

US EPA ARCHIVE DOCUMENT

**Project XL
Final Project Agreement**

for the

**Jeffersontown Sewershed/Chenoweth Run Watershed
Pretreatment Reinvention Project**

Louisville and Jefferson County Metropolitan Sewer District

United States Environmental Protection Agency, Region 4

Commonwealth of Kentucky Department for Environmental Protection

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TABLE OF CONTENTS

I. Parties	1
II. Purpose of the Final Project Agreement	1
III. Description of the Project	2
IV. Stakeholder Involvement Process	3
V. Pretreatment Program Requirements	4
VI. MSD's Current Pretreatment Program	5
VII. MSD Redesign of the Pretreatment Program	8
A. PHASE 1	8
B. PHASE 2	10
1. CRITERIA FOR POLLUTANTS OF CONCERN	10
2. PRETREATMENT PROGRAM MODIFICATIONS	11
3. SUPERIOR ENVIRONMENTAL PERFORMANCE	14
4. ACCOUNTABILITY	14
C. PHASE 3	14
VIII. Project XL Acceptance Criteria	15
A. Superior Environmental Performance	15
1. SEWERSHED AND WATERSHED MANAGEMENT	15
2. ENVIRONMENTAL TARGETING OF RESOURCES	15
3. POLLUTION PREVENTION AND ABATEMENT	16
B. Cost Savings and Paperwork Reduction	16
C. Stakeholder Support	17
D. Innovation/Multi-Media Pollution Prevention	17
E. Transferability	17
F. Feasibility	18
G. Monitoring, Reporting, and Evaluation	18
H. Shifting of Risk Burden	18
IX. Intentions, Performance Measures, and Milestones	19
A. MSD Intentions	19
1. ENFORCEABLE COMMITMENTS	19
2. VOLUNTARY COMMITMENTS	20
3. ASPIRATIONS	20
B. EPA Intentions	20

C. KYDEP Intentions	21
D. Project XL Performance Targets for MSD	21
E. Proposed Milestones	21
X. Project Implementation	22
A. Legal Basis	22
B. Applicability of Other Laws or Regulations	22
C. Authority to Enter Agreement	22
D. Rights to Other Legal Remedies Retained	23
E. Reporting/Annual Reports	23
1. MID-YEAR REPORTS	23
2. REGULATORY REPORTING	23
3. USE OF INFORMATION	24
F. Unavoidable Delay	24
G. Dispute Resolution	24
H. Duration	25
XI. Modification of Agreement/Reopener	25
XII. Withdrawal or Termination	26
A. Expectations Concerning Withdrawal or Termination	26
B. Withdrawal or Termination Procedures	26
XIII. Return to Compliance	27
A. Return to Compliance at Early Termination	27
B. Return to Compliance at End of Project Term	27
XIV. Periodic Review	27
XV. Signatories and Effective Dates	28
LIST OF APPENDICES	30
Appendix A	31
Appendix B	32
Appendix C	33
Appendix D	34
Appendix E	36
Appendix F	37

I. Parties

The Parties to this Project XL Final Project Agreement (Agreement or FPA) are the United States Environmental Protection Agency (EPA) Region 4, the Commonwealth of Kentucky Department for Environmental Protection (KYDEP), and the Louisville and Jefferson County Metropolitan Sewer District (MSD).

II. Purpose of the Final Project Agreement

Project XL is a pilot program to test new approaches for meeting environmental goals and responsibilities. This site-specific Agreement will allow EPA to gather data and evaluate experiences that will help the Agency make sound decisions as it considers ways to improve the current regulatory system for the Pretreatment Program. While EPA, working with state and local agencies, hopes to transfer flexible new approaches in this Agreement that are determined to be successful into the current system of environmental protection, careful analysis of the results of the Project is a necessary prerequisite for broader implementation.

As part of this Project, EPA will propose an amendment to the federal General Pretreatment Regulations which would allow the Regulatory Authority (KYDEP) to provide some flexibility to MSD with respect to certain administrative requirements, such as the definition of Significant Noncompliance (SNC), monitoring and inspection frequencies, reporting, and definition of Significant Industrial User (SIU) is being granted to MSD for the Pretreatment Program in the Jeffersontown sewer system. The flexibility granted in connection with this Agreement, in and of itself, establishes no precedent with regard to other projects.

The Parties enter into this Project XL Final Project Agreement to accomplish five principal purposes. They are:

- (1) To describe how MSD intends to attain measurably Superior Environmental Performance (SEP) when compared to current water quality and to describe related commitments made by MSD.
- (2) To describe EPA and KYDEP commitments regarding the flexibility needed by MSD to accomplish the SEP described in this Agreement.
- (3) To identify the procedures, processes and approvals necessary to allow this project to go forward.
- (4) To state that the Parties do not intend to create legal rights or obligations by this Agreement.
- (5) To describe rules, permits, and other mechanisms by which EPA and KYDEP intend to implement the provisions described in this Agreement.

III. Description of the Project

The National Pretreatment Program is primarily focused on procedural aspects of regulating indirect dischargers rather than on evaluating whether the environment (water quality) is being positively or negatively impacted. This focus is largely due to the fact that standards for dischargers into a publicly owned treatment works (POTW) are largely technology-based, rather than water quality based. For example, one way that EPA and states evaluate pretreatment programs is on the percent of industries in SNC. SIUs are in SNC if a certain fraction of their wastewater samples have pollutants at concentrations above set technology-based standards or if they submit monitoring reports late.

MSD's Pretreatment Program, the largest program in the Commonwealth of Kentucky and one of the largest in EPA Region 4, is an example of a program that, based on programmatic and administrative accomplishments, is very successful. MSD's Pretreatment Program SNC has been reduced from approximately 44 percent to less than EPA's (informal) 10 percent target since the early 1990s. But, reducing SNC does not necessarily improve receiving stream quality. MSD manages its Pretreatment Program more rigorously than is required by the National Pollutant Discharge Elimination System (NPDES) permit, but there are still no direct measures of the program's effectiveness for the goal of clean water.

MSD intends to use Project XL to achieve additional reductions in key pollutant loadings and to identify areas of ineffective resource utilization to free-up resources that can be applied to achieve greater environmental benefits. MSD has proposed this XL Project for a watershed, (Chenoweth Run watershed, shown in Appendix A) which is not currently meeting its use designation. In an effort to reduce pollutant loadings and reach use designation, MSD has begun to identify desirable loading patterns within the watershed, including loadings to the collection system, the treatment plant and the receiving waters. MSD may use pretreatment program requirement tradeoffs resulting from this Agreement to encourage industry's aid in funding non-traditional water quality controls such as creating riparian zones and planting trees.

The project is being implemented in three phases:

Phase 1 Data Collection and Development of Pretreatment Program Performance Measures. In order to achieve the project goals, MSD's approach is to develop a strong safety net, namely, Pretreatment Performance Measures, and then use the baseline data to target the resources where the most significant environmental improvements can be achieved. Development and use of the proposed performance measures has required MSD to conduct extensive monitoring and analysis (more than the current program requires) and to make comparisons to environmental criteria. The information gathered for performance measures has already proven to be of great value in understanding the loadings patterns in the system. The data also provides MSD with a technical basis for determining risk potential of various pollutant sources.

- Phase 2 Program Redevelopment. In this phase, MSD and Stakeholders have worked closely together to define the criteria for redevelopment of the pretreatment program. The elements of redevelopment include: Criteria for Pollutants of Concern, Pretreatment Program Modifications, Superior Environmental Performance, and Project Accountability.
- Phase 3 Program Implementation. In this phase, the baseline monitoring data (from Phase 1) and the criteria for redevelopment (from Phase 2) will be used to determine the site specific applications to the Jeffersontown Sewershed/Chenoweth Run Watershed system. Once the proposed Pretreatment Program Modifications are made, resources will be reallocated according to a specific Prioritization Strategy.

The first phase has been completed and Phase 2 is nearly completed. Already, tremendous benefits have been realized. Some of the benefits include: significantly more meaningful data; development of a dynamic process for determining Pollutants of Concern and for targeting of resources accordingly; development of Performance Measures to protect the environment; and Stakeholder involvement. This Final Project Agreement followed by the Pretreatment Program Modifications will allow implementation of the third phase of this project.

IV. Stakeholder Involvement Process

Stakeholder involvement is considered essential by both MSD and EPA and has been an important part of the concept and development of this project since 1998. MSD began reaching out to stakeholders shortly after EPA's June 1998 announcement of pretreatment pilot opportunities under Project XL. This outreach continued as MSD developed its pre-proposal and proposal.

MSD conducted a series of meetings over several months with key stakeholders and professionals, culminating in a formal Stakeholder Orientation Meeting (in October 1999). MSD has since identified additional stakeholders and has begun holding regular quarterly stakeholder meetings. In addition, monthly Stakeholder Work Group meetings were held from March, 2000 to July, 2000 for the development of this Agreement. Stakeholders who have been identified and asked to participate in the development of this Project are listed in Appendix B. (The Work Group volunteers are noted in Appendix B with an asterisk.) The dates and subjects of Stakeholder meetings and Stakeholder Work Group meetings are listed in Appendix C.

MSD's Stakeholder Participation Plan, Appendix D, is intended to describe the basic method by which additional input can continue to be solicited and received throughout the duration of the project. Stakeholder input and community goals will be considered as MSD redevelops its pretreatment program for the Jeffersontown WWTP. MSD will maintain and update the Stakeholder Participation Plan, as appropriate, to provide for continued stakeholder involvement over the duration of this XL Project.

V. Pretreatment Program Requirements

The Federal Water Pollution Control Act of 1972 initially defined the National Pretreatment Program. Section 307 of the Act required the EPA to develop pretreatment standards designed to prevent the discharge of pollutants from Industrial Users (IUs) to POTWs which interfere with, pass through, or are otherwise incompatible with such works. The Act was amended in 1977 to require POTWs to establish local pretreatment programs to ensure compliance with the pretreatment standards. The General Pretreatment Regulations (found at 40 CFR 403) were developed to enable the EPA to implement the requirements of the Act. These regulations outline the purpose and objectives of pretreatment programs and the minimum responsibilities of Federal, State and local authorities, and IUs. The KYDEP retains the primary authority to ensure the implementation of the federal pretreatment regulations. These requirements are prescribed to the local authority in its NPDES permit and its approved pretreatment program.

The minimum requirements specified in the General Pretreatment Regulations for approval of a pretreatment program are legal authority to apply and enforce program requirements, procedures to ensure compliance, sufficient funding and personnel, development of local limits, and enforcement. These elements of a pretreatment program are summarized below:

The POTW must have *legal authority* in the form of a statute, ordinance, contracts or agreements which allow the POTW to apply and enforce the pretreatment requirements of the Act, including denying or conditioning discharges into the POTW; requiring compliance with applicable pretreatment standards by IUs; issuing permits to significant industrial users, inspecting and monitoring industrial users; and enforcing any noncompliance by IUs. See 40 CFR 403.8(f)(1).

The POTW must have *procedures* to ensure compliance with pretreatment program requirements, including identifying and notifying all industrial users subject to program requirements, receiving and analyzing reports, sampling and surveillance activities, investigation of noncompliance, and public participation and notification. See 40 CFR 403.8(f)(2).

The POTW must have *sufficient funding and personnel* to implement the pretreatment program as described in the NPDES permit. See 40 CFR 403.8(f)(3).

The POTW must develop *local limits* or demonstrate why local limits are not necessary. See 40 CFR 403.8(f)(4).

The POTW must develop and implement an *enforcement* response plan describing how the POTW will investigate and respond to instances of noncompliance. See 40 CFR 403.8(f)(5).

The POTW is screened for compliance with these requirements during yearly inspections and audits once every five years by KYDEP or EPA, and through submittal of an annual performance report to KYDEP or EPA.

VI. MSD's Current Pretreatment Program

MSD's pretreatment program is managed by MSD's Industrial Waste Department (IWD). The purpose of MSD's pretreatment program is to:

- protect the POTWs;
- protect the health and safety of the workers at these facilities;
- protect the sewage / collection system;
- prevent POTW interference and pass through;
- prevent non-compliance of the National Pollution Discharge Elimination System (NPDES) permit;
- protect the receiving waters; and
- enhance biosolid reuse and water reclamation.

To accomplish these purposes, IWD inspects, and when appropriate, issues permits to and monitors targeted commercial / industrial discharges (referred to as IUs). IWD is also responsible for enforcing the applicable discharge regulations. MSD's ability to implement and enforce its pretreatment program is determined by its legal authority. MSD's Wastewater Discharge Regulations (WDRs) comprise the legal authority which state law confers to MSD.

In many cases, MSD routinely collects more samples from industries than regulations require because MSD is concerned that the minimum required three samples per year (two by industry, one by MSD) from SIUs is not a sufficient basis for determining environmental non-compliance (i.e. SNC). So, MSD, in an effort to determine whether an IU is really consistently in compliance, routinely conducts more sampling events. MSD inspects and samples its industries as required by regulation, at least once per year. In addition to the minimum monitoring requirements prescribed by 40 CFR 403, MSD uses a risk based methodology to determine the frequency of sampling and inspections for SIUs, general permittees and wastewater treatment plants (WWTPs). Thus, MSD generally exceeds the minimum monitoring requirements. MSD reports its performance to the state on a semi-annual basis.

The regulations require that permits be issued to industrial dischargers which are considered to be significant. MSD has over 135 SIU permits, 8 of which are in the Jeffersontown system. For the Jeffersontown system, MSD considers an industrial discharger to be significant if the discharge:

- is subject to Categorical Pretreatment Standards (under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N); or
- is an average of 5,000 gallons per day of process wastewater; or

- contributes a process waste stream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the WWTP; or
- is designated by MSD as having a reasonable potential to adversely impact the WWTP operation or to violate any pretreatment standard or requirement.

In some cases, if facilities were not defined as SIUs (and therefore not subject to SNC), MSD would reduce monitoring based on a long history of environmental compliance. But the current regulations require some monitoring regardless of the potential for environmental impact. Regulations require Categorical Users, for instance, to monitor for all the pollutants regulated under that category, even though they demonstrate that those pollutants are not present. This results in a needless expense by both industry and MSD. Also, low flow, low impact Categorical Users exist for which MSD expends significant resources for inspection and sampling activities while their potential for affecting water quality may be minimal.

Also, MSD has found that even with a considerable amount of industrial monitoring, the data is of limited value because it is collected without relating it to other possible pollutant sources in the system. The HISTORICAL pattern (typical representation) for industrial and WWTP monitoring in the Jeffersontown system is shown on the following chart:

TABLE 1 - Typical Historical Sampling Pattern:

COMPANY NAME	J	F	M	A	M	J	J	A	S	O	N	D
Adam Matthews									X			
Beechmont Press				X								
Brandeis Machinery						X						
Courier Carton				X								
Cummins Cumberland Inc									X			
Derby Cone				X								
Dispenser's Optical						X						
JONES PLASTICS & ENGINEERING			X									
Southern Standard Carton				X								
WAUKESHA CHERRY-BURRELL										X		
WINSTON PRODUCTS											X	
Midland Communications Pkg			X									
Clarke Detroit Diesel	X											
Ryder Truck & Car Rental				X								
WHITE CASTLE DISTRIBUTING									X			
INNOVATIVE ELECTRONIC DESIGN	X											
H L LYONS									X			
CONDEA VISTA CO	X											
DCE, INC				X								
Jeffersontown WWTP Influent			X			X			X		X	
Jeffersontown WWTP Effluent			X			X			X		X	
Jeffersontown WWTP Biosolids			X			X			X		X	

Note 1: The X=s on the chart refer to periods of composite sampling. (Typically 4 to 7 days.)

Note 2: The Company names shown in all caps with **bold type** are SIUs.

This chart illustrates that MSD conducts sampling randomly at the industries and does not schedule industrial sampling to coincide with WWTP influent/effluent sampling. MSD collects data from individual industries, but there is no routine data collection from strategic points in the sewer collection system or from the receiving stream. And, MSD evaluates samples using concentration limits, but typically does not consider total mass of pollutant in the system. Therefore, MSD has no estimate of loading patterns. (Loading data, rather than just concentrations, is important because it gives an accurate representation of the relative significance of pollutants.) Therefore, under this XL project, MSD will reinvent its pretreatment program to provide a better mechanism to achieve cleaner water.

VII. MSD Redesign of the Pretreatment Program

MSD decided to proceed with this XL Project in three phases: Data Collection and Development of Pretreatment Program Performance Measures; Program Redevelopment; and, Program Implementation.

A. PHASE 1: Data Collection And Development of Pretreatment Performance Measures

The purpose of this phase is to develop a baseline of pollutant loadings. MSD has collected more data and better data in this phase of the XL Project. In 1999, MSD collected and analyzed samples and flow data on a quarterly basis from six points in the sewer collection system, from the WWTP influent/effluent/biosolids, from the receiving stream (up and downstream of the WWTP), and from industrial discharges. The monitoring locations are identified on the map in Appendix D. Baseline monitoring was conducted as depicted in the following table:

TABLE 2 - Year One Baseline Monitoring Pattern

Collection System Trunkline No.	Company Name	J	F	M	A	M	J	J	A	S	O	N	D
1	Beechmont Press										X		
1	Bramco Brandeis Machinery										X		
1	Cummins Cumberland Inc										X		
1	Derby Cone										X		
1	Dispenser's Optical										X		
1	Jones Plastics & Engineering										X		
1	Kroger										X		
1	Southern Standard Carton										X		
1	Waukesha Cherry-Burrell										X		
1	Winston Products										X		
2	Clarke Detroit Deisel							X					
2	Ryder Truck & Car Rental							X					
2	White Castle Distributing							X					
3	Innovative Electronic Design			X									
4	DCE, Inc												X
4	Print-Tex												X
4	H L Lyons												X
4	Georgia Gulf (formerly Condea Vista Co.)												X
	Jtown WWTP Influent			X			X			X			X
	Jtown WWTP Effluent			X			X			X			X
	Jtown WWTP Biosolids			X			X			X			X
	Chenoweth Run (upstream)			X			X			X			X
	Chenoweth Run (downstream)			X			X			X			X
	Collection System #1			X			X			X			X
	Collection System #2			X			X			X			X
	Collection System #3			X			X			X			X
	Collection System #4			X			X			X			X
	Collection System #5			X			X			X			X
	Collection System #6			X			X			X			X

Note: Significant Industrial Users are shown in **Bold type**.

Details of the 1999 sampling effort are presented in an MSD report entitled “Jeffersontown Sewershed & Chenoweth Run Watershed - 1999 Quarterly Sampling Data” (June 2000). That report is available from MSD on request. Using the data from the baseline monitoring (in addition to some historical data), stakeholders have assisted MSD to develop Pretreatment Performance Measures appropriate for the assessment of the effectiveness of the Pretreatment Program in the Jeffersontown system. These performance measures are summarized in the following:

TABLE 3 - Proposed Pretreatment Program Performance Measures

LOCATION & PARAMETER	COMPARISON	PERFORMANCE MEASURE THRESHOLD LEVEL
WTP EFFLUENT		
Conventionals	BOD, TSS, NH3, TP vs. NPDES Permit Limit	90% Permit
Biomonitoring	Biomonitoring vs. NPDES Permit Limit	100 % of Permit
Toxics	Metals vs. Lowest WQ Criteria ⚡	70% of WQ Criteria
	Organics vs. Lowest WQ Criteria ⚡	90% of WQ Criteria
Aesthetics	Visual Observation	No deleterious effect
WWTP BIOSOLIDS		
Metals	Metals vs. 503 Exceptional Quality sludge criteria	90% of Criteria
OTHER		
Maintenance Concerns	Physical Observations	No created maintenance concerns

B. PHASE 2: Program Redevelopment

The purpose of this phase is to establish the basis for Program Redevelopment. Therefore, in Phase 2, the following are established: Criteria for Pollutants of Concern, Pretreatment Program Modifications, Superior Environmental Performance, and Project Accountability. These have each been a product of the Stakeholder Work Group, with review by Stakeholders.

1. CRITERIA FOR POLLUTANTS OF CONCERN

Pollutants of Concern are the pollutants that this project will primarily focus on reducing. The Criteria for the Pollutants of Concern were determined such that a parameter would be considered a Pollutant of Concern if:

- there have been multiple exceedances of any of the Pretreatment Performance Measures threshold levels;
- if the data shows an increasing trend for that parameter toward any of the Pretreatment Performance Measure threshold levels;
- if concentrations of that parameter in the receiving stream are near water quality criteria (even though the pollutant source may not be Pretreatment related);
- that parameter is listed as a reason for the stream to be on the State of Kentucky's current 303(d) list and/or subject of a TMDL;
- the parameter has a numeric limit on the WWTP's NPDES permit;
- the parameter is deemed significant by the local Stakeholder Group; or,
- the parameter has been demonstrated to create a health and/or safety concern.

2. PRETREATMENT PROGRAM MODIFICATIONS

In order to allow reallocations, a modification to the regulations are required. MSD requests a regulatory revision allowing for program modifications to be made in the following areas: SIU definition, SNC definition, and Sampling for Pollutants Not Present. The following briefly describes how and why each of these changes are requested.

Significant Industrial User Definition. MSD believes that in order to effectively reinvent the pretreatment program, the definition for SIU must be revised. The original definition had merit when pretreatment programs were being developed, but over the years and with additional data it can be seen that this definition should be revised to target resources toward the industrial users that truly have potential for significant risk to the POTW and environment. This request is made in combination with a commitment to hold the overall operation of the treatment plant to environmental performance measures. Specific aspects of the revised definition are as follows:

Flows. The current federal SIU definition automatically includes IUs with 25,000 gpd or more of process flow. MSD believes that this was a good initial threshold to target significant IUs. However, with experience in implementation of the pretreatment program, it is clear that the industries with the greatest potential to have a significant impact on a treatment plant are those with the highest mass loadings. These may or may not be the facilities with the largest flows. Under the current definition, an IU with high flow and low concentrations may have minimal impact but would be automatically classified as an SIU and could require significant resources. However, an IU with low flow and high concentrations may have a significant impact but may not be classified as an SIU. Therefore, flow alone is not an automatic indicator of environmental risk potential. SIUs will remain SIUs until affirmatively redesignated as non-SIUs as per the stakeholder endorsed screening criteria. Dischargers with 25,000 gpd or greater process flow can be designated non-SIUs if they meet the screening criteria listed below.

Mass Loading. MSD proposes to ADD a requirement that mass loadings of the pollutants of concern be evaluated for industrial users in determining relative significance. If an IU contributes 5% or more of the mass of any pollutant of concern, they would be considered an SIU.

Non-Significant Categorical Industrial User. A new category of industrial user is proposed to be defined as Non-Significant Categorical Industrial User (NCIU) by allowing the existing provisions at 40 CFR 403.3(t)(2), which are shown now to be applicable just to paragraph (ii), to be also applicable to both categorical and non-categorical industrial users. This program modification would allow MSD, in determining that such industrial users are not an SIU, to make an evaluation as to the reasonable potential for adversely affecting the POTW's operation or for being in SNC under 40 CFR 403.8(f)(2)(vii) with any pretreatment standard or requirement. MSD desires the flexibility to designate certain categorical users as NCIUs in order to modify permitting and monitoring protocols using the following screening criteria for the determination that an industrial user should not continue to be considered to be an SIU:

- No SNC for minimum of 2 years immediately preceding the determination;
- No reasonable potential to be in significant noncompliance under 403.8(f)(2)(vii) or adversely impact POTW;
- No reasonable potential to discharge a slug load; and,
- Pollution Prevention program in place.

All NCIUs and other former SIUs would have the following requirements:

- Execute a Site-specific Industrial Agreement or obtain a General Permit (3-year term);
- Sample and analyze its discharge in accordance with the techniques described in 40 CFR Part 136;
- Submit Annual Reports to MSD;
- Reinvest a minimum of 50% of the saved compliance and monitoring expenses toward an Stakeholder-approved environmental program; and,
- Maintain a clean compliance record.

If a former SIU violates any applicable pretreatment standard or requirement, then the sample results from the six month period (starting with the month of the violation) would be subject to evaluation according to the SNC definition as described below. If the results meet the requirements of the newly defined SNC, then the former SIU would be reclassified as an SIU. This classification would remain in effect until they are eligible for non-SIU status under the above screening criteria.

Significant Non-Compliance. The following program modifications are needed in order to ensure that SNC truly refers to non-compliance that has the potential to be environmentally significant.

Applicable to SIUs. MSD proposes that SNC should only apply to SIUs. A significant amount of MSD resource is required when an industry falls into SNC. As such, only Significant IUs should be included in this requirement. All violations, SNC and otherwise, will be subject to enforcement actions in accordance with MSD's Enforcement Response Plan.

Elimination of Rolling Quarters. The current rolling quarters policy is perceived by Control Authorities to be a program mandate. This policy can force SNC determinations based on one data point and may not adequately reflect compliance and performance by industrial users. MSD believes that it would be more appropriate to determine SNC on a 6-month basis starting with the month of the violation.

SNC only for Pollutants of Concern. Determination and implementation of performance measures requires that significant sampling and flow monitoring be conducted. This mass loading, in combination with historical discharge information, provides the basis for a technical determination of Pollutants of Concern. MSD believes that SNC as calculated by the technical review criteria (TRC) should only apply to those pollutants with the potential to significantly impact the environment.

Technical Review Criteria. Currently, SNC is attained if $\geq 33\%$ samples exceed the product of the daily maximum limit or the average limit by more than the TRC in a 6-month period. MSD believes that TRC should only be applied to the daily maximum limit to avoid unnecessary restrictiveness without giving perceivable environmental benefit. However, to ensure that trends of noncompliance are captured, SNC would also be attained when a monthly average limit is exceeded by more than the TRC more than once during a 6-month period.

Late Reports. MSD will issue a NOV for a late report, but a report that is submitted more than 30 days late, but less than 90 days late, if all data shows compliance, will not automatically be considered SNC unless it is the second of two consecutive late reports. Any report showing noncompliance and received more than 30 days late, would be automatically considered SNC.

Sampling For Pollutants Not Present. Current regulations require Categorical IUs to monitor for all regulated pollutants, even if shown to not be present. The same arguments/ideas presented previously by others are presented here. The proposed program modification would:

- (1) Authorize a Control Authority to allow an industrial user subject to categorical Pretreatment Standards to not sample for a pollutant if the pollutant is not expected to be present in its wastestream in a quantity greater than the background level present in its water supply, with no increase in the pollutant due to the regulated process. (This flexibility is already available for non-categorical industrial users, via the local limits allocation method implemented by the Control Authority).
- (2) Require the Control Authority's decision to waive sampling to be based upon both review of at least 6 sampling events and other technical data, such as the raw materials, industrial processes, and potential by-products.
- (3) Potentially require influent and effluent sampling to be necessary for the initial determination to support the technical factors.
- (4) Require that an industrial user submit, as part of its regular monitoring reports, the following certification:

"Based on my inquiry of the person or persons directly responsible for managing compliance with the pretreatment standard for 40 CFR ____, I certify that, to the best of my knowledge and belief, the raw materials, industrial processes, and potential by-products have not contributed this pollutant to the wastewaters since filing of the last monitoring report."

(5) Allow Control Authorities to waive sampling of indicator pollutants to the same extent as other pollutants.

(6) Clarify that an industrial user that is allowed to not sample for a pollutant is still subject to the pollutant limits in the applicable National Categorical Pretreatment Standard.

3. SUPERIOR ENVIRONMENTAL PERFORMANCE (SEP)

Specific aspects of SEP have been developed in Phase 2. These aspects are detailed in Section VIII.A.

4. ACCOUNTABILITY

Specific aspects of Project Accountability have been developed in Phase 2. These aspects are detailed in Section IX.B.

C. PHASE 3: Program Implementation and Evaluation

The purpose of this phase is to develop and implement a site-specific pretreatment program. In this phase, Stakeholders will determine specific Pollutants of Concern based on application of the Criteria for Pollutant of Concern to the actual Monitoring Data.

The Enforcement Screening Criteria (as described above) and a data model will be utilized to determine the list of Significant Industrial Users. Pretreatment and other resources will be allocated according to the following Prioritization Strategy:

1. Additional monitoring and pollutant source identification come first. Under the XL project, MSD will shift resources away from monitoring indirect dischargers whose impacts are shown to be minimal or non-existent and target resources to expanding in-system monitoring and special investigations to identify sources of particular pollutants at the category level (e.g., residential, commercial), and at the facility level if necessary;
2. After monitoring and special investigations, if indicated as environmentally beneficial, MSD will invest cost-savings in pollution prevention outreach, education, and technical assistance. These expanded programs will target categories, groups, and/or individual dischargers based on the evaluation of data collected under #1 above; and
3. When and where environmental priorities and cost-effectiveness analysis indicates, MSD will invest cost-savings in watershed-based improvements. MSD will invest reallocated pretreatment program resources in riparian restoration, for example, and other nonpoint source management efforts to improve priority conditions, especially where returns on such investments in watershed-based reductions, are greater than an equal investment in the pretreatment program.

A Cost Assessment will be performed to aid in resource reallocation recommendations.

This is a dynamic process. Data will continue to be collected according to a Monitoring Frequency Plan. The initial Monitoring Frequency Plan is included in Appendix E. This plan will be updated with Stakeholder input as needed. Regular review of the data will occur and resources adjusted accordingly, as described in the Accountability section.

VIII. Project XL Acceptance Criteria

MSD's project, as described in this Agreement, meets EPA's Project XL criteria. See 60 Fed. Reg. 27,282, et seq. (May 23, 1995). The criteria and the basis for stating that they are met are summarized below.

A. Superior Environmental Performance

Through Phase 1 and Phase 2 of this project, MSD has already begun to better manage its pretreatment program through a holistic watershed approach. It is expected that this approach will, lead to improved pollutant loading trends in the watershed. MSD has developed a specific strategy to achieve SEP which includes additional monitoring and pollutant source identification, pollution prevention outreach, education and technical assistance, and reinvestment of cost-savings in watershed based improvements. Specifically, MSD has established a baseline for pollutant loadings using existing pollutant data and data collected during the first phase of the project. Using this information, MSD has developed loading projections, performance measures, and an initial proposal to redevelop its pretreatment program. MSD believes that reductions in pollutant loadings to the watershed will occur with enhanced sewershed and watershed management, environmental targeting of resources, and pollution control.

1. SEWERSHED AND WATERSHED MANAGEMENT

Sewershed and watershed management have already been improved by collection of more meaningful data, better coordination of information, and better information for incident response. Data has been and will continue to be collected at the industries, collection system key locations, treatment plant influent, treatment plant effluent, treatment plant biosolids, and receiving stream (upstream and downstream). In addition, MSD is establishing mass loadings by capturing concentration and flow data. This data provides a baseline understanding of the watershed and sewershed. By collecting more valuable data, MSD can attain improved environmental performance.

MSD will continue sampling according to the new coordinated approach. The parameters and locations and frequencies will be reviewed periodically to ensure that the data collection is appropriate to the needs of the watershed.

MSD will strive to coordinate the sampling efforts with biomonitoring when conducted on a quarterly basis. By coordinating these efforts, insight may be gained into unusual pollutant loadings that may or may not create concerns in the biomonitoring tests.

Through this project, MSD has identified a system to enhance internal MSD response to treatment plant incidents as they occur. The enhanced response allows MSD personnel to better investigate conditions leading to receipt of unusual wastewater or process upsets. Superior environmental performance will be received through enhanced responses.

2. ENVIRONMENTAL TARGETING OF RESOURCES

Through the environmental targeting of resources, MSD's limited resources will be targeted more effectively, redirected toward environmental improvements, and within industry for environmental programs. MSD anticipates, through the study of baseline information and establishing performance measures, that MSD's limited resources can be directed toward monitoring and inspecting only those industries that are creating an environmental impact or have the potential to create an environmental impact. Resources will be freed

up by not monitoring and inspecting those industries that have demonstrated they do not have the potential to create environmental impact. These resources can be spent more wisely.

MSD anticipates partnering with the stakeholder group to expend a limited pool of resources contributed by those industries with less regulatory controls. These resources will be invested on one or two projects identified by the stakeholder group. Some of the projects may include Riparian vegetation restoration and non-point source pollution prevention/control. These projects will obtain superior environmental performance as defined by the stakeholder group. Industry will have the option of redirecting some of their saved resources (from less regulatory control) toward internal projects intended to create environmental benefit. Some examples of projects include pollution prevention, training, equipment, audits, etc. These projects will further diminish the impact these companies have on the environment.

3. POLLUTION PREVENTION AND ABATEMENT

Pollution prevention and abatement will occur by reducing Pollutants of Concern toward target thresholds, maintaining pollutants not of concern at less than target thresholds and tracking of pollutant loading trends. MSD has established performance measures and identified the Pollutants of Concern based on specific criteria. MSD anticipates targeting resources toward those entities discharging Pollutants of Concern. The overall loading of these pollutants can be reduced or maintained below performance measure thresholds. The targets for these efforts are the performance measures established for each pollutant. It should be noted that pollutants of concern may not be the consequence of industrial discharge, thus requiring MSD to work outside of the realm of the classic pretreatment program to target pollution prevention in the commercial and residential sectors.

Also, some Pollutants of Concern are developed based on the current pollutant concentrations in the stream prior to wastewater treatment plant discharge. By looking at these pollutants (even though the treatment plant discharge is not causing environmental harm) will show greater environmental benefit outside the classic definition of the pretreatment program. MSD has established performance measures for the pretreatment program. For those pollutants whose concentrations do not exceed performance measures thresholds, MSD will continue to monitor for these pollutants. MSD will strive to maintain the concentration of pollutants (not of concern) in the sludge and in the effluent below performance measure levels. MSD anticipates tracking of pollutant trends in the influent, effluent, and sludge. By monitoring loading trends, MSD can be more proactive and less reactive to increasing discharges that may threaten the wastewater treatment plant and/or the receiving stream.

B. Cost Savings and Paperwork Reduction

While MSD has seen a short term increase in costs (collection system monitoring, receiving stream monitoring, administration and stakeholder interaction) during the initiation of this project, the following cost savings and reinvestments are expected over the long-term:

Cost Savings/Paperwork Reduction

Less permitting

Fewer inspections

Less data entry

Less time spent on compliance

Reductions in monitoring, sampling,
reporting for selected users***Reinvestments***

Additional monitoring

Source identification

Special investigations

Pollution prevention issues

Outreach, technical assistance and education

Watershed management

C. Stakeholder Support

As described in Section IV, MSD developed a stakeholder strategy which was developed into a Stakeholder Participation Plan (Appendix C). MSD has used existing and new mechanisms to extensively involve stakeholders and citizens in building a bridge between the pretreatment program and watershed management programs under this XL project. MSD has conducted full Stakeholder Meetings, as well as, Stakeholder Work Group meetings. Stakeholders have been extensively involved in the development of the components of this FPA. Stakeholders have mostly been supportive of this project and stakeholder involvement will continue throughout the project.

D. Innovation/Multi-Media Pollution Prevention

The integration of the pretreatment program with other environmental monitoring and management programs will allow more efficient use of resources while providing SEP. MSD will test several of the eighteen (18) recommended results-oriented measures for assessing performance of Pretreatment Programs developed by a special Association of Metropolitan Sewerage Agencies committee in 1994, under a cooperative agreement grant with EPA. See Appendix F. When appropriate, MSD will reinvest cost-savings into pollution prevention activities, including outreach, education, and technical assistance, first within the pretreatment program, then in other watershed based programs. MSD is working with the Kentucky Pollution Prevention Center for input in this area.

E. Transferability

Other municipalities will be able to draw valuable lessons from MSD's experience, as it relates to implementing a performance-based program in individual facilities, and ultimately across a multi-plant, multi-watershed sewer district. MSD's XL project confronts the operational, data collection and analysis, and environmental challenges posed by a regulatory structure that compartmentalizes programs that in practice would benefit from a more holistic approach and will attempt to build links between the pretreatment program and the rest of the system. Almost every sewer agency confronts this same challenge and will benefit from MSD's exploration and investigation of viable technical solutions and management approaches.

F. Feasibility

MSD can demonstrate that this project is financially, technically, and administratively feasible. MSD's Executive Director 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. This project will not involve any unproven techniques or environmental concepts.

G. Monitoring, Reporting, and Evaluation

EPA's monitoring, reporting, and evaluation criterion articulates EPA's expectation that Project XL sponsors will make project information, including performance data, available to Stakeholders in a form that is easy to understand. Information about this project can be found on the Project XL website, <http://www.epa.gov/projectxl> and on the MSD website, <http://www.msdlouky.org>.

This Agreement provides for monitoring, reporting to Agencies and Stakeholders, and periodic performance evaluation. The means of reporting and an annual meeting near the project site (with advance notice) and the availability of backup data on request should make information regarding the project accessible. Regulated activities not addressed by this Agreement should adhere to the appropriate reporting requirements.

MSD will submit a mid-year Progress Report describing the progress of its XL project, including MSD's activities and accomplishments, as well those of participating agencies, industries, and public initiatives, as relevant. Additionally, MSD will submit an annual Performance Assessment Report. The Progress Report and the Performance Assessment Report will include the items listed in Section IX.

Additionally, MSD will take advantage of other avenues to share information about this project and provide stakeholders with opportunities to assess progress and ensure that MSD is meeting its commitments. For example, MSD staff expect to present papers at key conferences about their XL project during the course of the project, post interim and milestone results on the internet, maintain data in MSD's files, summarize results in newsletters, and speak about the project at local events, including government meetings, local school events, and public tours of MSD facilities.

H. Shifting of Risk Burden

MSD's project is expected to have no negative environmental impacts and no adverse shifts in loadings across media. Environmental benefits will be evenly distributed across the community and watershed. MSD's current pretreatment program requirements to protect worker health and safety will remain in place.

IX. Intentions, Performance Measures, and Milestones

This section describes the intentions of MSD, EPA, and KYDEP; performance measures to determine the success of the project; and, milestones for project completion.

A. MSD Intentions

MSD will submit Pretreatment Program Modifications for this project to EPA and KYDEP. Additionally, MSD makes the following enforceable and voluntary commitments and aspirations regarding this project.

1. ENFORCEABLE COMMITMENTS

MSD commits to the following items as a condition of MSD's NPDES permit for the Jeffersontown WWTP, and as contained in other documents and regulations that will govern this project:

- ✧ MSD will monitor the SIUs, the Collection System Monitoring points, the WWTP influent, effluent, and biosolids, and the Chenoweth Run receiving stream at a frequency as described in the Stakeholder approved Monitoring Frequency Plan;
- ✧ MSD will, with Stakeholder involvement, develop Indirect Discharger Agreements which can be entered into by eligible and willing indirect dischargers;
- ✧ MSD will, with Stakeholder involvement, develop a plan for reallocation of Industry resources;

On a Six-Month Basis, MSD will prepare and submit a Progress Report to the EPA and KYDEP. At minimum, the report will include:

- ✧ a summary of data collection efforts;
- ✧ updated trend charts of all monitored pollutants;
- ✧ narrative discussion on trends.

On an Annual Basis, MSD will:

- ✧ Perform an assessment of the Pretreatment Program (as it is applied in the Jeffersontown area) relative to the Pretreatment Performance Measures;
- ✧ Re-evaluate the list of Pollutants of Concern based on current data and the criteria identified in Section VII.B.1;
- ✧ Re-evaluate the SIU status based on current data and the criteria identified in Section VII.B.2; and,
- ✧ Prepare and submit a Performance Assessment Report to the EPA and KYDEP.

On a Biennial Basis, MSD will:

- ✧ Prepare a Cost Comparison of the program costs relative to baseline costs;
- ✧ Make recommendations for Reallocation of MSD resources according to the prioritization strategy described in Section VII.C;

2. VOLUNTARY COMMITMENTS

MSD voluntarily commits to:

- ⌘ Educating the public regarding Pollution Prevention, as appropriate; and,
- ⌘ Hold a minimum of one formal Stakeholder meeting per year.

3. ASPIRATIONS

MSD aspires to:

- ⌘ Reduce pollutant loadings for pollutants of concern **below Performance Measure threshold levels** defined in Section VII.B., on an average annual basis. This aspiration excludes acts of God (e.g., flood), other unforeseeable events, and events that are otherwise uncontrollable within the scope of MSD's Superior Environmental Performance strategy.
- ⌘ Maintain pollutant loadings for those pollutants not specifically designated as pollutants of concern **below Performance Measure threshold levels** defined in Section IX.D., on an average annual basis. This aspiration excludes acts of God (e.g., flood), other unforeseeable events, and events that are otherwise uncontrollable within the scope of MSD's SEP strategy.
- ⌘ Develop a more holistic watershed management approach for the improvement of water quality.

B. EPA Intentions

EPA will continue to facilitate, in a timely manner, and through use of Project XL and the regulatory flexibility it provides, the reinvention on the MSD pretreatment program for the Jeffersontown WWTP.

EPA will review MSD's Pretreatment Program reinvention to determine whether they will result in superior environmental performance.

EPA will review MSD's performance of the activities in this Agreement.

EPA will continue to provide resources to maintain the schedules set forth in this Agreement.

EPA intends to propose and issue (subject to applicable procedures and review of public comments) a rule amending 40 CFR 403, to allow modifications to the Jeffersontown WWTP pretreatment program as necessary for full implementation of this project.

EPA intends to work with the KYDEP to issue (also subject to applicable procedures and review of public comments) a NPDES permit or a permit modification under 40 CFR Part 122, Clean Water Act Section 402 and Title 401 of the Kentucky Administrative Regulations, Chapter 5, Sections 050-080 that applies specifically to MSD's Jeffersontown WWTP. The permit will also provide for withdrawal or termination and a post-Project compliance period consistent with the Agreement.

C. KYDEP Intentions

KYDEP will continue to facilitate, in a timely manner, the reinvention on the MSD pretreatment program for the Jeffersontown WWTP. KYDEP will aid EPA in the review of MSD's Pretreatment Program reinvention to determine whether they will result in superior environmental performance.

KYDEP will aid EPA in the review MSD's performance of the activities in this Agreement.

KYDEP will continue to provide resources to maintain the schedules set forth in this Agreement.

KYDEP intends to propose and issue (subject to EPA's proposal and applicable procedures and review of public comments) a rule, amending Title 401 of the Kentucky Administrative Regulations, Chapter 5, Sections 050-080, to allow modifications to the Jeffersontown WWTP pretreatment program as necessary for full implementation of this project.

KYDEP intends to issue (also subject to applicable procedures and review of public comments) a NPDES permit or a permit modification under 40 CFR Part 122, Clean Water Act Section 402 and Title 401 of the Kentucky Administrative Regulations, Chapter 5, Sections 050-080 that applies specifically to MSD's Jeffersontown WWTP. The permit will also provide for withdrawal or termination and a post-Project compliance period consistent with the Agreement.

D. Project XL Performance Targets for MSD

MSD has developed with the Stakeholders, and EPA and KYDEP have agreed on, specific criteria to determine the success of this project:

1. Collecting more meaningful data;
2. Managing a dynamic Pretreatment Program;
3. Achieving reductions in discharge of Environmental Pollutants of Concern;
4. Monitoring Pollutants NOT of Specific Concern at or below stakeholder approved Performance Measure Threshold Levels;
5. Watershed improvements realized by reinvested Industry resources;
6. Utilizing MSD resources in most efficient manner.

Ultimate success will be maintaining all pollutants below Performance Measures Threshold Levels, realizing improved watershed health and reducing economic burden.

E. Proposed Milestones

Milestones for the project include the following:

- ✧ Performance measure monitoring, which began in October 1998, will continue throughout the

duration of this project;

- ✧ Eligibility of industrial users will be determined executed within three months of the effective date of the Pretreatment Program Modifications;
- ✧ Site-specific agreements with eligible industries will be executed within six months of the effective date of the Pretreatment Program Modifications;
- ✧ SIU permits will be issued within six months of the effective date of the Pretreatment Program Modifications;
- ✧ Compliance of industries will be reviewed on an annual basis;
- ✧ Pollutants of Concern will be updated annually.

X. Project Implementation

A. Legal Basis

This Agreement states the intentions of the Parties with respect to MSD's Project XL proposal for its pretreatment program. The Parties have stated their intentions seriously and in good faith, and expect to carry out their stated intentions.

The Agreement does not create or modify legal rights or obligations and is not a contract or a regulatory action such as a permit or a rule and is not legally binding or enforceable against any Party. This Agreement expresses the plans and intentions of the Parties without making those plans and intentions into 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 parties intend to follow with respect to dispute resolution and termination under the Agreement. However, while the parties fully intend to adhere to these procedures, they are not legally obligated to do so.

Because this Agreement does not create binding legal requirements, EPA and/or KYDEP intend to propose for public comment any rules, permit modifications or legal mechanisms needed to implement portions of this project. Any rules, permit modifications or legal mechanisms that implement this project will be effective and enforceable as provided in applicable law.

This Agreement is not a "final Agency action" by the EPA because this Agreement 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. No action or omission by any Party that is at variance with a provision or provisions of this Agreement, or that is alleged to be at variance with a provision or provisions of this Agreement, can serve as the basis for any claim for damages, compensation or other relief against any Party.

B. Applicability of Other Laws or Regulations

Except as provided in any rules, compliance orders, permit provisions or other implementation mechanisms that may be adopted to implement the Project, the parties do not intend that the Project will modify existing or future laws or regulations.

C. Authority to Enter Agreement

By signing this Agreement, EPA, KYDEP and MSD acknowledge and agree that they have the respective authorities, discretion, and resources to enter into this Agreement and to implement all of the applicable provisions of this Agreement.

D. Rights to Other Legal Remedies Retained

Except as expressly provided in the legal implementation mechanisms described above in Section IX, nothing in this Agreement affects or limits MSD's, EPA's or KYDEP's legal rights. These rights may include legal, equitable, civil, criminal or administrative relief regarding the enforcement of present or future applicable federal and state code, rules, regulations, or permits.

Although MSD does not intend to challenge actions implementing the project that are consistent with this Agreement, MSD reserves any right it may have to appeal or otherwise challenge an EPA action implementing the project. Nothing in this Agreement is intended to limit MSD's right to administrative or judicial appeal or review of legal mechanisms in accordance with the applicable procedures for such review.

E. Reporting/Annual Reports

For the duration of this Project XL Agreement, MSD will provide an annual Performance Assessment Report report to EPA and, upon request, to Stakeholders. MSD will make all backup data and reports available to Stakeholders on request. MSD will post the reports on its Internet web site at <http://www.msdlouky.org>. The first Performance Assessment Report report will be due April 1, 2001.

In each annual report, MSD will provide a summary of environmental performance data related to the performance measures and will describe MSD's progress toward development of performance measures and redevelopment of the pretreatment program as described in this Final Project Agreement. The report should describe progress on all of the enforceable and voluntary commitments contained in Section IX.C of this Agreement as well as information on the status of the schedule goals in Section IX.D. Other reports produced as part of the project which address these subjects (such as reports for the 104(b)(3) Performance Measures Grant may be used as appropriate. An annual public meeting will be scheduled during the month of April of each year beginning April 2001. Reasonable advance meeting notice will be provided to the Agencies and Stakeholders. MSD or its representative will present the report to the Stakeholders prior to the public meeting.

1. MID-YEAR REPORTS

MSD will also submit a written report at mid-year. The mid-year report will include an update of the status of pretreatment program redevelopment and implementation. The mid-year report will be provided by October 1 for each of the first two years after Agreement approval, starting October 1, 2001. After two years, and upon agreement by the Parties, reporting may be extended to annual reporting as described above. The mid-year report will be submitted to the EPA Region 4 Administrator and to the KYDEP Commissioner.

2. REGULATORY REPORTING

One of the Parties' goals is to reduce the burden of unnecessary paperwork and obtain resulting cost savings without compromising the integrity of regulatory controls. In addition, the project is intended to

simultaneously enhance Stakeholder ability to understand the environmental benefits of the project and track the project's compliance with regulatory requirements and goals articulated in this Agreement. At this time, however, no flexibility in regulatory reporting requirements has been specifically identified. EPA and MSD will work with other regulating entities (the Commonwealth of Kentucky) to identify opportunities for consolidation of reporting requirements to move toward attainment of these goals. Any reporting requirements not specifically identified in this Agreement are unaffected.

3. USE OF INFORMATION

Nothing in this Agreement reduces or affects MSD's rights to copyright, patent, or license the use of any proprietary or business confidential information or data contained in or created in the course of the implementation of its vision.

F. Unavoidable Delay

This section applies to provisions of this Agreement that do not encompass legal implementing mechanisms. Legal implementing mechanisms, such as permit provisions or rules, will be subject to modification or enforcement as provided in applicable law.

Unavoidable delay for purposes of this Agreement means any event arising from causes beyond the control of any Party that delays or prevents the implementation of the project described in this Agreement despite the Parties' best efforts to put their intentions into effect. An unavoidable delay can be caused by, for example, fire or acts of war.

When any event occurs that may delay or prevent the implementation of this project, whether or not it is unavoidable, the Party with knowledge of the event will provide verbal notice to the designated representatives of the remaining Parties. Within ten (10) days of the Party providing initial notice to the event, a written confirmation will be provided. The confirming notice will include the reason for the delay, and the party's rationale for considering such a delay to be unavoidable. The Party providing notice will include appropriate documentation supporting the claim that the delay was unavoidable.

If the Parties, after reasonable opportunity to confer, agree that the delay is attributable to an unavoidable delay then the time for performance of obligations that are affected will be extended to cover the period lost due to the delay. If the Parties agree, the Parties will document their Agreement in a written amendment to this Agreement. If the Parties do not agree then the following provisions for Dispute Resolution will be followed.

G. Dispute Resolution

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

In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties may invoke non-binding mediation by setting forth the nature of the dispute with a proposal for resolution in a letter submitted to the Regional Administrator for EPA Region 4. Prior to issuance of an opinion, the Regional Administrator may request an additional, informal mediation meeting. If so requested, the Regional

Administrator will attempt to resolve the dispute by issuing a written opinion. Any opinion, verbal or written, expressed by the Regional Administrator, will be non-binding and will not constitute final EPA action.

H. Duration

This Agreement will be in effect for the period of five years, beginning when Pretreatment Program Modifications are made effective, unless it is terminated or extended. Prior to the end of the five year period (at least 180 days), MSD may apply for a renewal or extension of this project. A renewal or extension of the project period will be treated as a modification of the Agreement, and is addressed under Section C. This Agreement does not affect the term of any permit or rule or other legal implementing mechanism.

XI. Modification of Agreement/Reopener

This Agreement may be modified by mutual agreement of all parties at any time during the minimum Project term. The parties recognize that certain modification to the Project may necessitate modification of any existing implementation mechanisms or may require development of new implementation mechanisms, as provided in Section IX. In that case, EPA, KYDEP and MSD expect to work together to identify and pursue any modifications or additions to the implementation mechanisms required, in accordance with procedures applicable to the modification of the relevant implementation mechanism. To the extent that the parties agree to make a material modification of the Project, appropriate notice of such modification, as set forth in this Agreement and the implementing mechanism, and an appropriate opportunity to participate in the process will be provided to stakeholders and interested parties.

In recognition that the Project is an experiment designed to test new approaches to environmental protection, and of the uncertain nature of the environmental benefits and costs associated with the activities to be undertaken in this Project, the parties to this Agreement agree to evaluate the appropriateness of a modification or "reopener" to the Agreement according to the provisions set forth below.

1. During the minimum Project term, MSD may seek to reopen and modify this Agreement in order to address matters covered in the Agreement, including failure of the Project to achieve superior environmental results, or the enactment or promulgation of any environmental, health or safety law or regulations after execution of this Agreement which renders this Project legally, technically, or economically impractical. To do so, MSD will submit a proposal for a reopener under this Section to EPA and KYDEP for their consideration. EPA and KYDEP will review and evaluate the appropriateness of such proposal submitted by MSD. EPA and/or KYDEP may also elect to initiate termination under Section XII of this Agreement, which shall supersede application of this Section.
2. In determining whether to reopen and modify the Agreement in accordance with any reopener proposal(s) submitted by MSD under this Section, EPA will base their decision upon the following: (a) whether the proposal meets the Project XL criteria in effect at the time of the proposal; (b) the environmental benefits expected to be achieved by the proposal; (c) the level of emissions or effluent included in the proposal; (d) other environmental benefits achieved as a result of other activities under the proposal, and (e) any net adverse environmental impacts expected to occur as a result of the proposal.
3. All parties to the Agreement will meet within ninety (90) days following submission of any reopener

proposal by MSD to EPA (or within such shorter or longer period as the parties may agree) to discuss the Agencies' evaluation of the reopener proposal. If, after appropriate stakeholder involvement, the Agencies support reopening of this Agreement to incorporate the proposal, the parties will subject to any required public comment) take steps necessary to amend the Agreement. Concurrent with the amendment of this Agreement, EPA will take steps consistent with Section XII to implement the proposal.

XII. Withdrawal or Termination

A. Expectations Concerning Withdrawal or Termination

This Agreement is not a legally binding document and any Party may withdraw from the Agreement at any time. However, it is the desire of the Parties that this Agreement should remain in effect through the expected duration, and be implemented as fully as possible. Accordingly, it is the intent of the Parties that they will not withdraw and that this project will not be terminated unilaterally during its expected duration of five years unless one of the conditions set forth below occurs:

1. Failure (taking into account its nature and duration) by any Party to (a) comply with the provisions of the implementation mechanisms for this project, or (b) act in accordance with the provisions of this Agreement.
2. Discovery of the failure of any Party to disclose material facts during development of the Agreement.
3. Failure of the project to provide superior environmental performance consistent with the provisions of this Agreement.
4. Enactment or promulgation of any environmental, health or safety law or regulations after execution of this Agreement which renders the project legally, technically or economically impracticable.

In addition, EPA does not intend to withdraw from the Agreement based on MSD's failure to act consistently with this Agreement or the implementation mechanisms, unless such action constitutes a substantial failure to comply with intentions expressed in this Agreement and the implementation mechanisms, taking into account its nature and duration. MSD will be given notice and a reasonable opportunity to remedy any failure to act consistently prior to an EPA withdrawal. If there is a disagreement between the Parties over whether a substantial failure to comply exists, the Parties will use the dispute resolution mechanism identified in Section X.G. of this Agreement. EPA, along with KYDEP, retain their discretion to address the failure through existing enforcement authorities, including withdrawal or termination of this project, as appropriate.

B. Withdrawal or Termination Procedures

The Parties agree that the following procedures will be used to withdraw from or terminate the Project prior to the minimum project term, and further that the implementation mechanism(s) shall provide for withdrawal or termination consistent with these procedures:

1. Any Party desiring to terminate or withdraw from the Project is expected to provide written notice of its intent to withdraw or terminate to the other Party at least sixty (60) days prior to withdrawal or termination.

2. If requested by any Party during the sixty (60) day period noted above, the dispute resolution proceedings provided in this Agreement may be initiated to resolve any dispute relating to the intent to withdraw or terminate. If, following any dispute resolution or informal discussion, the Party still desires to withdraw or terminate, the withdrawing or terminating Party will provide written notice of final withdrawal or termination to the other Party.
3. The withdrawal or termination procedures set forth in this Section apply to the decision to withdraw or terminate participation in the Agreement. Procedures to be used in modifying or rescinding the legal mechanisms used to implement the Project will be governed by the terms of those legal mechanisms and applicable law.

XIII. Return to Compliance

Failure to achieve anticipated environmental performance or early termination will result in an orderly return to compliance with regulatory requirements which would have been in effect absent the flexibility provided through Project XL as described below.

A. Return to Compliance at Early Termination

In the event of a termination not based upon the end of the project term, there will be an Interim Compliance Period to provide sufficient time consistent with permit modification procedures set forth in 40 CFR Part 122.1 et seq. for MSD to come into compliance with the regulations deferred under this project. By the end of the Interim Compliance Period, MSD will comply with the applicable standards set forth in 40 CFR Part 403 and 401 KAR 5:057. During the Interim Compliance Period, EPA and/or KYDEP will issue an order, permit, or other legally enforceable mechanism establishing an implementation schedule for MSD's orderly return to compliance as soon as practicable, but no later than 12 months from the date of termination. The Interim Compliance Period is 12 months from the date on which EPA or MSD provides written notice of final termination of the project in accordance with this Agreement. It is MSD's intent to be in full compliance with all applicable requirements as soon as is practicable, as will be set forth in the implementation schedule.

B. Return to Compliance at End of Project Term

In the event of termination based upon the end of the project term, MSD will achieve compliance with all applicable requirements by the end of the project term. MSD is expected to anticipate and plan for all activities necessary to come into compliance upon completion of the project in advance of the end of the project term. MSD may request a meeting with EPA and KYDEP to discuss the timing and nature of any actions that MSD will be required to take to come into compliance with regulatory requirements that have been deferred under this project and should request such a meeting at least 60 days in advance of the anticipated completion date of the project term. The parties expect that they will meet within thirty days of receipt of MSD's written request for such a discussion. At and following such meeting, the parties expect that they will engage in reasonable good faith discussions to identify the extent to which requirements deferred under this project will apply after termination of the project.

XIV. Periodic Review

The Parties will confer, on a periodic basis, to assess their progress in implementing this project. Unless it is agreed otherwise, the date for Periodic Performance Review Conferences will occur concurrently with the annual Stakeholder meeting. No later than thirty (30) days following a Periodic Performance Review Conference, MSD will provide a summary of the minutes of that conference to all direct Stakeholders. Any additional comments of participating Stakeholders will be reported to EPA and KYDEP.

XV. Signatories and Effective Dates

A. The signatories to this Agreement will be the EPA Regional Administrator for Region 4, the Commissioner of the KYDEP and the Executive Director of MSD.

B. Each party has designated a representative to serve as its contact person for inquiries concerning the Project. These representatives are as follows:

1. For MSD: Sharon K. Worley, P.E., Project Manager
Metropolitan Sewer District
700 West Liberty Street
Louisville, KY 40203
Phone: (502) 540-6464;
Fax: (502) 540-6563
Email: worley@msdlouky.org
2. For EPA: Melinda Mallard Greene, Pretreatment Coordinator
U.S. EPA Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street
Atlanta, GA 30303
Phone: 404-562-9771;
Fax: 404-562-9728
Email: mallard.melinda@epa.gov
3. For Kentucky: Allan Bryant
Kentucky Department for Environmental Protection
Division of Water
Frankfort Office Park
14 Reilly Road
Frankfort, KY 40601
Phone: 502-564-2225 ext. 521
Email: Allan.Bryant@mail.state.Ky.us

C. This Agreement is effective on the date it is dated and signed by EPA's Regional Administrator for Region 4, the Commissioner of the KYDEP, and the Executive Director of MSD.

John H. Hankinson, Jr.
Regional Administrator
U.S. Environmental Protection Agency, Region 4

Date: _____

Robert Logan
Commissioner
Kentucky Department for Environmental Protection

Date: _____

Gordon R. Garner
Executive Director
Louisville and Jefferson County MSD

Date: _____

LIST OF APPENDICES

Appendix A:	Chenoweth Run Watershed Map
Appendix B:	List of Stakeholders
Appendix C:	Stakeholder Meeting Summary
Appendix D:	Stakeholder Participation Plan
Appendix E:	Monitoring Frequency Plan
Appendix F:	AMSA Recommended Pretreatment Program Performance Measures

Appendix A

CHENOWETH RUN WATERSHED MAP

Appendix B

Chenoweth Run/J-Town XL Project Stakeholder Meeting Invitees List

(NOTE: Work Group volunteers are noted with an asterisk.)

Mr. Jeff Frank, Vanguard Sales, Audobon Society*

Ms. Kathy Lowrey, Association of Chenoweth Run Environmentalists (ACRE)

Ms. Teena Halbig, Floyds Fork Environmental Association (FFEA)

Mr. Richard Meisenhelder, University of Louisville KY Pollution Prevention Center (KPPC)*

Mr. John DeReamer, Chase Environmental Group, Inc.; Greater Louisville Inc. Water Subcommittee

Mr. Allan Bryant, Department of Environmental Protection Division of Water*

Mr. Bob Thieneman, Homebuilders Association

Mr. Richard Dunn, City of Jeffersontown

Mr. Tom FitzGerald, Kentucky Resources Council

Mr. Frank Elsen, Kentucky Waterways Alliance

Mr. Dave Liest, Department of Environmental Protection

Mr. Paul Fitch, Department for Environmental Protection*

Mr. David Wicks, JCPS Center for Environmental Education

Mr. Bud Hixson, Friends of Beargrass Creek

Ms. Winnie Hepler, Concerned Environmentalist*

Mr. Bruce Scott, Friends of Beargrass Creek

Mr. John Cosby, Jeffersontown Development Council

Ms. Melinda Mallard-Greene, US EPA, Region 4

Ms. Michelle (Glenn) Cook, US EPA, Region 4, Project XL Coordinator

Mr. Steve Stahl, Beechmont Press*

Mr. Kent Chastain and Mr. Steve Hillman, Georgia Gulf Corporation

Mr. Edward Fortener, DCE, Inc.

Mr. H. Livingston Lyons, IV, H.L. Lyons Co.

Mr. Pat Mullaney, Innovative Electronis Design

Mr. Pat Schoenbachler, Jones Plastic & Engineering Corp.

Mr. Charles Schutz, Waukesha Cherry- Burrell

Mr. William Blake, White Castle Distributing, Inc.

Mr. Adam Burckle, Adam Matthews, Inc.

Mr. Butch Gaddie, Clarke Detroit Diesel- Allison

Mr. Bryan Angel, Construction Machinery Corp.

Mr. Brian Barnes, Cummins Cumberland Inc.

Mr. Gary Grove, Dispensers Optical Service Corp.

Ms. Stacey Kerby, Louisville Tractor

Mr. Barry Cummings, Midland Communications

Ms. Kathy Becht, Neff Packing Solutions, Inc.

Mr. Steve Day, Overnite Transportation Co., Inc.

Mr. Greg Dutton, Print- Tex U.S.A.

Mr. Gary Russell, RussTech Admixtures, Inc.

Mr. David Powell, Sr., Ryder Truck Rental Inc.

Mr. Jermey Wilcox, Southern Standard Carton Inc.

Mr. Larry Slauenwhite, The Kroger Co. Warehouse

Mr. Gregory Buchheit, Vivid Impact

Mr. Ernie Grayson, Winston Products Co.

Mr. Richard Jenkins, United Catalysts*

Ms. Janet Kean, ACRE

Ms. Jackie Swigart, Jackie Swigart, Inc.

Also, from MSD: Mike Sweeney, Sharon Worley*, Greg Ratliff*, Sue Green*, Marsha Jenkins, Vicki Coombs, Derek Guthrie,

Roddy Williams, Debbie Newton, Tom Spalding

Appendix C
List of Stakeholder Meetings and Stakeholder Work Group Meetings

DATE	MEETING TYPE	SUBJECT OF DISCUSSION
December 8, 1998	Stakeholder Meeting	Orientation Presentation: The Road to Improved Water Quality
April 22, 1999	Stakeholder Meeting	Groundrules Overview of Project Proposal Stakeholder Involvement
October 26, 1999	Stakeholder Meeting	Convening Report Role of the Stakeholder Phase 1 Final Project Agreement
October 26, 1999	Public Meeting	Project Overview; XL Program; Q&A
January 25, 2000	Stakeholder Meeting	National & Local Pretreatment Program Overview Proposed Program Modifications Presentation of Preliminary Data
March 2, 2000	Stakeholder Work Group Meeting	Performance Measures Regulatory Revisions
March 30, 2000	Stakeholder Work Group Meeting	Performance Measures Ideas for EMPACT Grant
May 9, 2000	Stakeholder Meeting	Performance Measures Regulatory Revisions Wastewater Treatment Plant Operation
5/24/00	Stakeholder Work Group Meeting	Pollutants of Concern Superior Environmental Performance
6/21/00	Stakeholder Work Group Meeting	Pollutants of Concern Superior Environmental Performance_ Accountability
7/27/00	Stakeholder Work Group Meeting	Final Project Agreement

8/8/00	Stakeholder Meeting	Final Project Agreement
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Appendix D

STAKEHOLDER PARTICIPATION PLAN

INTRODUCTION

The US EPA initiated Project XL to develop innovative approaches for addressing environmental issues. Under Project XL, MSD plans to redesign its pretreatment program at the Jeffersontown Wastewater Treatment Plant to better establish links between existing wastewater programs and to move towards a more holistic watershed protection strategy in the Chenoweth Run Watershed.

MSD and EPA consider Stakeholder involvement to be essential for the success of this Project. Significant effort has already been made to identify and communicate with interested stakeholders. This Stakeholder Participation Plan was developed by MSD and is intended to supplement those previous activities and to describe methods by which future public input can be solicited and incorporated into the project.

GOALS AND OBJECTIVES

A goal of this Stakeholder Participation Plan is to ensure that interested members of the public are afforded the opportunity to participate in the project. MSD will make every effort to provide Stakeholders with adequate information and data to understand the options available and to provide input into decisions about the future of the XL project. In keeping with this goal, an assessment of stakeholder issues was conducted by bringing in the Meridian Institute, a neutral non-profit mediation and facilitation organization located in Dillon, Colorado. (For a copy of the report, refer to EPA's Project XL webpage www.epa.gov/projectxl.)

As requested by past participants, meeting summaries will be provided prior to the next meeting. Information to be discussed will be distributed in a timely manner so that all interested Stakeholders can be prepared for the meeting. Efforts have been made and will continue to be made, to ensure that the stakeholder group is diverse and representative of community interests. As the need arises for tours or additional public input, the Stakeholders will assist in planning those activities.

STAKEHOLDER CATEGORIES

DIRECT PARTICIPANTS are those individuals committed to the goals of the XL Project who will dedicate their time and energy to understanding the importance of this Project to the public. Direct participants will help develop the project and evaluate project performance. This group should be a manageable size to enable productive discussion. This group includes stakeholders that wish to make written comments, participate in planning actions for the group, make site visits, and propose and present issues of concern. Stakeholders provide information on the preferences of the community and may also identify new issues. COMMENTORS are those who have an interest in the XL Project but who do not wish to participate as intensively as Direct Participants. It is an expanded committee that receives all information distributed to the Direct Participants and may provide feedback, as appropriate.

FINAL PROJECT AGREEMENT GROUP consists of US EPA, Kentucky Division of Water, MSD and other volunteer representatives of the Stakeholder group who will help develop the Final Project Agreement document.

COMMUNICATION METHODS

In order to accomplish the goal of broad public involvement in the XL Project, MSD has agreed to provide data that is needed to assist in understanding the project. Appropriate use of this data for the project requires a dedicated group of Stakeholders to attend meetings and provide their input. As stated earlier, agendas, discussion documents and meeting summaries will be mailed prior to the meetings. Upon

request, Stakeholders will be provided agenda time to present information relevant to the project. Such requests for agenda time must be submitted to the facilitator in a timely fashion prior to the meeting.

MSD may use its existing publications (such as Streamline) and a newsletter to the Jeffersontown residents to inform stakeholders and the community about the XL project. Streamline is published periodically, reaches over 3,000 customers and generally provides information about the pretreatment program. Other methods which may be utilized to inform the public about the project will be the local newspapers and fact sheets.

Also, EPA and MSD have established public websites with information about this project. The EPA site provides general Project XL information, while the MSD site will provide access to announcements, project background, documents, meeting summaries, project developments and implementation status as well as an internet address for comment submittal. The Internet addresses are www.msdlouky.org and www.epa.gov/projectxl. EPA, MSD and KY DNREP will also be repositories for hard copies of relevant information.

Information about the project can be obtained from any of the following:

MSD	Sharon Worley, 502-540-6464
EPA Region 4	Melinda Greene 404-562-9771
EPA Headquarters	Chad Carbone, 202-260-4296
KY DOW	Allan Bryant, 502-564-2225, x521

Appendix E Monitoring Frequency Plan

The initial Monitoring Frequency Plan follows. This plan will be adjusted throughout the project, as appropriate, with Stakeholder input.

Monitoring for Performance Measures:

SAMPLING LOCATION	CURRENT MONITORING FREQUENCY	MINIMUM MONITORING FREQUENCY
WTP EFFLUENT		
Conventionals (BOD, TSS, NH3)	3X/week	3X/week
Biomonitoring	Quarterly	Quarterly
Toxics – Metals	Quarterly	Monthly
Toxics - Organics	Quarterly	Quarterly
Aesthetics	Daily	Daily
BIOSOLIDS		
Metals	Quarterly	Monthly
Maintenance Concerns	Daily	

SAMPLING LOCATION	CURRENT MONITORING FREQUENCY	MINIMUM MONITORING FREQUENCY
WTP EFFLUENT		
Conventionals (BOD, TSS, NH3)	3X/week	3X/week
Toxics – Metals	Quarterly	Monthly
Toxics - Organics	Quarterly	Quarterly
Collection System Points (6 total)		
Conventionals (BOD, TSS, NH3)	Quarterly	Quarterly
Toxics	Quarterly	Quarterly

Appendix F

AMSA's Recommended Performance Measures for Pretreatment Programs

Source: The Association of Metropolitan Sewerage Agencies, *Performance Measurement & National Industrial Wastewater Pretreatment Program*, July 1994

Measurements of Trends in Pollutant Loadings and Concentrations Measurements of Trends in Pollutant Loadings and Concentrations

1. Trends in mass loadings of metals and other toxic and nonconventional pollutants in POTW effluent; and comparisons to allowable levels in NPDES permits where such limits exist.
2. Trends in emissions of hazardous air pollutants to air, particularly for volatile pollutants from unit processes and metals from incineration.
3. Trends in mass loadings of metals and other toxic contaminants in POTW influent, as a total, and, where possible, divided into domestic, commercial, industrial, and storm water contributions to the total; and comparison to allowable loadings as calculated during the headworks analysis, where such an analysis is available.
4. Reductions in annual average metals levels in biosolids, with an indication of any trend towards or compliance with the most stringent nationwide biosolids standards.

Measures of Compliance with Requirements

5. Percent compliance with NPDES permit discharge requirements.
6. For each POTW, whether the POTW is failing WET (Whole Effluent Toxicity) tests due to industrial sources.
7. Percent compliance with non-pathogen biosolids quality limits for the management method currently used, with sites divided into categories based on applicable biosolids regulations.
8. Percent compliance at each IU with categorical limits.
9. Percent compliance at each IU with all permit limits.
10. Percent of IUs in compliance with reporting requirements.
11. For each control authority, No. and % of IUs in SNC for the current year that were also in SNC last year.

Procedural or Programmatic Measures

12. Whether an effective method is being used to prevent, detect, and remediate incidents of violations of the specific pretreatment prohibitions attributable to industrial or commercial sources (e.g., fire and explosion hazards, etc.)
13. Whether an effective procedure is being used to identify non-domestic users and to update the list of regulated users.
14. Number of sample events conducted by the control authority per SIU per year, and percent of all sample events that were conducted by the control authority.
15. Number of inspections per SIU per year.
16. Whether the control authority has site-specific, technically based local limits, based on the most recent regulatory changes and latest NPDES permit requirements; or a technical rationale for the lack of such limits.
17. Whether the POTW or control authority has significant activities or accomplishments that demonstrate performance beyond traditional goals and standards.
18. Whether or not POTWs have an effective public involvement program in place.