

US EPA ARCHIVE DOCUMENT

DRAFT
FINAL PROJECT AGREEMENT

Narragansett Bay Commission (NBC)
Pretreatment Program

XL Project

August 29, 2000
DRAFT Final



Final Project Agreement
Narragansett Bay Commission (NBC) Pretreatment Project
8-29-00

I. Introduction to the Agreement

- A. Project Signatories
- B. Purpose of the XL Program
- C. Purpose of this FPA

II. Description of NBC and the Project

- A. Description of NBC Facilities and Pretreatment Program
- B. Description of the Project
- C. Project Implementation

III. Regulatory Relief Requested

- A. Reduced regulatory inspections from NBC of Participating Tier 1 facilities (40 CFR 403.8(f)(2)(v))
- B. Reduced frequency of self-monitoring requirements for Participating Tier 1 facilities (40 CFR 403.12(e))
- C. Eliminate categorical self-monitoring requirements for specific constituents based on a company's non-use of such materials (40 CFR 403.12(e))

IV. Project XL Acceptance Criteria

- A. Anticipated Superior Environmental Performance
- B. Cost Savings, Paperwork Reduction and Operational Flexibility
- C. Stakeholder Involvement and Support
- D. Innovative Approach and Multi-media Pollution Prevention
- E. Transferability of the Approach to Other Entities or Sectors
- F. Feasibility of the Project
- G. Monitoring, Reporting, Accountability, and Evaluation Methods to be Used
- H. Avoidance of Shifting the Risk Burden to Other Areas or Media

V. Intentions and Commitments of Project Signatories

VI. Legal Basis for the Project

- A. Authority to Enter Into the Agreement
- B. Legal Effect of the Agreement
- C. Other Laws and Regulations That May Apply
- D. Retention of Rights to Other Legal Remedies

VII. FPA Implementation Issues

- A. Withdrawal From or Termination of the FPA
- B. Procedures for Withdrawal or Termination of the FPA
- C. Modification of the FPA
- D. Duration of the Agreement
- E. Dispute Resolution
- F. Project Completion or Termination
 - 1. Project Completion if Regulatory Flexibility is Found to be Successful
 - 2. Early Withdrawal, Termination or Project Failure
- G. Periodic Review
- H. Effective Date

VIII. Project Signatories**Appendix:**

Appendix 1: NBC Participant Application, Metal Finishing 2000

I. Introduction to the Agreement

A. Project Signatories

The Project Signatories to this Final Project Agreement (FPA or Agreement) are the Narragansett Bay Commission (NBC), located in Providence, Rhode Island, the U.S. Environmental Protection Agency (EPA), and the Rhode Island Department of Environmental Management (RI DEM). All of those listed are referred to collectively as “Project Signatories”; EPA and RI DEM are referred to collectively as “the Agencies.”

B. Purpose of the XL Program

This FPA states the intentions of the Project Signatories to carry out a pilot project as part of EPA’s “Project XL” which tests innovative approaches to environmental protection. Project XL is an EPA initiative to test the extent to which regulatory flexibility, and other innovative environmental approaches, can be implemented to achieve both superior environmental performance and reduced economic and administrative burdens. (See 60 FR 27282).

C. Purpose of this FPA

This FPA is a joint statement of the Project Signatories’ plans and intentions with respect to the Narragansett Bay Commission Pretreatment XL Project (“NBC Pretreatment XL Project”). This FPA outlines the details of how this project will be implemented and measured and sets forth the regulatory flexibility that is necessary to implement this project.

This FPA sets forth the plans of the Project Signatories and represents the firm commitment of each signatory to support the XL process, to implement the necessary regulatory flexibility in a timely fashion and to follow the terms of this FPA. This FPA is not, however, intended to create legal rights or obligations and is not a contract, a final agency action or a regulatory action such as a permit or rule. This FPA does not give anyone a right to sue the Project Signatories for any alleged failure to implement its terms, either to compel implementation or to recover damages.

This FPA and materials relating to this project are available on the Project XL Web Site at www.epa.gov/projectxl.

II. Description of NBC and the Project

A. Description of NBC Facilities and Pretreatment Program

NBC operates the wastewater collection and treatment system for the greater Providence area as well as regulates the facilities that discharge to the collection system. NBC's wastewater collection system collects wastewater from approximately 360,000 people and 8,000 businesses and includes two treatment plants, the Field's Point wastewater treatment plant and the Bucklin Point wastewater treatment plant. The Field's Point facility treats wastewater from Providence, North Providence, Johnston and portions of Lincoln and Cranston. It is the state's largest and one of the country's oldest wastewater treatment facilities and is designed to provide secondary activated sludge treatment for 65 million gallons per day (MGD) and preliminary and primary treatment of up to 200 MGD. The Bucklin Point facility treats wastewater from Pawtucket, Central Falls, Cumberland, Lincoln, the northern portion of East Providence and a small section of Smithfield. The facility is designed to provide secondary activated sludge treatment for 35 MGD, and preliminary and primary treatment of incoming flows of approximately 50 MGD.

The NBC pretreatment team (PT) is made up of engineers and engineering technicians who are responsible for permitting, monitoring and regulating more than 1,250 industrial and commercial users. NBC permits and regulates approximately 105 metal finishers. PT staff conduct regular compliance inspections of all permitted users thereby enforcing strict wastewater discharge and operating standards. Since initiating the PT Program, NBC has reduced metal and cyanide loadings to the Field's Point treatment plant headworks by more than 94%. In recognition of the PT staff's extraordinary efforts and accomplishments NBC was chosen to receive EPA Pretreatment Excellence Award in 1990 and 1998.

B. Description of the Project

NBC requests a modification of portions of the pretreatment regulations found at 40 Code of Federal Regulations (CFR) Part 403 for up to ten metal finishing companies that have established a history of exemplary environmental performance and compliance (described further in this FPA as Tier 1 facilities) as an incentive to maintain their performance. Eliminating certain inspection and monitoring requirements for these high performing companies will allow NBC to refocus its resources towards increased compliance inspections, pollution prevention audits and technical assistance on lower level performers (Tier 2 facilities).

The primary goal of this XL Project is to demonstrate that through more efficient use of existing resources, NBC can achieve measurable improvements in the environmental performance levels of Tier II companies while encouraging and assisting Tier I companies to maintain or possibly improve their current level of environmental performance.

In order to achieve Tier 1 status, facilities must go through an application process with NBC, where NBC evaluates the facilities on four factors. The specific application requirements and ranking factors can be found in Appendix A "NBC Participant Application, Metal Finishing 2000". NBC will evaluate whether these facilities qualify for Tier 1 status and will provide EPA and RI DEM with a list of potential Tier 1 companies. EPA and RI DEM will then have 30 days to concur or to provide NBC with reasons as to why a particular company should not be included in the program.

While the complete description of the four ranking factors are found in Appendix A, summaries of the four ranking factors are as follows:

1.) Environmental Compliance - Applicants must have an exceptional environmental compliance record for at least three years with federal, state and local environmental and OSHA regulations. For regulatory problems that have occurred, each applicant must demonstrate that they have put forth a good faith effort to return to compliance in an expeditious manner. While a perfect compliance record is not required, a pattern of repeat violations or inadequately addressed violations will exclude companies from participation.

2.) Pollution Prevention Efforts - Applicants must demonstrate a commitment to use pollution prevention (P2) policies and procedures as part of their environmental management practices. This commitment could be demonstrated through implementation of a Pollution Prevention Facility Management Plan, and measurable reductions in waste generation and water use. In addition, they should also be active in P2 organizations such as the P2 Roundtable or the Rhode Island P2 Council. The exact requirements are set forth in the Metal Finishing 2000 application package.

3.) Employee Environmental Education - Applicants must have in place an educational system that trains employees on environmental management practices, and encourages employee involvement with finding and initiating new and innovative ways of reducing pollutants at the source of generation.

4.) Improved Environmental Performance - In addition to establishing itself as an exceptional environmental performer, each applicant must clearly describe how any regulatory flexibility will result in improved environmental performance.

Once a facility is selected for Tier 1 status, it may request, as part of Project XL, regulatory benefits in three areas. These include: 1) reduction of federally required inspections, 2) reduced frequency of self-monitoring of wastewater effluent, and 3) elimination of categorical self-monitoring for certain constituents not used within a facility. However, in addition to the selection criteria described above, the facility must meet the criteria for each type of regulatory relief being sought (the exact qualifications necessary to obtain each of the three regulatory benefits being offered as part of this project is shown in Table 1 below). For example, if a facility sought a reduced compliance inspection frequency by NBC, it would have to show,

among other things, that they have not had any record keeping, reporting or operational violations in the last three years. If a facility requests a reduced frequency of self-monitoring, it must show, among other things, a pattern of nothing worse than infrequent minor discharge violations.

Table 1 Qualifications For Regulatory Relief

Benefits	1.) Reduction of inspections	2.) Reduced frequency of self-monitoring of wastewater effluent	3.) Elimination of categorical self-monitoring for certain chemicals not used within a facility
Qualifications	1.a.) Three years of NBC inspection reports demonstrating <u>no violations</u> of NBC record-keeping and reporting requirements ¹ .	2.a.) Three years of NBC inspection reports demonstrating <u>no major violations</u> ³ of NBC record-keeping and reporting requirements.	3.a.) Three years of NBC inspection reports demonstrating <u>no major violations</u> of NBC record-keeping and reporting requirements.
	1.b.) Three years of NBC inspection reports demonstrating <u>no violations</u> of NBC operational requirements ² .	2.b.) Three years of NBC inspection reports demonstrating <u>no major violations</u> of NBC operational requirements.	3.b.) Three years of NBC inspection reports demonstrating <u>no major violations</u> of NBC operational requirements.
	1.c.) Three years of self-monitoring and NBC EMDA effluent data results demonstrating that, with the exception of pH, the company has not been in Significant Noncompliance with any NBC discharge limit.	2.c.) Three years of self-monitoring and NBC effluent data results that <u>show only minor exceedences of effluent standards</u> with the exception of pH.	3.c.) Three years of self-monitoring and NBC effluent data that shows concentrations at detection-limit levels for constituents of concern. The constituent of interest is not a major process chemical.
	1.d.) The company must have and implement an NBC approved environmental management self-audit program.		3.d.) The company must notify NBC of any process changes that may reasonably impact effluent concentrations of that constituent

¹ Record keeping and reporting requirements include timely submittal of self-monitoring reports, maintenance of training records, timely notification of spills or accidents.

² Operational requirements include proper use and maintenance of all pretreatment and safety equipment, proper training of employees, proper response to spills or accidents.

³ Violations will be considered “major” if they may be addressed by formal responses as set forth in the NBC Enforcement Response Plan

Generally NBC inspects each of their significant industrial users (SIUs) once every 6 months,

while the federal requirement is once every year. As part of this XL Project, NBC will reduce their compliance inspection frequency of qualified Tier 1 facilities to once every two years. NBC will periodically determine, based upon the required compliance inspections, compliance monitoring, and pollution prevention audits, whether the Tier 1 companies are continuing to meet the original Tier 1 application requirements (see Appendix 1) as well as the qualifications for regulatory relief set forth in Table 1. As set forth in the application materials, "...a pattern of repeat violations and/or inadequately addressed violations will prevent an applicant from meeting participation criteria." Thus, as a part of these activities, NBC will also determine whether Tier 1 companies are committing repeat violations and conducting adequate correction and remediation efforts. Failure by Tier 1 companies to meet the application criteria and the regulatory relief qualifications on an ongoing basis, or demonstration by Tier 1 companies of a pattern of repeat violations and/or inadequately addressed violations, may warrant removal from this XL Project. NBC intends to use the resources saved by not inspecting Tier 1 facilities to increase the frequency of compliance inspections at Tier 2 facilities. See Section IV.A. for more detailed breakdown of NBC's resource reallocation.

Ten Tier 2 facilities will be selected from NBC's metal finishing user base that have shown a poor record of environmental performance but have also expressed an interest to implement recommended pollution prevention projects that may be offered by NBC. NBC will select these facilities in consultation with RIDEM and EPA. At a minimum, facilities showing a pattern of repeat violations or lack of responsiveness to NBC Notices of Violation or Letters of Deficiency will not be considered in this Project.

C. Project Implementation

EPA and RI DEM will work expeditiously towards developing the regulatory flexibility through appropriate legal implementing mechanisms. EPA will propose for public comment a federal rule which will allow RIDEM to incorporate the flexibility discussed in this FPA into its own rules and NBC's Rhode Island Pollutant Discharge Elimination System (RIPDES) permits. When, after consideration of public comment, this rule is issued in final form, RIDEM will then promulgate a state rule or other legal implementing mechanism that will incorporate the terms of the federal rule. NBC will then revise or modify its existing pretreatment program for review by RI DEM (subject to public notice and consideration of public comment). In addition RI DEM will amend or incorporate these changes in NBC's RIPDES permit¹ as appropriate.

NBC will then accept applications from facilities for Tier 1 status and then make their selections. NBC will also select up to ten Tier 2 companies to work with over the term of this project. Once this is completed, NBC will work with these companies on pollution prevention activities as well

¹At the time of the signing of this FPA, NBC has expired RIPDES permits and their revised permits are still being developed. RI DEM will incorporate the appropriate legal implementing mechanisms discussed in this FPA into NBC's revised RIPDES permits when they are issued.

as increase the compliance sampling rate of Tier 2 facilities to once every quarter. NBC anticipates that this increased effort with Tier 2 companies will help increase their environmental performance to the levels described in Section IV.A. A more detailed description of project activities is described in Table 2 below.

Table 2 Timing of Project Activities

Description	Time	Activity
EPA develops federal rule.	Concurrent with FPA signing or as soon as possible after signing.	EPA develop and issue federal rule (consistent with public comment procedures) and the terms of this FPA.
RIDEM develop regulatory flexibility for NBC and Tier 1 facilities.	Once EPA has finished its rule.	RI DEM develops and issue state rule (consistent with public comment procedures) and the terms of this FPA.
NBC revises Pretreatment Program and RIDEM reviews modifications.	. After RIDEM has issued its state rule	NBC revises and submits its Pretreatment Program modification for approval by RIDEM, after public notice and comment, and consistent with 40 CFR 403.18.
RIDEM reissues NBC's RIPDES permits	After RIDEM has issued the state rule.	RIDEM reissues NBC's RIPDES permits incorporating pretreatment modifications consistent with the rule and FPA.
NBC initiates selection of Tier 1 and Tier 2 facilities	Once NBC pretreatment modifications have been put in place and approved by RI DEM	<ul style="list-style-type: none"> - facilities apply for Tier 1 status, and up to ten facilities are selected by NBC in consultation with RI DEM and EPA - NBC identifies and negotiate with facilities to select up to ten Tier 2 facilities - Tier 1 facilities request types of flexibility and NBC evaluates and grants requests

<p>Project begins.</p>	<p>After EPA and RIDEM have implemented federal and state rules, modified the pretreatment program and issued NBC's RIPDES permits.</p>	<p>NBC in cooperation with Tier 1 and Tier 2 facilities collect environmental information on baseline performance NBC will perform the following activities:</p> <ul style="list-style-type: none"> - semiannual compliance sampling of Tier 1 facilities by NBC; - quarterly compliance sampling of Tier 2 facilities by NBC; - compliance inspections every other year of Tier 1 facilities by NBC; - semiannual compliance inspections of Tier 2 facilities by NBC; - annual pollution prevention audits of Tier 1 facilities; - annual pollution prevention audits of Tier 2 facilities; and - annual project update by NBC.
<p>Project completion and evaluation.</p>	<p>Six years from issuance of the RIPDES permits</p>	<p>NBC compiles environmental performance for the Tier 1 and Tier 2 facilities and determines whether pollution reduction goals have been achieved.</p>

Measurement of Success

NBC has proposed as a goal that this XL project will result in several areas of pollution reduction. Over the six years of this project, NBC proposes that the Tier 2 facilities will reduce their process water usage by 25%, total metals (which include the regulated metal finishing pollutants along with arsenic and selenium) loadings in their effluent discharge by 25% and their generation of F006 waste by 25%. Progress towards these goals will be evaluated against one year of information collected from the facility by NBC for the year preceding selection as a Tier 2 facility. NBC would then compile annual information and report progress towards the 25% reduction goals in each annual report. NBC also projects as a goal that Tier 2 facilities will improve their compliance rate by 75%.

III. Regulatory Relief Requested

Narragansett Bay Commission seeks regulatory flexibility in three areas:

A. Reduced regulatory inspections from NBC of Participating Tier I facilities (40 CFR 403.8(f)(2)(v)).

As part of this project, NBC will reduce its regulatory oversight (i.e. compliance inspections) for the up to ten Tier 1 metal finishing companies. Pursuant to 40 CFR 403.8(f)(2)(v), NBC must inspect each SIU once per year. Under this project, NBC would reduce this requirement to once every two years for the period of this XL Project. Time and effort saved by NBC regulatory personnel conducting fewer inspections of companies that meet appropriate Project XL criteria will allow for more focused attention on compliance inspections, monitoring and regulating more problematic (Tier 2) companies. NBC believes that additional resources spent on problematic companies will result in improved measurable environmental performance.

The reduced sampling requirement can also be considered an incentive for exemplary performance. NBC would continue to perform at least one compliance sampling event per year.

B. Reduced frequency of self-monitoring requirements for Participating Tier I SIU's (40 CFR 403.12(e)).

As part of this project, NBC will reduce the self-monitoring requirements for Tier 1 companies. Less time and money spent on monitoring by companies with exceptional environmental performance levels will allow these companies to pursue other environmental goals. The current requirement in 40 CFR 403.12(e) requires that such reports be submitted two times per year. The frequency would be reduced from once every 6 months to once every calendar year.

C. Eliminate categorical self-monitoring requirements for specific constituents based on a company's non-use of such materials (40 CFR 403.12(e)).

As part of this project, NBC will eliminate the categorical self-monitoring requirements (for specific pollutants) pursuant to 40 CFR 403.12(e). Eliminating this requirement for companies that meet Project XL participation criteria will allow for expenses associated with this requirement to be used on activities with more productive environmental goals. NBC may provide written approval for elimination of the self-monitoring requirements for individual categorical constituents (i.e., the seven metals and cyanide) if those pollutant are found in the discharge at or below detection limit levels and are not process chemicals used at the facility. Cost savings employed by the elimination or reduction of the frequency for the need to monitor for pollutants not present in a wastestream, can be used to increase the frequency of tests made on problematic constituents, employee training and/or pollution prevention initiatives. Tier 1 companies will be required to submit notification to NBC of any process changes that may reasonably impact effluent concentrations of that constituent. NBC would continue to sample for the eliminated constituents at least once per year.

NBC cannot take advantage of the flexibility being offered in this FPA unless and until RIDEM issues a RIPDES permit consistent with this FPA.

IV. Project XL Acceptance Criteria

A. Anticipated Superior Environmental Performance

The primary goal of this XL Project is to demonstrate that through reallocation of existing resources, NBC can achieve measurable improvements in the environmental performance levels of Tier II companies while encouraging and assisting Tier I companies to maintain or improve their current level of superior environmental performance. The following table (Table 3) compares the goals and activities that will be performed with and without Project XL. It describes the shift in resources that would be implemented through Project XL. Resources used for inspections and sampling of Tier 1 companies will be redirected to Tier 2 companies.

Table 3 Goals and Activities with and without Project XL

	Current Goals and Activities (without Project XL)	Proposed Goals and Activities (with Project XL)
Tier I Companies (10)	(for 10 companies)	(for 10 companies)
# of Annual Inspections by NBC	20 every year	10 every 2 years
NBC Compliance Sampling Events	20	20
# of Annual Company Self-Audits Conducted	0	10
# of Annual Pollution Prevention Audits	0 ¹	10
Tier II Companies (10)	(for 10 companies)	(for 10 companies)
# of Annual Inspections	20	20
NBC Compliance Sampling Events	20	40
# of Annual Pollution Prevention Audits	0 ¹	10
Process Water Usage	No change anticipated	25% reduction
Total Metal ² Concentration in Wastewater	No change anticipated	25% reduction

F006 Waste Generation	No change anticipated	25% reduction
Increased Rate of Compliance ³	No change anticipated	75% increase ³

¹ Currently pollution prevention technical assistance is offered on a request only basis. As part of Project XL all participating companies will have pollution prevention audits performed by the staff of NBC's Pollution Prevention Program.

² Total metals include metal finishing metals (chromium, copper, nickel and zinc) along with arsenic, cadmium, lead, silver and selenium which have more stringent local limits.

³ As measured through NBC compliance actions. NBC will maintain strict adherence to their ERP to assure consistent enforcement responses throughout the life of the project.

B. Cost Savings, Paperwork Reduction and Operational Flexibility

Cost savings from reducing the frequency of self-monitoring requirements for Tier 1 companies will vary depending upon the parameters being analyzed. The cost savings realized will be used to increase the frequency for tests made on problematic constituents, employee training, and/or pollution prevention initiatives for Tier 2 facilities.

Reduction in the number of regulatory inspections being conducted for Tier 1 facilities will save time and effort on the part of both NBC and each participating company. The dollar value associated with implementing this regulatory flexibility option is difficult to quantify but NBC will use all resources saved on Tier 1 facilities and apply those resources to Tier 2 facilities.

Cost savings and paperwork reduction will also result from simplified permit writing, inspection report documentation, and compliance reporting.

C. Stakeholder Involvement and Support

The stakeholder process is essential to the potential success of this XL Project. Rhode Island Department of Environmental Management (RI DEM) is a Project Signatory to this Agreement. Potential stakeholders notified of this project include, but are not limited to: NBC's Citizen Advisory Committee, University of Rhode Island's Center for Pollution Prevention, Rhode Island Council of Electroplaters, Save the Bay and the Rhode Island Economic Development Corporation.

The first NBC Project XL Stakeholder meeting was held on June 13, 2000, at NBC's facilities. The purpose of this meeting was to inform the various stakeholders of NBC's proposed Project

XL and how the various aspects of this project fit in with several existing NBC Pollution Prevention initiatives. In attendance at this meeting were representatives from RIDEM, EPA, the Rhode Island Council of Electroplaters (RICE), the American Electroplaters and Surface Finishers Society (AESF), NBC's Citizen's Advisory Committee (CAC), Save the Bay, and several individual metal finishing companies. Members from each of these organizations have been involved with other NBC's initiatives such as: Metal Finishing 2000, CLEAN P2, NBC's Regulatory Advisory Committee, and the Rhode Island Pollution Prevention Conference Committee. Future stakeholder meetings will be held on a regular basis.

Comments from all other organizations and individuals are welcomed throughout the stakeholder process and active stakeholders will receive semi-annual updates on progress of the XL project from NBC. Updates will also will be available on EPA's web site.

D. Innovative Approach and Multi-media Pollution Prevention

The NBC Pretreatment XL Project will promote pollution prevention through several activities including identifying source reduction opportunities, process optimization and input substitution. By reallocating resources from top performers to "under performers," NBC hopes to apply resources where the end results will be improved compliance as well as measurable reductions in pollution that go beyond what is required by regulation.

NBC has set goals to reduce process water usage, total metal concentration in wastewater, and F006 waste generation from the Tier 2 facilities selected for this project. Additionally, NBC has also set the goal of reducing the number of violations as measured by the total number of enforcement actions of the selected Tier 2 companies by 75% as a result of increased NBC oversight (see Table 3).

E. Transferability of the Approach to Other Entities or Sectors

This project contains several elements that will be transferable. If successful, the pollution prevention approaches and management practices that occur as a result of the refocusing of resources will be readily transferable to POTWs and industries in many other areas. Additionally EPA is in the process of streamlining the general pretreatment regulations (Federal Register Vol.63, No. 140 July 22, 1999, pages 39564 - 39605). Information gathered as part of this XL project may be used to inform current streamlining efforts.

F. Feasibility of the Project

NBC can demonstrate that this project is financially, technically, and administratively feasible. NBC has made a commitment to ensure that sufficient resources are made available for the appropriately qualified staff, along with the labor and non-labor expenses to implement this project.

The Agencies, by signing this FPA, agree to support the project, subject to any public review procedures including consideration of any public comments necessary to implement the legal mechanism for the project.

G. Monitoring, Reporting, Accountability, and Evaluation Methods to be Used

EPA expects, and the rest of the Project Signatories agree, that NBC will provide project information to stakeholders in a form that is accessible and easy to understand. As described more fully elsewhere in this document, NBC will make all data from this project available to stakeholders. In order to measure and evaluate environmental improvements, NBC will utilize environmental performance data obtained through the following:

- NBC's Industrial Compliance Databases: NBC's P2 staff maintain detailed records of each SIU's compliance status consisting of 11 compliance criteria. The information is reviewed each year and will be documented as part of the project.
- RIDEM's Regulatory Compliance Files (where available for the specific company): NBC will use RI DEM's files to compile a 3-year environmental compliance history for each company. The information will be used to measure environmental improvements.
- P2 Technical Assistance Site Visits: NBC will conduct regular site visits of selected Tier 1 and 2 facilities and document progress.
- Strategic Goals Program Company Profile Database: Company productivity information, waste generation data, and water use information will be used to measure advances.

NBC will provide semi-annual updates to the Project Signatories on NBC activities associated with this project, the environmental performance of the selected Tier 1 and 2 facilities participating in the XL project, as well as any measured pollution reductions achieved through this project.

H. Avoidance of Shifting the Risk Burden to Other Areas or Media

NBC's project will have no negative impact, and no adverse shifts in loadings across media. NBC's current pretreatment program requirements to protect worker health and safety will remain in place.

V. Intentions and Commitments of Project Signatories

As discussed more fully within this FPA, NBC agrees to:

1. Reallocate any resources saved from less oversight of Tier 1 companies to increasing oversight of the selected Tier 2 companies and focusing attention to other areas of environmental concern;
2. Increase sample screening events for each Tier 2 company from 2 per year to 4 per year;
3. Perform an annual pollution prevention audit at each of the Tier 1 and Tier 2 companies;
4. Assist each Tier 1 company and review the results of their annual self audits;
5. Work with the Tier 2 companies so they may achieve a 25% reduction in water usage, F006 waste generation, and total metal concentrations;
6. Work with the Tier 2 companies so they may achieve a 75% increase in compliance;
7. Supply summary reports on project progress, as more fully set forth in Section IV.G;
8. Make revisions to NBC's Pretreatment Program (including the Enforcement Response Plan, if necessary) relative to the selected Tier 1 facilities, through the proper procedures including review and approval by RI DEM and all public notice and comment requirements.
9. Assist each Tier 1 company with the development and implementation of a multi-media self-audit, environmental compliance plan and audit procedure. These plans and procedures will be developed in cooperation with NBC's Pretreatment office and appropriate RIDEM offices.

Pollution Prevention Audits conducted by NBC Pollution Prevention staff are by design non-regulatory and assistance oriented. While compliance with environmental regulations are a component of all pollution prevention plans and projects, no focused effort on the part of NBC's Pollution Prevention staff will be made to assess a company's overall regulatory compliance as part of a Project XL Pollution Prevention Audit. Should the situation arise that a violation(s) is noted during a Pollution Prevention Audit, NBC Pollution Prevention staff will inform the company that they may self-report the violation(s).

Violations which are criminal in nature, present an imminent and substantial endangerment to public health and the environment, or may result in serious actual harm to the environment and are not immediately self-reported by the participating company, will be brought to the attention of NBC's Pretreatment office by the P2 Auditors.

As discussed more fully in the FPA, RI DEM agrees to:

1. Expediently undertake the necessary procedures, subject to all necessary notice and comment procedures, to develop and promulgate a state site specific rule that incorporates the terms of the federal rule promulgated pursuant to this project or other appropriate legal implementing mechanism as discussed more fully in Section III.
2. Reissue NBC's RIPDES permit to incorporate the state rule as discussed above.
3. Review NBC pretreatment program revisions in a timely manner and approve where appropriate so NBC may undertake the activities described in this FPA.

As discussed more fully in the FPA, EPA agrees to:

1. Undertake the necessary procedures, subject to all necessary notice and comment procedures, to develop and implement a federal rule as discussed in Section III.
2. Work with NBC and RI DEM to achieve goals of this project.

VI. Legal Basis for the Project

A. Authority to Enter Into the Agreement

By signing this Agreement, EPA, RI DEM and NBC acknowledge and agree that they have the respective authorities, discretion and resources to enter into this Agreement and to implement all applicable provisions of this Project, as described in this Agreement.

B. Legal Effect of the Agreement

This Agreement states the intentions of the Project Signatories with respect to the NBC Pretreatment XL Project. The Project Signatories state their intentions seriously and in good faith, and expect to carry out their stated intentions.

This Agreement in itself does not create or modify legal rights and obligations, is not a contract or a regulatory action such as a permit or rule, and is not legally binding or enforceable against any Project Signatory. Rather, it expresses the plans and intentions of the Project Signatories without making those plans and intentions binding requirements. This applies to the provisions of this Agreement that concern procedural as well as substantive matters. Thus, for example, the Agreement establishes procedures that the Project Signatories intend to follow with respect to dispute resolution and termination (see Sections VII.E and VII.A). However, while the Project Signatories fully intend to adhere to these procedures, they are not legally obligated to do so.

The Agencies intend to propose for public comment and implement, as appropriate, the necessary legal implementing mechanisms for this XL Project. Any rules, permit modifications or legal mechanisms that implement this Project will be effective and enforceable as provided under applicable law.

This Agreement is not a “final agency action” by EPA or RI DEM, because it does not create or modify legal rights or obligations and is not legally enforceable. This Agreement itself is not subject to judicial review or enforcement. Nothing any Project Signatory does or does not do that deviates from a provision of this Agreement, or that is alleged to deviate from a provision of this Agreement, can serve as the sole basis for any claim for damages, compensation or other relief against any Project Signatory.

C. Other Laws or Regulations That May Apply

Except as provided in the legal implementing mechanisms for the XL Project, the Project Signatories do not intend that this Final Project Agreement will modify any other existing or future laws or regulations.

D. Retention of Rights to Other Legal Remedies

Except as expressly provided in the legal implementing mechanisms described in Section III, nothing in this Agreement affects or limits EPA's, RI DEM's or NBC's legal rights. These rights may include legal, equitable, civil, criminal or administrative claims or other relief regarding the enforcement of present or future applicable federal and state laws, rules, regulations or permits with respect to the facility.

Although NBC does not intend to challenge agency actions implementing the Project (including any rule amendments, permit actions or other action) that are consistent with the Agreement, NBC reserves any right it may have to appeal or otherwise challenge any EPA or RI DEM action to implement the project. With regard to the legal implementing mechanisms, nothing in the Agreement is intended to limit NBC's right of administrative or judicial appeal or review of those legal mechanisms, in accordance with the applicable procedures for such review.

VII. FPA Implementation Issues

A. Withdrawal From or Termination of the FPA

Although this FPA is not legally binding and any party may withdraw from the FPA at any time, it is the desire of the Project Signatories for the FPA to remain in effect and be implemented as fully as possible, and it is not their intent to terminate or withdraw from the FPA unless there is a compelling reason to do so.

The Project Signatories agree that appropriate grounds to seek withdrawal from the FPA could include, but are not limited to:

1. Substantial failure by any party to the Agreement to: a) comply with the provisions of the implementing mechanisms for this Project, or b) act in accordance with the provisions of this Agreement;
2. Substantial failure of any party to the Agreement to disclose material facts during development of this Agreement;
3. Substantial failure of the XL Project to provide superior environmental performance consistent with the provisions of this Agreement; and/or
4. Enactment or promulgation of any environmental, health or safety law or regulation after execution of the Agreement, which renders the Project legally, technically or economically impracticable.

EPA and RI DEM do not intend to withdraw from the Agreement unless actions by NBC

constitute a substantial failure to act consistently with intentions expressed in this Agreement and its implementing mechanisms. NBC will be given notice and a reasonable opportunity to remedy any “substantial failure” before EPA’s and/or RI DEM’s withdrawal. If there is a disagreement between the Project Signatories over whether a “substantial failure” exists, the Project Signatories will use the dispute resolution mechanism set forth in Section VII.E of this Agreement. EPA and RI DEM retain their discretion to use existing enforcement authorities, including withdrawal or termination of this Project, as appropriate. NBC retains any existing rights or abilities to defend itself against any enforcement actions, in accordance with applicable procedures.

B. Procedures for Withdrawal or Termination of the FPA

The Project Signatories agree that the following procedures will be used to withdraw from or terminate the Project before expiration of the Project term. They also agree that the implementing mechanism(s) will provide for withdrawal or termination consistent with these procedures.

1. Any Project Signatory that wants to terminate or withdraw from the Project is expected to provide written notice to the other parties at least sixty (60) days before the withdrawal or termination.
2. If requested by any Project Signatory during the sixty (60) day period noted above, the dispute resolution proceedings described in this Agreement may be initiated to resolve any dispute relating to the intended withdrawal or termination. If, following any dispute resolution or informal discussion, a Project Signatory still desires to withdraw or terminate, that Project Signatory will provide written notice of final withdrawal or termination to the other Project Signatories.

If any agency withdraws or terminates its participation in the Agreement, the remaining agency will consult with NBC to determine whether the Agreement should be continued in modified form, consistent with applicable federal or state law, or whether it should be terminated.

3. The procedures described in this Section apply only to the decision to withdraw or terminate participation in this Agreement. Procedures to be used in modifying or rescinding any legal implementing mechanisms will be governed by the terms of those legal mechanisms and applicable law.

C. Modification of the FPA

This Agreement may be modified by mutual agreement of all of the Project Signatories at any time during the duration of the Project. The Project Signatories recognize that modifications to this Agreement may also necessitate modification of the legal implementing mechanisms or may require the development of new implementation mechanisms. NBC will also provide notice to stakeholders to solicit, and incorporate to the extent feasible, their input on any proposed modifications prior to publication or notice of availability in the Federal Register. Any substantial modification will be subject to notice and comment in the Federal Register, as appropriate, and must comport with XL acceptance criteria..

D. Duration of the Agreement

This Agreement will be in effect for six years from the effective date of NBC's reissued RIPDES permits that incorporates the terms of this FPA and the state rule, unless it is terminated earlier or extended by agreement of all Parties. (If the FPA is extended, the comment and input of the stakeholders will be sought and a Federal Register Notice will be published as appropriate.) Any Project Signatory may terminate its participation in this Project at any time in accordance with the procedures set forth in Sections VII A,B of this FPA.

E. Dispute Resolution

Any dispute which arises under or with respect to this Agreement will be subject to informal negotiations between the Project Signatories to the Agreement. The period of informal negotiations will not exceed twenty (20) calendar days from the time the dispute is first documented, unless that period is extended by a written agreement of the parties to the dispute. The dispute will be considered documented when one party sends a written Notice of Dispute to the other parties.

In the event that the parties cannot resolve a dispute through informal negotiations, the parties may invoke non-binding mediation by setting forth the nature of the dispute with a proposal for resolution to the Regional Administrator for EPA Region I. Prior to the issuance of an opinion, the Regional Administrator may request an additional, informal mediation hearing. If so requested, the Regional Administrator will attempt to resolve the dispute by issuing a written opinion that will be non-binding and does not constitute final EPA action. If this effort is not successful, the parties still have the option to terminate or withdraw from the Agreement, as set forth in Section VII A,B.

F. Project Completion or Termination

1. Project Completion if Regulatory Flexibility is Found to Be Successful

If this project is found to be successful, it will be considered and evaluated as part of EPA's pretreatment program or other such effort. RIDEM, consistent with the terms set forth in the federal rule, may decide to reissue NBC's RIPDES permits consistent with the terms of this FPA.

2. Early Withdrawal, Termination or Project Failure

In the event of early withdrawal, termination or project failure, and where NBC has made efforts in good faith, NBC agrees that it will comply with all pretreatment requirements as specified by all applicable pretreatment standards found in 40 CFR 403. If determined to be necessary by the Agencies, NBC will be required to submit a plan that sets forth the inspection/monitoring schedule to be resumed upon project withdrawal, termination or failure.

G. Periodic Review

The Project Signatories will confer, on a periodic basis, to assess progress in implementing the XL Project. Unless it is agreed otherwise, a Periodic Performance Review Conference by the Project Signatories will take place at least once per year. Status reports may take the place of the conference, if agreed to by the Project Signatories. EPA will provide interested parties with a copy of the minutes from the conference or status reports. The minutes will be furnished to any entity requesting the information. Interested parties should also refer to EPA's web site for project information updates.

H. Effective Date

This FPA is effective on the date it is dated and signed by EPA's Regional Administrator for Region I.

VIII. PROJECT SIGNATORIES:

Mindy Lubber, Regional Administrator, U.S. EPA

Date Signed

Jan Reitsma, Director, RI DEM

Date Signed

Juan Mariscal, P.E., Director of Planning, Policy and Regulation
Narragansett Bay Commission

Date Signed