

US EPA ARCHIVE DOCUMENT

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6863-6]

Regulatory Reinvention (XL) Pilot Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of the Project XL Draft Final Project Agreement: IBM East Fishkill Facility – F006 Sludge Recycling Project.

SUMMARY: EPA is requesting comments on a draft Project XL Final Project Agreement (FPA) for the International Business Machines Corporation's (hereafter "IBM") East Fishkill semiconductor manufacturing facility in Hopewell Junction, NY. The FPA is a voluntary agreement developed collaboratively by IBM, the New York State Department of Environmental Conservation (NYSDEC), EPA and interested stakeholders. Project XL, announced in the Federal Register on May 23, 1995 (60 FR 27282), gives regulated entities the opportunity to develop alternative strategies that will replace or modify specific regulatory or procedural requirements on the condition that they produce greater environmental benefits.

In the draft FPA, IBM proposes to determine whether the wastewater treatment sludge resulting, in part, from the treatment of wastewaters generated from electroplating operations at the facility and therefore designated F006 Hazardous Waste, should be subject to full regulatory controls pursuant to the Resource Conservation and Recovery Act (RCRA) when it is to be used as an ingredient to produce a product (cement) that is used in a manner constituting disposal (i.e., placement on the land).

Under current RCRA regulations, a hazardous secondary material (i.e., a term of art used

to describe materials that are not virgin raw materials or products, and therefore may or may not be considered solid wastes, depending on how they are recycled) that is used as an ingredient to produce a product is excluded from the definition of solid waste (and thus, RCRA jurisdiction). However, this exclusion is not available if the product being produced is used in a manner constituting disposal. This XL project involves the use of the IBM wastewater treatment sludge as a substitute for ingredients normally used in the production of cement. Cement is a product that is presumed to be used in a manner constituting disposal. IBM believes the sludge that is the focus of this XL project does not require RCRA regulatory oversight to ensure that it is protective of human health and the environment, and that such oversight (and regulatory requirements for the proper permits and use of a hazardous waste manifest) effectively precludes such sludge from being recycled in a manner that is beneficial to the environment and society as a whole. EPA and the NYSDEC agree that IBM's sludge is comparable to the normal raw ingredients typically used to produce cement and believe this XL project is useful in exploring a potential approach to an overall strategy for addressing the appropriate management of a large-volume wastestream.

IBM has posed that EPA remove the wastewater treatment sludge from RCRA regulatory controls, and thus encourage (or at least not discourage) its recycling as an ingredient in cement manufacture. The draft FPA being noticed today as available in the RCRA docket presents a detailed description of the IBM East Fishkill facility, the XL project itself, and the intents and commitments on the part of signatories to the agreement. EPA expects to propose in a separate **Federal Register** notice a regulatory modification of the current regulations in the near future to allow for this XL project to be implemented (a regulatory change, subject to applicable regulatory

procedures is required). NYSDEC also agrees to adopt an appropriate legal implementing mechanism to implement this XL project once EPA has promulgated its final rule that will implement the project.

Project XL was chosen as the vehicle for this project because IBM is asking EPA to reconsider a historical view of RCRA jurisdiction (i.e., hazardous secondary materials that are recycled through use constituting disposal) and determine whether some identifiable subset of such hazardous secondary materials may protectively be removed from RCRA regulatory control when recycled as an ingredient in cement. This XL project may provide the Agency with a new approach for encouraging the environmentally sound recycling of a hazardous waste, and support a broader effort to address the proper management of a large-volume, but diverse wastestream (i.e., F006) on a national level.

DATES: The period for submission of comments on the draft FPA ends on [INSERT DATE 14 DAYS FROM PUBLICATION]

ADDRESSEES: All comments on the draft Final Project Agreement should be sent to: Sam Kerns, EPA Region II, 290 Broadway, New York, NY 10007-1866. Comments may also be faxed to Mr. Kerns at (212) 637-4949. Comments may also be received via electronic mail sent to: kerns.sam@epa.gov.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the draft Final Project Agreement, contact: Sam Kerns, U.S. EPA Region II, 290 Broadway, New York, NY 10007-1866, or Mitch Kidwell, U.S. EPA (1802), 1200 Pennsylvania Ave., NW, Washington, DC 20460. The FPA and related documents are also available via the Internet at the following location: <http://www.epa.gov/ProjectXL>. Questions to EPA regarding the documents can be

directed to Sam Kerns at (212) 637-4139, or Mitch Kidwell at (202) 260-2515. For information on all other aspects of the XL Program, contact Christopher Knopes at the following address: Office of Policy, Economics and Innovation, U.S. EPA (1802), 1200 Pennsylvania Ave., NW, Washington, DC 20460. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, regional XL contacts, application information, and descriptions of existing XL projects and proposals, is available via the Internet at <http://www.epa.gov/projectxl>.

Date: August 28, 2000. _____

Signature: _____

Elizabeth A. Shaw

Director

Office of Environmental Policy Innovation