the use of this alternative method by others. Isn't that what Project XL is all about – developing replicable models that can be used to help USEPA "redesign current approaches"?

Page 13, second full paragraph. How will other stakeholders, i.e. NGOs, be involved in the piloting of AMSs.

Page 13, last paragraph. This paragraph indicates that the Interagency Task Force will include the District, EPA, IEPA and “other stakeholders.” What other stakeholder categories will be included? Further, the TRAPs process needs to be clarified. As currently described, it is somewhat confusing – particularly with regard to who will do what. For instance, there are references to a “full TRAPs stakeholder task force”, a “full stakeholder group”, a “full task force, including interested local industries”, and a “full task force”; yet none of these terms is defined. (The single exception is the Interagency Task Force; but even it’s make-up, as indicated above, is unclear.)

The process, from what I can discern, looks like this (and perhaps something like the following should be included):

1. The District will convene the “full” TRAPs stakeholder task force within three months of the FPA being signed.
2. The “full stakeholder group” will participate in developing the criteria for identifying and ranking the pollutants.
3. The District, EPA and IEPA will then identify and rank the pollutants in order of importance.
4. The “full task force, including interested local industries,” will attempt to identify all the source(s) of the identified and ranked pollutants.
5. Strategies to reduce emissions of these pollutants will be developed by the full task force. *(It’s unclear whether NGOs will be on the “full task force” but CBE would be interested in participating in the development of reduction strategies and has some experience/expertise in this area.)*
6. The District will produce a mutually agreed upon work plan for the TRAP within one year of the FPA being signed. This plan will include the criteria for identifying and ranking the pollutants and a preliminary list of the non-regulated pollutants of local concern, as well as strategies for identify sources and reducing emissions.
7. Pollutant reduction plans will be evaluated and the results reported to EPA and IEPA. *(Why not stakeholder group, too?)*

Page 14, second full paragraph. It should be noted – up front – that CBE has some concerns about trading schemes, particularly if they lead to disparate impacts.

Section V. Project XL Criteria

Page 15. Please note that Section A. contains the first explicit language in this proposal about this Project’s potential for superior environmental benefits. As stated at the beginning of these comments, some mention of these benefits needs to be included in the Executive Summary.

Page 18, last full paragraph. Is the performance of the WRPs included in the District's Annual Report or only through FOIA request?

Page 19, second and third full paragraphs. This FPA states that the "80 or so" CIUs subject to reduced monitoring and oversight are located throughout the seven WRP districts and do not all discharge to one WRP. Yet, the "Parties" have apparently agreed that only one WRP's NPDES permit needs to be modified (and the District's sewer use ordinance amended) in order to implement the provisions of this Project. CBE seriously questions this decision. According to our discussions with District personnel, the reason only one WRP's NPDES will be modified is because all of the District's other WRPs have permits that are significantly outdated and "have problems". While we support the goals of this Project, we must reiterate once again that we are extremely concerned about the implications of endorsing a "regulatory reinvention" project that's being developed jointly by three agencies who appear not to have been able to manage the current regulatory process in a timely and effective manner.

VII. Events Preventing Project Implementation/Unavoidable Delays

Page 20, first full paragraph. The Stakeholder group and/or Task Force should also be notified of any delays in the Project.

IX. Duration of the Agreement

Page 1, paragraph 1. Who is the "Approval Authority"? Was the term used earlier in this Project proposal and defined?

X. Amendments or Modifications to the Agreement

Should there be a provision providing stakeholders an opportunity to request a review of and possible amendment or modification to the Agreement?

XI. Termination Procedures

Again, should there be a provision providing stakeholders an opportunity to request a review of and possible termination of the Agreement?

Page 23, Section B. While it is clearly inappropriate for stakeholders to be "at the table" during any dispute resolution proceedings, there should be some opportunity for them to "weigh in" on the resolution of any issues that could lead to a termination of the Project.

Page 24, first full paragraph. The District must return to compliance as soon as practicable but no later than 12 months from the date of termination; however, the Interim Compliance Period is 15 months from the date on which written notice of final termination is provided. This seems confusing.

Page 24, second full paragraph. It seems that there should be a “return to compliance” period that begins at the end of the minimum Project term.