

US EPA ARCHIVE DOCUMENT



October 18, 2007

Ms. Sandra Panetta
Mail Code: 1807T
Office of Policy, Economics and Innovations
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: NBC Project XL – Final Project Close Out Report

Dear Ms. Panetta:

Please accept this letter along with the attached “Final Project Close-Out Report” as a formal request by the Narragansett Bay Commission (NBC) for termination from Project XL.

In October of 1999 the Narragansett Bay Commission (NBC) submitted a Project XL proposal to EPA focusing on industrial pretreatment requirements and the application of these requirements to industrial users that have a demonstrated history of superior environmental performance. As written, existing regulations require that all Significant Industrial Users (SIUs) comply with very specific requirements regardless of their environmental efforts and accomplishments. NBC believed a greater level of environmental protection could be attained by redirecting regulatory efforts toward companies with poor environmental track records (Tier II Companies) and allowing good performers (Tier I Companies) to operate with less regulatory oversight.

In August 2000 NBC entered into a Final Project Agreement (FPA), with EPA and the Rhode Island Department of Environmental Management (RIDEM), to allow for the implementation of NBC's Project XL. On October 6, 2000 EPA published a Proposed Rule on Project XL in the Federal Register (Vol. 65 F.R. 59738) and on October 3, 2001 EPA publishes a Final Rule on Project XL in the Federal Register (Vol. 66 F.R. 50334). The FPA for NBC established the following regulatory flexibility options:

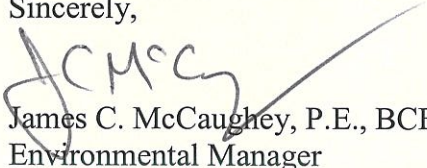
- (1) Reduced self-monitoring requirements for ten (10) categorical industrial users (CIUs) for Tier I facilities,
- (2) Reduced inspection frequency for ten (10) CIUs Tier I facilities from once every year to once every two years, and
- (3) Allow participating CIUs Tier I facilities to not sample for pollutants not expected to be present.

Final implementation of NBC's Project XL Program required modification of RIDEM Pretreatment Regulations and in June 2003 RIDEM developed draft regulations for internal review. Unfortunately these draft regulations were never adopted and therefore the NBC Project XL Program could not be fully implemented or tested.

While NBC Project XL was never fully implemented NBC's work with regulatory flexibility, both before and after Project XL, did result in many environmental benefits and improvements. The attached report summarizes NBC's work on these various projects and programs and gives some indication of how EPA's Project XL helped to catalyze some of these efforts and accomplishments.

In conclusion the NBC commends EPA on its efforts with respect to Project XL and remains hopeful that future such efforts will continue. If you have any question or comments please feel free to call me at 401-461-884 x 352.

Sincerely,



James C. McCaughey, P.E., BCEE
Environmental Manager

Cc: Robert DiSaia, RIDEM Division of Water Resources

**Narragansett Bay Commission
Project XL – Final Project Close-Out Report
September 2007**

NBC Project XL

In 1995 the Environmental Protection Agency (EPA) established Project XL (eXcellence and Leadership) – a program designed to identify and test new and better ways of protecting public health and the environment. Through Project XL EPA asked industry, communities, environmental advocacy groups, states, and municipalities for ideas and suggestions on how to improve current federal environmental protection efforts and offered to pilot test viable suggestions utilizing rule changes and regulatory modifications procedures if necessary. While EPA has always allowed for stakeholder involvement in the development of rules and regulations this was the first time a commitment was made to modify existing rules to allow for experimentation with alternate regulatory/pollution prevention approaches.

In October of 1999 the Narragansett Bay Commission (NBC) owner/operator of the State of Rhode Island's two largest wastewater treatment facilities submitted a Project XL proposal to EPA focusing on industrial pretreatment requirements and the application of those requirements to industrial users that have a demonstrated history of superior environmental performance. As written, regulations at that time required all Significant Industrial Users (SIUs) to comply with very specific regulatory requirements regardless of their environmental efforts and accomplishments. NBC believed a greater level of environmental protection could be attained by redirecting regulatory efforts toward companies with poor environmental track records (Tier II Companies) and allowing good performers (Tier I Companies) to operate with less regulatory oversight.

The basic premise of the NBC Project XL Program was simple and logical – establish a tiered set of environmental performance standards by which regulated NBC industrial and commercial users would be measured. The top tier performers within the program would be rewarded with regulatory flexibility such a fewer inspections and less oversight allowing NBC regulatory staff to focus more regulatory and technical assistance efforts on the lower tier performers. The actual implementation of this approach, however, was complicated by state and federal regulatory modification procedures.

In August 2000 NBC entered into a Final Project Agreement (FPA), with EPA and the Rhode Island Department of Environmental Management (RIDEM), to allow for the implementation of NBC's Project XL. On October 6, 2000 EPA published a Proposed Rule on Project XL in the Federal Register (Vol. 65 F.R. 59738) and on October 3, 2001 EPA publishes a Final Rule on Project XL in the Federal Register (Vol. 66 F.R. 50334). The FPA for NBC established the following regulatory flexibility options:

- (1) Reduce self-monitoring requirements for ten (10) categorical industrial users (CIUs) for Tier I facilities,

- (2) Reduce inspection frequency for ten (10) CIUs Tier I facilities from once every year to once every two years, and
- (3) Allow participating CIUs Tier I facilities to not sample for pollutants not expected to be present.

NBC's Project XL Program was designed as an experimental pilot project that had the potential to significantly change environmental regulatory approaches and procedures on a national level. In developing this program NBC worked closely with a stakeholder group that included representatives from: RIDEM, EPA, the Rhode Island Council of Electroplaters (RICE), the American Electroplaters and Surface Finishers Society (AESF), NBC's Citizen's Advisory Committee (CAC), Save the Bay and other interested parties.

In addition to the federal rule change final implementation of NBC's Project XL Program also required modification of RIDEM Pretreatment Regulations and in June 2003 RIDEM developed draft regulations for internal review. These draft regulations were never issued and the NBC Project XL Program was thus never fully implemented and subsequently never tested.

While implementation of NBC's Project XL Program was never fully realized NBC did investigate various other ways of using pollution prevention, education and limited regulatory flexibility to achieve "beyond Compliance" environmental goals through several formalized initiatives including:

- I. MF 2000 Program
- II. NBC's CLEAN P2 Program
- III. The National Strategic Goals Program
- IV. NBC's Environmental Management System Education Program
- V. Metal Products and Machinery (MP&M) Audits Program
- VI. EPA's Pretreatment Streamlining Rule

The remainder of this report contains brief summaries of these various programs - some of which pre-dated Project XL and some which were a direct result of NBC's work on Project XL.

I. MF 2000 Program

Project Background

In December of 1994 then EPA Administrator Carol Browner established the Common Sense Initiative - challenging industry and government environmental agencies to work together to develop "Cleaner, Cheaper, and Smarter" ways of achieving a clean environment while enhancing economic growth. In answer to this challenge the NBC began working with several representatives of the local metal finishing industry, the Rhode Island Council of Electroplaters (RICE), EPA New England, and the Rhode Island Department of Environmental Management (RIDEM) to identify ways of incorporating

Common Sense Initiative ideas and ideologies into every day environmental management practices within the State of Rhode Island. In October of 1997, the NBC was awarded a \$35,000 grant from EPA's Pollution Prevention Incentives for States (PPIS) Program to develop a regulatory flexibility program named "Metal Finishing 2000" within the NBC servicing district.

NBC's Metal Finishing 2000 Program was designed to reward top environmental performing metal finishing companies (the best of the best) with regulatory flexibility. Participating companies were to be allowed to operate and expand their production process with very limited NBC regulatory oversight. Companies participating in this program were offered flexibility with very specific NBC regulatory requirements. No flexibility was given with respect to state and/or federal environmental regulations, however, as part of this program NBC's wastewater discharge regulatory activities were to be made more flexible with respect to growth and expansion of company operations and as such regulatory inspections and reporting requirements were minimized to the extent possible. By rewarding these companies for their environmental achievements NBC had hoped to see: increased use of innovative environmental practices, a strengthening of Rhode Island's economy through a more competitive metal finishing industry, and more metal finishing companies striving for this level of environmental performance.

Project Results

Six individual metal finishing companies participated in NBC's Metal Finishing 2000 Program. Each of these companies demonstrated that there are clear and measurable differences between environmentally proactive metal finishing companies and those that strive for mere regulatory compliance. Environmental performance measurements utilized included: process water usage, pollutant levels in wastewater effluent, F006 sludge generation, total metals and cyanide loading (lb/year) and employee educational efforts. Without exception, analysis of environmental performance data indicated that the best environmental performers were found to have vigorously embraced pollution prevention philosophies and methodologies. While the working relationship between NBC and the six Tier I (top performing) companies participating in this program had always been good the formal recognition bestowed upon these companies through the Metal Finishing 2000 Program and the dialogue developed through the various stakeholder meetings helped strengthened this relationship.

Only limited regulatory oversight flexibility could be granted to those companies accepted to participate in the Metal Finishing 2000 Program and NBC's time spent conducting regulatory activities did not change much due to commitments associated with federal regulatory requirements. For example:

- Formal inspections were reduced to once or twice per year but could not be eliminated or replaced with less formal regulatory site visits and/or pollution prevention audits due to inspection requirements outlined in the Code of Federal Regulations, and

- Monitoring requirements were reduced but the actual elimination of testing and analysis of material not used within a facility could not be granted.

II. CLEAN P2 Program

Project Background

In October of 1997 the NBC initiated development of its Compliance Leadership through Environmental Audits Negotiations and Pollution Prevention (CLEAN-P2) Regulatory Relief program. Utilizing an \$85,000 EPA matching fund grant award this program was developed with the goal of giving qualifying NBC regulated businesses relief from regulatory enforcement actions while they correct environmental problems and/or improve operations using compliance audits and pollution prevention techniques and technologies. Upon receiving the grant award NBC immediately began working with EPA New England and the RIDEM to establish the necessary inter-agency agreements that would allow for the offering of regulatory relief to participating companies. In September of 1998 NBC signed final agreements with EPA Region I New England and RIDEM to offer this program to industrial users within the NBC servicing district. The ultimate goal of this program was to help improve the environmental performance of companies that have not succeeded in achieving sustained compliance with NBC wastewater pretreatment rules and regulations or have not maximized their pollution prevention efforts.

Through its work with regulated industrial and commercial users NBC recognized early on that in order to assure continuous regulatory compliance and improvement of environmental activities it was essential that these regulated businesses periodically evaluate their environmental practices and activities and utilize pollution prevention techniques and technologies wherever possible. Self-conducted environmental compliance audits and in-house compliance inspections can help to identify problematic areas, correct existing violations, identify pollution prevention opportunities and avoid potential problems before they occur. NBC also recognized that many businesses were being discouraged from conducting these evaluations due to self-disclosure requirements included in many environmental laws and regulations. NBC found many businesses to be hesitant with respect to making changes necessary for the implementation of pollution prevention activities. As with any process or procedural change the implementation of a pollution prevention activity requires an adjustment period. Often process changes can result in initial problems and/or system upsets and when dealing with environmental compliance the regulated community is not always willing to risk even short-term non-compliance to investigate new and environmentally better ways of conducting business.

Project Results

Through NBC's CLEAN P2 Program NBC Pollution Prevention staff worked with more than 20 companies to conduct Pollution Prevention and Environmental Compliance Audits. Participating companies, with the assistance of NBC's Pollution Prevention

Program were given the opportunity to conduct environmental compliance and/or pollution prevention audits and implement pollution prevention activities without the threat of regulatory repercussions utilize the then newly developed Rhode Island Compliance Incentives Act (developed by RIDEM in response to NBC CLEAN P2 initiative) to self-report any violations discovered as part of self-conducted compliance audits. These companies were also given the option to sign a CLEAN P2 Participation Agreement to obtain regulatory relief from violations that may occur as part of implementing a pollution prevention project/activity.

Companies participating in this program implemented pollution prevention process changes, corrected existing environmental problems and violations and developed good working relationships with NBC Pretreatment Staff, RIDEM and EPA. This program has created an opportunity for the industrial community and NBC to work together to solve industrial waste management and environmental compliance problems in a timely and cost effective manner.

III. National Strategic Goals Program

Project Background

In January of 1998 the National Strategic Goals Program (SGP) was launched by a group of stakeholders brought together through EPA's Common Sense Initiative (CSI). The members of the SGP Stakeholder Group, consisting of representatives from the metal finishing industry, EPA, various state environmental agencies, Publicly Owned Treatment Works (POTWs), and various public interest groups developed voluntary environmental goals for the metal finishing industry that go far beyond those achievable through regulatory compliance standards alone. Measured against 1992 performance levels the SGP sought to achieve, on a company by company basis, a:

- 50 % reduction in water use,
- 25 % reduction in energy use,
- 90 % reduction in TRI organic emissions
- 50 % reduction in TRI metals emissions to air and water, and
- 50 % reduction in land disposal of hazardous waste sludge.

The SGP Stakeholder Group felt that by encouraging companies to work toward these goals, on a voluntary basis, the metal finishing industry as whole would be able to minimize the need for EPA to impose future environmental regulatory requirements.

SGP participants were required to sign a "letter" of commitment with respect to working toward the established goals and to report their efforts on an annual basis to the National SGP Stakeholder Group which maintained this information (without company names) on an internet accessible data base. Using this database a metal finishing company could measure its environmental performance against other similar operations across the country and focus efforts on areas within their own operations that were shown to have

low level performance. At its height the SGP had 400 participating members with 20 of them from the State of Rhode Island

Project Results

Prior to the development of the National SGP, NBC had been working with EPA Region I - New England, the Rhode Island Department of Environmental Management (RIDEM), the American Electroplaters and Surface Finishers Society (AESF) and the Rhode Island Council of Electroplaters (RICE) to develop programs to assist the metal finishing industry with achieving improved environmental performance. These programs included NBC's Metal Finishing 2000 Program; NBC's CLEAN P2 Regulatory Relief Program; and NBC's Project XL Program.

Each of these programs used some form of regulatory flexibility as a tool for achieving overall improved environmental performance. The SGP complimented each of these programs by serving as a performance measurement tool. NBC anticipated great success utilizing the metal finishing industry's involvement with the SGP to help supplement the efforts of each of these programs and in the spring of 2000 awarded a \$15,000 grant to RICE to help local metal finishing companies gather and report the required data elements. Working with RICE and independently, NBC assisted 20 local metal finishing companies with SGP environmental assessment and reporting activities. Over all the NBC realized many beneficial results through the SGP including improved communications with the regulated metal finishing community and measurable environmental improvements achieved by the participating metal finishing companies.

The metal finishing industry equally benefited from the SGP – in fact of all the industry sectors participating in EPA's CSI, the metal finishing sector, while representing in general primarily small businesses, was the most proactive and achieved the most success at realizing industry and regulatory changes particularly in the State of Rhode Island. Some of these outcomes of the SGP included:

- Extension of the RCRA 90 day accumulation period for F006 sludge,
- Development of a Rhode Island Evaporator Use Policy,
- Development of a regulatory flexibility program within the Narragansett Bay Commission's Servicing District (Metal Finishing 2000 Program),
- Extensive educational outreach to the metal finishing industry.

NBC continues today to assist many metal finishing companies with SGP environmental performance data tracking activities.

IV. Environmental Management Systems Program

Project Background

In October of 1999 the NBC was awarded an EPA Pollution Prevention Incentives for States (PPIS) Grant in the amount of thirty two thousand dollars (\$32,000) to develop a

program to train and assist the local industrial community to develop site-specific Environmental Management Systems (EMS).

An EMS is a set of voluntary management procedures that allows a company to develop a structured systematic approach for identifying and addressing how their activities impact the environment. An EMS establishes environmental goals such as finding and implementing ways of decreasing waste generation, using less process water, and/or minimizing energy usage. Through an EMS a company establishes timetables and develops procedures for accomplishing identified environmental goals and for continuously working to improve upon their existing level of environmental performance. Through the use of a properly designed EMS environmental efforts should never stagnate - new environmental goals are always being identified resulting in improved overall environmental living conditions, improved working conditions and sustainable economic conditions.

Project Results

In May of 2001 NBC initiated a series of eight Environmental Management System (EMS) Development Workshops. The first workshop was held on May 16, 2001 and the final workshop was held on September 26, 2001. These half-day workshops were conducted by the consulting firm of Camp Dresser and McKee and were attended by more than thirty-five representatives from 15 local businesses, RIDEM and NBC. Each of the EMS workshops focused on a distinct and fundamental aspect of developing and implementing an EMS:

Workshop Session	Topics Discussed	Date
Introduction Session	EMS Overview and Benefits of an EMS	May 9, 2001
Module 1	Environmental Policy and Aspect Identification	May 16, 2001
Module 2	EMS Planning - Identification of Significant Environmental Aspects (SEAs)/Operational Control	May 30, 2001
Module 3	EMS Planning- Objectives and Targets and Environmental Management Programs	June 13, 2001
Module 4	EMS Planning- Legal and Other Requirements and Industrial Wastewater Treatment (IWT)	August 1, 2001
Module 5	EMS Implementation- Structure, Responsibilities, Operational Control and IWT	August 15, 2001
Module 6	EMS Implementation - Communication, Documentation, Emergency Preparedness, Training	August 29, 2001
Module 7	Checking and Corrective Action- Non-conformances, Corrective and Preventive Action and EMS Audits	September 12, 2001
Module 8	Management Review and Implementation Assistance	September 26, 2001

Attendees learned how to identify their company's environmental aspects, write an environmental policy statement, obtain upper management support with respect to EMS development, and implementation and track environmental improvements.

NBC as of September 2007 continues to work with various attendees through EMS related on-site technical assistance activities, meetings conducted by the Rhode Island ISO14000 Roundtable and interaction as part of other NBC Pollution Prevention Projects.

V. Metal Products and Machinery (MP&M) Audits Program

Project Background

On January 3, 2001 EPA published the Metal Products and Machinery (MP&M) Rule in the Federal Register containing, among other regulatory requirements, strict wastewater discharge limits for metal finishers. Recognizing that these effluent discharge limitations would certainly impact the local metal finishing community, NBC initiated efforts to encourage metal finishers to further utilize pollution prevention to better comply with the MP&M requirements and to take advantage of the MP&M Pollution Prevention exclusions.

In October of 2001 the Narragansett Bay Commission (NBC) was awarded an EPA Pollution Prevention Incentives for States (PPIS) Grant in the amount of fifty thousand dollars (\$50,000) to develop a program to assess the local metal finishing community's pollution prevention efforts. As part of this project NBC's Pollution Prevention Program planned on conducting Pollution Prevention Audits of metal finishing companies located within NBC's servicing district in order to determine their compliance status with the MP&M Pollution Prevention Criteria.

As part of the originally proposed project each company audited would receive either an "NBC Certification of Compliance with the MP&M Pollution Prevention Standard" or a detailed P2 Activity Report on activities they would need to implement in order to meet the MP&M criteria. Companies that received Certificates would be exempt from the strict discharge limits included in the MP&M Rule and companies that received P2 Activity Reports would receive follow-up audits in order to assist them with the implementation of suggested pollution prevention activities.

Metal finishing companies that could demonstrate compliance with MP&M Pollution Prevention Criteria would stand to gain great benefits such as: less stringent wastewater effluent standards, improved environmental compliance; cost savings associated with material purchases, energy, and waste disposal and the professional standing that accompanies overall improved environmental performance. As part of this project NBC planned on conducting 20 individual Pollution Prevention Audits.

In February of 2003, however, the final MP&M rule did not include the strict effluent standards of the originally proposed rule. While this modified rule eliminated the need for companies to obtain "NBC Certification of Compliance with the MP&M Pollution

Prevention Standard” other benefits of meeting MP&M Pollution Prevention standards still existed such as improved overall environmental performance, improved regulatory compliance, and decreased operating costs. NBC thus modified the original project plan and established goals of: identifying pollution prevention opportunities, improving regulatory compliance and measuring environmental performance. These goals were accomplished through performance of the following tasks:

1. Educating and informing the metal finishing industry on the MP&M proposed pollution prevention options,
2. Developing a MP&M Pollution Prevention Criteria Audit Check List,
3. Developing a Current and Historical “Environmental Performance Summary Reports” for each company requesting a Pollution Prevention Audit,
4. Conducting Pollution Prevention Audits,
5. Issuing Pollution Prevention Audit Reports/Certifications,
6. Monitoring environmental improvements of participating companies through environmental performance indicators measured and reported through the NSGP, and
7. Developing Final Environmental Performance Report for each participating company

Project Results

Overall NBC viewed this project as a success. Environmental Compliance Assessments were conducted of 50 individual metal finishing companies and Pollution Prevention audits were conducted of approximately 40 individual companies. Assessments consisted of a process walkthrough, completion of the MP&M Pollution Prevention Activity checklist and offering assistance with improving process pollution prevention efforts.

Companies participating in this project became more aware of pollution prevention opportunities available to them and the benefits of reducing pollutants at the source of generation. Specifically, participants tracked environment progress made through pollution prevention efforts, weighed their overall environmental performance against their business productivity, and utilized lessons learned by other companies. Some specific examples of achieved process improvements included: the use of motion detectors on spray rinse systems by one company to minimize water usage, increased use of drip pads and drag-out tanks, and development of ISO 14001 Environmental Management Systems. Project Success factors included:

- More than 50% of metal finishing companies serviced by the NBC agreed to participate in both the Environmental Compliance Assessments and the MP&M Pollution Prevention Audits
- The State of Rhode Island had 20 individual metal finishing companies signed onto the NSGP
- The State of Rhode Island had the highest number of metal finishing companies actively participating the NSGP, and
- Metal finishing companies participating in the NSGP demonstrated continuously improved environmental performance.

VI. EPA's Pretreatment Streamlining Rule

Project Background

On October 14th, 2005 the EPA published the Streamlining the General Pretreatment Regulations for Existing and New Sources of Pollution – Final Rule (“The Pretreatment Streamlining Rule”) in 40 CFR Parts 9, 122 and 403. This rule modified certain provisions of the General Pretreatment Regulations that apply to regulatory oversight of industrial users that discharge pollutants to Publicly Owned Treatment Works (POTWs). The purpose of the rule change was to reduce the regulatory burden of top tier environmental performing industrial users and POTWs while still maintaining a high level of overall environmental protection thus allowing POTWs to focus regulatory attention on more problematic industrial users. The rule contained 11 provisions, some mandatory and some optional. Three of the optional provisions with the greatest potential impact with respect to regulatory flexibility are:

- The elimination of sampling requirements for pollutants that are not present within an Industrial User's operations – 40 CFR 403.8(f)(2)(v) and 403.12(e)
- Creation of new categories of Industrial Users that qualify for reduced regulatory oversight – 40 CFR 403.3(v)(2), 403.8(f)(2)(v), and 403.12(e), (g), (i), and (q)
- Allowance of equivalent mass based limits to replace concentration based limits – 40 CFR 403.6(c)(5)

Project Results

As of September 2007 NBC has adopted all the required changes with respect to the Pretreatment Streamlining Rule and is prepared to address the optional “Regulatory Flexibility” changes as issues arise.

Attachments:

- Questions Related to Evaluation and Transferability of Project XL Innovations
- NBC Project XL Final Project Agreement
- NBC CLEAN P2 Regulatory Relief Program Fact Sheet
- The Rhode Island Environmental Compliance Incentive Act Policy

NBC Project XL Close Out Report Attachment - 1
Questions Related to Evaluation and Transferability of Project XL
Innovations

Questions Related to Evaluation and Transferability of Project XL Innovations

*Narragansett Bay Commission Pretreatment Program
September 2007*

We would like your thoughts on the following questions regarding your personal experience and observations while developing and/or implementing the Narragansett Bay Commission Pretreatment Program innovation pilot project. While we realize that the project did not run to completion, your feedback on the questions below (to the extent possible) will assist us in gleaning transferable innovations and "lessons learned" from Project XL. Please feel free to caveat your answers, as necessary, to reflect that the project did not run to completion.

1. To what extent do you consider the new approach you tested to be an improvement over the traditional way of doing business? In what way(s) was the new approach an improvement?

Response: The Narragansett Bay Commission (NBC) has historically utilized regulatory flexibility, even before the establishment of Project XL, to the extent allowable by existing regulations. NBC's Pretreatment Program has regulatory policies in place that go beyond the requirements of both the State of Rhode and EPA and therefore has some "built-in" flexibility with respect to fairly applying at least some of these policies. NBC has and continues to utilize flexibility within these policies to give increased regulatory oversight over problematic industrial discharges and limited forms of oversight relief to historic environmental "good performers." This approach evolved into a more focused format with the establishment of a formal non-regulatory NBC Pollution Prevention Program in the fall of 1992.

The Project XL approach is theoretically an improvement over NBC's limited regulatory flexibility efforts in that if fully implemented it could have allowed for flexibility with federal and state requirements that were outside of NBC's discretionary use, it would have formalized this approach with the State of Rhode Island's Department of Environmental Management and EPA, and it did in fact help to bring various stakeholders together to discuss regulatory flexibility issues.

- a. Are there specific environmental benefits and/or cost savings that you can share? If so, describe these benefits or indicate whether or not the final project report already includes such information.

Response: While NBC's proposed Project XL was never fully implement to its fullest extent I believe the approach helped get several metal finishing companies involved with the National Strategic Goals Program and helped with getting this industry sector as whole looking at pollution prevention and regulatory compliance issues.

2. Do you think that the approach is mature enough for one to have a full understanding of its advantages and disadvantages?

Response: Because the NBC's Project XL was not fully implemented at this point I believe it is not possible to fully assess the benefits and drawback of this approach.

- a. If not, when will it be possible to gain a full understanding of its advantages and disadvantages?

Response: At this point possible never. The inability of the various participating regulatory agencies to implement this program has surely been discouraging to the applicable industrial community. Additionally, the metal finishing industry in the State of Rhode Island is in a dramatic decline. Inexpensive foreign labor costs have completely eliminated business for many job-shops and have forced many other metal finishers to conduct at least portions of their manufacturing operations overseas. While environmental compliance is still an important issues and of considerable cost to the remaining metal finishing companies the small competitive edge theoretically offered by Project XL is far outweighed by the current state of business.

3. If not captured in your final project report, what do you think are the primary lessons learned from testing and analyzing the new approach that pertain to its broad-scale application?

Response: 1) All participating parties must have an understanding of their roles and responsibilities with respect to implementing the program, and 2) All participating regulatory agencies need to "get on board" before any promises are made to the regulatory community.

4. What is the potential for broader application of the new approach?
 - a. Could it be used to address another problem?

Response: Inability to implement program does not allow for response to this question.

5. What are the primary barriers to broader application of the new approach?

Response: Agreement and action by participating regulatory agencies.

6. What are the critical implementation elements needed to overcome the barriers to broader application of the new approach?

Response: Agreement and action by participating regulatory agencies.

7. In your judgment, how would the new approach (or "innovation") you tested best be applied more broadly?

Response: Inability to implement program does not allow for response to this question.

- a. What steps could be taken to facilitate more widespread application of the innovation.
 - b. What steps could reduce the transaction costs of the diffusion?
 - c. What elements should be scaled-up?
 - d. What elements should be changed?
 - e. How might other practitioners be identified?
 - f. Are there unique circumstances that could impact broader application of innovation (e.g., a window of opportunity)?
 - g. Are there resource limitations, if any, which would constrain broad-scale application?
8. At what level – national, State, or local – could the innovation be applied?
- a. What are the appropriate mechanisms for such application?

Response: Based on NBC's experience with the State of Rhode Island's Department of Environmental Management's inability to implement their aspects of Project XL I would have to say that any future attempt at implementing such an approach will need to take place at the federal government level with specific action required by the state to be dictated through some form of federal modification over state authority.

9. Are there any new developments and/or activities that you would like to share that have occurred following completion of the project and/or as a result of the project? If so, please briefly summarize.

Response: In conjunction with attempted implementation of Project XL NBC initiated and coordinated involvement of more than 20 individual metal finishing companies with the National Strategic Goals Program, coordinated Environmental Management System training for the local industrial community and initiated and initiated dialogue with the Rhode Island Economic Development Corporation and the Governor's office on a program informally referred to as "Save-the-Platers" and effort to get the state to help encourage metal finishing business in the state through the use of various public relations tactics.

10. Do you have any other general feedback to provide about the project; especially any other lessons learned that might be useful for future project sponsors/stakeholders?

THANK YOU AGAIN FOR YOUR EFFORT, YOUR TIME, AND YOUR INTEREST!

NBC Project XL Close Out Report Attachment - 2
NBC Project XL Final Project Agreement

FINAL PROJECT AGREEMENT

Narragansett Bay Commission (NBC)
Pretreatment Program

XL Project

September 25, 2000

Final



Final Project Agreement

Narragansett Bay Commission (NBC) Pretreatment Project

September 25, 2000

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Appendix:

Appendix 1: NBC Participant Application, Metal Finishing 2000

I. Introduction to the Agreement

A. Project Signatories

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

B. Purpose of the XL Program

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

C. Purpose of this FPA

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

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

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

II. Description of NBC and the Project

A. Description of NBC Facilities and Pretreatment Program

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

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

B. Description of the Project

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

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

In order to achieve Tier I status, facilities must go through an application process with NBC, where NBC evaluates the facilities on four factors. The specific application requirements and ranking factors can be found in Appendix A "NBC Participant Application, Metal Finishing

2000" NBC will evaluate whether these facilities qualify for Tier I status and will provide EPA and RIDEM with a list of potential Tier I companies. EPA and RIDEM will then have 30 days to concur or to provide NBC with reasons as to why a particular company should not be included in the program.

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

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

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

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

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

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

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

Table 1 Qualifications For Regulatory Relief

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

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

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

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

Generally NBC inspects each of their significant industrial users (SIUs) once every 6 months, while the federal requirement is once every year. As part of this XL Project, NBC will reduce

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

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

C. Project Implementation

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

NBC will then accept applications from facilities for Tier 1 status and then make their selections. NBC will also select up to ten Tier 2 companies to work with over the term of this project. Once this is completed, NBC will work with these companies on pollution prevention activities as well as increase the compliance sampling rate of Tier 2 facilities to once every quarter. NBC anticipates that this increased effort with Tier 2 companies will help increase their environmental performance to the levels described in Section IV.A. A more detailed description of project

¹ At the time of the signing of this FPA, NBC has expired RIPDES permits. Both NBC permits are currently scheduled to be reissued by December, 2001 in order to incorporate the findings of the ongoing Providence River Total Maximum Daily Load (TMDL) determination. RI DEM will incorporate the appropriate legal implementing mechanisms discussed in this FPA into NBC's revised RIPDES permits when they are issued.

activities is described in Table 2 below

Table 2 Timing of Project Activities

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

Project begins.	After EPA and RIDEM have implemented federal and state rules, modified the pretreatment program and issued NBC's RIPDES permits.	NBC in cooperation with Tier 1 and Tier 2 facilities collect environmental information on baseline performance NBC will perform the following activities: - semiannual compliance sampling of Tier 1 facilities by NBC; - quarterly compliance sampling of Tier 2 facilities by NBC; - compliance inspections every other year of Tier 1 facilities by NBC; - semiannual compliance inspections of Tier 2 facilities by NBC; - annual pollution prevention audits of Tier 1 facilities; - annual pollution prevention audits of Tier 2 facilities; and - annual project update by NBC.
Project completion and evaluation.	Six years from issuance of the RIPDES permits	NBC compiles environmental performance for the Tier 1 and Tier 2 facilities and determines whether pollution reduction goals have been achieved.

Measurement of Success

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

III. Regulatory Relief Requested .

Narragansett Bay Commission seeks regulatory flexibility in three areas:

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

As part of this project, NBC will reduce its regulatory oversight (i.e. compliance inspections) for the up to ten Tier 1 metal finishing companies. Pursuant to 40 CFR 403.8(f)(2)(v), NBC must inspect each SIU once per year. Under this project, NBC would reduce this requirement to once

every two years for the period of this XL Project. Time and effort saved by NBC regulatory personnel conducting fewer inspections of companies that meet appropriate Project XL criteria will allow for more focused attention on compliance inspections, monitoring and regulating more problematic (Tier 2) companies. NBC believes that additional resources spent on problematic companies will result in improved measurable environmental performance.

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

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

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

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

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

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

IV. Project XL Acceptance Criteria

A. Anticipated Superior Environmental Performance

The primary goal of this XL Project is to demonstrate that through reallocation of existing resources, NBC can achieve measurable improvements in the environmental performance levels

of Tier II companies while encouraging and assisting Tier I companies to maintain or improve their current level of superior environmental performance. The following table (Table 3) compares the goals and activities that will be performed with and without Project XL. It describes the shift in resources that would be implemented through Project XL. Resources used for inspections and sampling of Tier I companies will be redirected to Tier 2 companies.

Table 3 Goals and Activities with and without Project XL

	Current Goals and Activities (without Project XL)	Proposed Goals and Activities (with Project XL)
Tier I Companies (10)	(for 10 companies)	(for 10 companies)
# of Annual Inspections by NBC	20 every year	10 every 2 years
NBC Compliance Sampling Events	20	20
# of Annual Company Self-Audits Conducted	0	10
# of Annual Pollution Prevention Audits	0 ¹	10
Tier II Companies (10)	(for 10 companies)	(for 10 companies)
# of Annual Inspections	20	20
NBC Compliance Sampling Events	20	40
# of Annual Pollution Prevention Audits	0 ¹	10
Process Water Usage	No change anticipated	25% reduction
Total Metal ² Concentration in Wastewater	No change anticipated	25% reduction
F006 Waste Generation	No change anticipated	25% reduction
Increased Rate of Compliance ³	No change anticipated	75% increase ³

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

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

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

B. Cost Savings, Paperwork Reduction and Operational Flexibility

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

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

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

C. Stakeholder Involvement and Support

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

The first NBC Project XL Stakeholder meeting was held on June 13, 2000, at NBC's facilities. The purpose of this meeting was to inform the various stakeholders of NBC's proposed Project XL and how the various aspects of this project fit in with several existing NBC Pollution Prevention initiatives. In attendance at this meeting were representatives from RIDEM, EPA, the Rhode Island Council of Electroplaters (RICE), the American Electroplaters and Surface Finishers Society (AESF), NBC's Citizen's Advisory Committee (CAC), Save the Bay, and several individual metal finishing companies. Members from each of these organizations have been involved with other NBC's initiatives such as: Metal Finishing 2000, CLEAN P2, NBC's Regulatory Advisory Committee, and the Rhode Island Pollution Prevention Conference Committee. Future stakeholder meetings will be held on a regular basis.

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

D. Innovative Approach and Multi-media Pollution Prevention

The NBC Pretreatment XL Project will promote pollution prevention through several activities including identifying source reduction opportunities, process optimization and input substitution. By reallocating resources from top performers to "under performers," NBC hopes to apply

resources where the end results will be improved compliance as well as measurable reductions in pollution that go beyond what is required by regulation.

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

E. Transferability of the Approach to Other Entities or Sectors

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

F. Feasibility of the Project

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

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

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

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

- NBC's Industrial Compliance Databases: NBC's P2 staff maintain detailed records of each SIU's compliance status consisting of 11 compliance criteria. The information is reviewed each year and will be documented as part of the project.
- RIDEM's Regulatory Compliance Files (where available for the specific company): NBC will use RI DEM's files to compile a 3-year environmental compliance history for

each company. The information will be used to measure environmental improvements

- P2 Technical Assistance Site Visits: NBC will conduct regular site visits of selected Tier 1 and 2 facilities and document progress
- Strategic Goals Program Company Profile Database: Company productivity information, waste generation data, and water use information will be used to measure advances.

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

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

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

V. Intentions and Commitments of Project Signatories

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

5.
Reallocate any resources saved from less oversight of Tier 1 companies to increasing oversight of the selected Tier 2 companies and focusing attention to other areas of environmental concern;
6. Increase sample screening events for each Tier 2 company from 2 per year to 4 per year;
7. Perform an annual pollution prevention audit at each of the Tier 1 and Tier 2 companies;
8. Assist each Tier 1 company and review the results of their annual self audits;
9. Work with the Tier 2 companies so they may achieve a 25% reduction in water usage, F006 waste generation, and total metal concentrations;
10. Work with the Tier 2 companies so they may achieve a 75% increase in compliance;
11. Supply summary reports on project progress, as more fully set forth in Section IV.G;

12. Make revisions to NBC's Pretreatment Program (including the Enforcement Response Plan, if necessary) relative to the selected Tier I facilities, through the proper procedures including review and approval by RI DEM and all public notice and comment requirements.

13. Assist each Tier I company with the development and implementation of a multi-media self-audit, environmental compliance plan and audit procedure. These plans and procedures will be developed in cooperation with NBC's Pretreatment office and appropriate RIDEM offices.

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

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

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

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

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

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

VI. Legal Basis for the Project

A. Authority to Enter Into the Agreement

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

B. Legal Effect of the Agreement

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

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

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

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

C. Other Laws or Regulations That May Apply

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

D. Retention of Rights to Other Legal Remedies

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

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

VII. FPA Implementation Issues

A. Withdrawal From or Termination of the FPA

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

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

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

EPA and RI DEM do not intend to withdraw from the Agreement unless actions by NBC constitute a substantial failure to act consistently with intentions expressed in this Agreement and its implementing mechanisms. NBC will be given notice and a reasonable opportunity to remedy any "substantial failure" before EPA's and/or RI DEM's withdrawal. If there is a disagreement between the Project Signatories over whether a "substantial failure" exists, the Project Signatories will use the dispute resolution mechanism set forth in Section VII.E of this Agreement. EPA and RI DEM retain their discretion to use existing enforcement authorities, including withdrawal or termination of this Project, as appropriate. NBC retains any existing rights or abilities to defend itself against any enforcement actions, in accordance with applicable procedures.

B. Procedures for Withdrawal or Termination of the FPA

The Project Signatories agree that the following procedures will be used to withdraw from or terminate the Project before expiration of the Project term. They also agree that the

implementing mechanisms will provide for withdrawal or termination consistent with these procedures.

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

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

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

C. Modification of the FPA

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

D. Duration of the Agreement

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

E. Dispute Resolution

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

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

F. Project Completion or Termination

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

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

2. Early Withdrawal, Termination or Project Failure

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

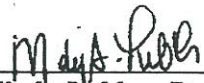
G. Periodic Review

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


H. Effective Date

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


VIII. PROJECT SIGNATORIES:


Mindy Dubber, Regional Administrator,
U.S. EPA

9/22/2000
Date Signed


Samuel Silverman, Acting Director,
Office of Environmental Stewardship, U.S. EPA

9-25-00
Date Signed


Jan Reitsma, Commissioner,
Rhode Island Department of Environmental Management

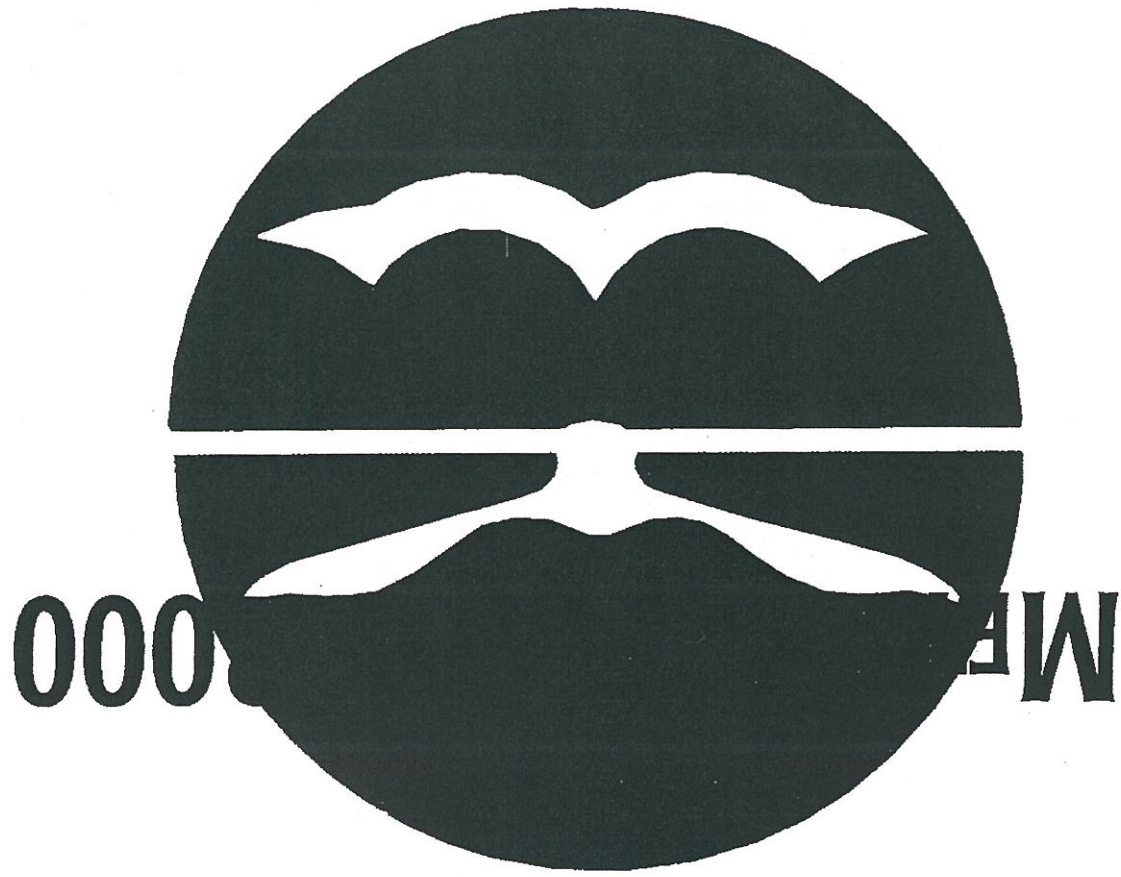
9/25/00
Date Signed


Paul Pinault, Executive Director,
Narragansett Bay Commission

9/25/2000
Date Signed

Appendix 1

NBC Participant Application, Metal Finishing 2000



NARRAGANSETT Bay COMMISSION
PARTICIPATION APPLICATION

1997 Application: Program Description

The Narragansett Bay Commission (NBC), in partnership with the Rhode Island Department of Environmental Management (RIDEM), EPA Region I New England (EPA-NE), Save the Bay, and the Rhode Island Contract Electroplaters, is proud to announce a solicitation for participation in a Rhode Island based Common Sense Initiative project: NBC-Metal Finishing 2000.

NBC-Metal Finishing 2000 is an ambitious effort to explore, develop, and test alternative regulatory and compliance approaches for the metal finishing industry within Rhode Island. The primary goal of NBC-Metal Finishing 2000 is to create a flexible regulatory approach for companies that are exceptional environmental performers. This program will reduce regulatory oversight of a qualifying company's operations in return for environmental results that exceed the environmental standards of the traditional regulatory system. The NBC will work with six to eight metal finishers to find new ways of protecting the environment while fostering growth in the metal finishing industry.

Eligibility

To be eligible for participation in NBC-Metal Finishing 2000 a company must:

- ★ Perform any of the following six metal finishing operations: Electroplating, Electroless Plating, Anodizing, Coating (chromating, phosphating, and coloring), Chemical Etching and Milling, and Printed Circuit Board Manufacturing;
- ★ Be subject to Narragansett Bay Commission pretreatment requirements;
- ★ Meet Program Participation Criteria as described below.

Program Participation Criteria

Each company that wishes to participate in the NBC-Metal Finishing 2000 program must demonstrate that they are consistently in compliance with regulations and are able to document their efforts in making environmental improvements that move beyond compliance. An applicant's environmental performance level will be evaluated in accordance with the following four criteria:

★ **Environmental Compliance**

Participants in NBC-Metal Finishing 2000 must have an exceptional environmental compliance record with federal, state, and local environmental and OSHA regulations. For regulatory problems that have occurred the applicant must demonstrate that they have put forth a good-faith effort to return to compliance in an expeditious manner. While a perfect compliance record is not required for participation a pattern of repeated violations and/or inadequately addressed violations will prevent an applicant from meeting participation criteria.

Demonstration of meeting environmental compliance criteria may be made through a disclosure of:

- All non-compliance issues that have arisen at the applicant's facility over the past three years,
- The applicant's response to those issues, demonstrating a fast and safe return to compliance, and
- A description of response actions taken to prevent future non-compliance.

★ **Pollution Prevention Efforts**

Applicants must be able to demonstrate a commitment to and use of pollution prevention policies and procedures as part of their waste management practices. The national pollution prevention policy, as stated in the Pollution Prevention Act of 1990 is:

- Pollution should be prevented or reduced at the source whenever possible,
- Pollution that cannot be prevented should be recycled in an environmentally sound manner whenever possible,
- Pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and
- Disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

Applicants may demonstrate their commitment and use of pollution prevention policies and procedures through any combination of the following:

- The use of a Pollution Prevention Facility Management Plan,
- Demonstration of reduction in waste generation trends through such documentation as: hazardous waste manifests, Biennial Hazardous Waste reports, TRI reports, water and/or sewer bills, etc. As part of this response the applicant must be prepared to demonstrate that reduction in waste generation did not result solely from a decline in production,
- Having worked with and implemented suggestions made by one or more of the pollution prevention technical assistance programs available in Rhode Island,
- Implementation of water reduction use techniques and/or technologies, and/or
- Involvement with an industrial community based environmental or pollution prevention program or committee such as: the Rhode Island Pollution Prevention Council, the NBC Regulatory Advisory Committee, the NBC Citizens Advisory Committee, the Rhode Island Pollution Prevention Conference, the National Pollution Prevention Roundtable, and/or trade association environmental work-groups.

★ **Employee Environmental Education**

Applicants must have in place an educational system that trains employees in proper environmental management practices and procedures, and encourages employee involvement with finding and initiating new and innovative ways of reducing pollutants at the source of generation. Training may be offered in-house or through outside contractors or educational institutes.

★ **Improved Environmental Performance**

In addition to establishing itself as an exceptional Environmental Performer an applicant must clearly define the type and extent of regulatory flexibility desired, and must demonstrate how this regulatory flexibility will result in improved environmental performance, or how obtaining flexibility will ease in maintaining the current level of environmental performance.

When responding to this item an applicant must be sure to:

-Describe in detail the type and extent of regulatory flexibility being requested. For instance, if the applicant wishes to eliminate a specific reporting requirement he/she must describe the reporting requirement, the regulatory authority which requires the reporting, and a reasoning of why this particular requirement should be eliminated. While NBC has authority only over requirements of its own rules and regulations, should a reasonable request for flexibility outside of NBC requirements be made, the NBC may be able to work as an advocate to obtain flexibility from other regulatory authorities. However, no guarantee is being made that flexibility outside of NBC's authority will be granted.

-Describe in detail how obtaining regulatory flexibility will result in improved environmental performance or ease in maintaining existing environmental performance standards. Requests for flexibility that do not result in clear cut overall improved environmental performance may not be granted.

How Does the Metal Finishing 2000 Program Work ?

Interested companies may call the NBC Pollution Prevention Manager to request more information and to arrange for an initial confidential meeting with NBC non-regulatory personnel. The following outlines the steps to be taken by interested companies to obtain the benefits of the NBC's Metal Finishing 2000 Program:

- ★ The Company contacts the NBC Pollution Prevention Manager.
- ★ Initial meeting is held with NBC Pollution Prevention non-regulatory staff and company representatives.
- ★ NBC Pollution Prevention staff and company representatives will review the company's compliance record, pollution prevention efforts, and overall environmental management practices.
- ★ NBC Pollution Prevention staff and company representatives will discuss the various regulatory requirements from which possible flexibility may be granted. No guarantee of flexibility will be offered at this time.
- ★ With NBC Pollution Prevention staff assistance the company will complete a Metal Finishing 2000 participation application.
- ★ The completed participation application will be reviewed by regulatory personnel from NBC, RIDEM Air, Water, and Waste divisions, and EPA Region I.
- ★ Upon application approval, NBC regulatory and Pollution Prevention personnel will work with company personnel to implement regulatory flexibility options. This may include the development and execution of written agreements between all applicable regulatory oversight agencies and the company.
- ★ NBC Pollution Prevention staff will continue to work with the company to ensure that environmental compliance is maintained.

Metal Finishing 2000 Flexibility Options

The following is a partial list of activities that could be considered for exemption from certain NBC regulatory notification and permitting requirements:

No Prior Notification Required

Upon acceptance into the program the following activities would require no prior notification to the NBC, however, follow-up notification in the form of revised site plans, pretreatment plans, emergency procedures, etc., will be required within 30 days of making changes:

- ★ Relocation of existing tanks.
- ★ Re-piping of process water/wastewater flow.
- ★ Installation of additional rinse tanks.
- ★ Initiation of certain pollution prevention/source reduction techniques or practices such as:
 - Installation and use of "hang-bars" over process tanks,
 - Installation and use of fog-spray rinse systems,
 - Installation and use of ion exchange equipment for recycling of process water,
 - Use of membrane separation equipment (including Reverse Osmosis and Diffusion dialysis) for recycling of process water and materials,
 - Use of electrolytic recovery equipment,
 - Hazardous material replacement, provided no cross media contamination occurs as part of this activity, and
 - Process changes that result in the elimination or reduction of hazardous material usage.
- ★ Installation of equipment to treat incoming water for production use which may include Ion Exchange, Carbon Absorption and Reverse Osmosis.

Limited Notification Required

The following activities will require only limited reporting, i.e. phone call:

- ★ New industrial activities that do not include the addition of any regulated constituents not already included in the participating company's existing permit. As an example, prior to installing a plating line that uses different chemical constituents than those already in place, a participating company will need to notify the NBC's Industrial Pretreatment Program before installing the plating line.
- ★ New industrial activities that will not increase current water usage by more than 10% and will not put the company into a different permit category.
- ★ The addition of new production lines/equipment, and
- ★ Installation of proven water pollution control/prevention and/or wastewater recycling equipment/technologies, such as:
 - Ion Exchange Equipment
 - Membrane Separation Equipment
 - Diffusion Dialysis Equipment
 - Carbon Absorption Equipment

These flexibility options apply provided the company monitors wastewater effluent to assure compliance with all NBC discharge requirements and limitations. The company must report any and all violations immediately upon discovery by calling 222-3738. The company must then respond within 5 working days with a written response describing how they will correct or have corrected the problem and how they will prevent it from reoccurring.

Narragansett Bay Commission Metal Finishing 2000 Participation Application

Company Name _____
Address _____
City/State/Zip _____
Phone _____ Fax _____
Owner _____ Title _____
Number of Employees _____
Parent Company _____
Company Contact _____ Title _____
Products Made _____

Description of Production Process _____

Rating

In order to be selected as a participant in the NBC-Metal Finishing 2000 program an applicant must, at the time of application, have achieved and maintained an elevated level of environmental performance. Selected companies must meet the standards as described in the Program Participation Criteria section. Applicants must:

- ★Clearly and thoroughly respond to each of the following four environmental subject areas in narrative form (not to exceed three pages per subject).
- ★Introduce each response with the subject heading.
- ★Be sure to substantiate claims by referring to verifiable evidence wherever possible.

Note, your response to the first three subjects noted below will be used in the determination of your company's tier rating. Response to the fourth subject will help you to determine the overall environmental and economic benefits to be gained through your participation in the NBC Metal Finishing 2000 Program.

★ **Environmental Compliance Information**

List all environmental regulatory inspections, audits, investigations, etc., conducted of your company over the last three years. Include the date of each inspection, the purpose of each inspection (i.e., pretreatment, air pollution, hazardous waste), the names of environmental regulatory inspectors, the name of company personnel that participated in the inspection, a brief description of activities conducted during each inspection, and a description of the outcome of the inspection. Think carefully about how each past environmental violation has been responded to by your company and address this in your response.

★ **Pollution Prevention Efforts**

Describe in detail all efforts put forth by your company to reduce the amount of pollutants generated as part of your manufacturing operations. Include a summary of the results these efforts have had on your company's compliance with federal, state and local environmental rules and regulations, your company's work environment, and your company's productivity.

★ **Employee Environmental Education**

Describe in detail all efforts put forth by your company to promote employee environmental education. Demonstrated efforts may include: in-house educational programs, company financed educational programs, and/or established incentives for employees to attend after-work environmental classes, courses or seminars.

★ **Improved Environmental Performance**

In addition to establishing yourself as an exceptional Environmental Performer, you must clearly define the type and extend of regulatory flexibility desired. Emphasis must be made on how this regulatory flexibility will result in improved environmental performance or how obtaining flexibility will reduce time, effort, and/or cost of maintaining your current level of environmental performance.

Other Incentives and Benefits afforded to Selected Participating Companies

As a participant in this program a company may request more specific regulatory flexibility options that will be addressed on a case-by-case basis. These may include, but are not limited to:

- ★ Reduction of reporting requirements such as:
 - pH monitoring reports
 - Effluent monitoring reports
- ★ Reduced frequency of regulatory inspections or substitution of these inspections with non-regulatory pollution prevention audits.
- ★ Possible reduction in permit fees (based on Public Utilities Commission (PUC) filings).
- ★ Assistance with the implementation of a non-conventional or innovative waste reduction and/or waste management practices or procedure.

For More Information:

Pollution Prevention Manager
The Narragansett Bay Commission
235 Promenade Street, Suite 500, Providence, Rhode Island 02908
401-222-6680/TDD 401-222-6680
FAX 401/222-2584
ppr@narrabay.com

NBC Project XL Close Out Report Attachment - 3
NBC CLEAN P2 Regulatory Relief Program Fact Sheet

**Narragansett Bay Commission
CLEAN P2 Regulatory Relief Program
Fact Sheet**

- CLEAN:** Compliance Leadership through Enforcement, Audits, and Negotiations
- P2:** Pollution Prevention: The cost saving practice of reducing waste at the source of generation "Source Reduction"
- Regulatory Relief:** The granting of relief from regulatory enforcement actions for the purpose of promoting the use of pollution prevention practices and procedures.

The Narragansett Bay Commission (NBC), in partnership with EPA-New England ("EPA") and the Rhode Island Department of Environmental Management ("RIDEM"), has established a bold new approach to help companies solve waste management problems using pollution prevention.

This program called: CLEAN-P2 Regulatory Relief makes available to the industrial community, located within the NBC servicing area, no cost, comprehensive **regulatory and non-regulatory pollution prevention technical assistance** in conjunction with limited **relief** from certain **regulatory enforcement actions**.

To obtain the benefits offered through NBC's CLEAN-P2 Regulatory Relief Program, participating companies, with the assistance of NBC's Pollution Prevention and Industrial Pretreatment Programs, must correct identified compliance problems promptly and demonstrate a good faith effort to exceed their regulatory compliance obligations through the use of pollution prevention measures.

Each participating company will work with, and as a part of, a **Regulatory Relief Assessment Team** made up of NBC Pollution Prevention and Industrial Pretreatment personnel, appropriate participating company personnel, and other environmental and industrial experts as needed.

NBC, EPA, and RIDEM will refrain from initiating an enforcement action seeking civil/administrative penalties, or will mitigate civil/administrative penalties for certain violations of NBC wastewater pretreatment rules and regulations, subject to the criteria and guidelines set forth in the CLEAN-P2 Regulatory Relief Program Policy and Guidelines. The enforcement relief provisions of this program are intended to provide incentives for participation in a program designed to maximize pollution prevention and to encourage prompt correction of violations.

By measuring the success of this program through its ability to improve the environmental performance of participating companies, NBC expects to be able to assist in the evolution of national compliance policies.

Pollution prevention efforts require a change. These changes may involve the raw materials purchased to make a certain product, the production process used to make a product, or the final product itself. With change comes adjustment

Participating companies will benefit by being allowed the time required to establish and perfect pollution prevention techniques and methodologies without the worry or concern of potential enforcement actions for violations that may occur during this adjustment periods.

Introduction

The Narragansett Bay Commission Regulatory Relief Program is designed to promote environmental improvements at companies which have not yet succeeded in achieving sustained compliance with NBC wastewater pretreatment rules and regulations or have not maximized their pollution prevention efforts. Through this program, the Narragansett Bay Commission (NBC) offers to qualifying companies within the NBC district no cost, comprehensive regulatory and technical assistance in conjunction with regulatory/enforcement relief with respect to violations of NBC pretreatment rules and regulations that may occur while correcting compliance problems using a pollution prevention approach.

To obtain the benefits offered through the NBC's Regulatory Relief Program, participating companies must commit to correcting compliance problems promptly and must demonstrate a good faith effort to exceed their regulatory compliance obligations through the use of pollution prevention measures. This program creates an opportunity for the industrial community and NBC to work together to solve industrial waste management and environmental compliance problems in a timely and cost effective manner.

Background

Existing environmental regulatory programs have been developed around a command and control approach to regulating the management of industrial waste. Environmental regulatory inspectors are trained and educated to take a "second party" role in working with the industrial community. As part of a regulatory inspection a regulator will document and report back to a company on all infractions of pertinent environmental rules and regulations, but typically, will give no advice on how to best solve these regulatory infractions. The reason for this approach stems from the liabilities associated with enforcing environmental regulations. If a possible solution to a regulatory problem, suggested by a regulatory inspector, is initiated by a company but does not result in correction of the problem the ability of the regulatory agency to now enforce this regulation can be seriously jeopardized. Inability of an environmental regulatory agency to enforce its rules and regulations results in inadequate and ineffective protection of the environment.

New Initiatives set forth by the Environmental Protection Agency now create opportunities to improve upon existing industrial waste management practices by allowing

for the development of a cooperative relationship between government environmental regulatory agencies and the industrial community. The NBC Regulatory Relief Program has been developed with the goal of improving the overall environmental performance of participating companies by offering limited regulatory/enforcement relief for violations of NBC pretreatment rules and regulations in return for a commitment by these companies to work toward significantly improving their waste management and environmental practices.

How Does the Regulatory Relief Program Work?

Interested companies may call the NBC Pollution Prevention Manager to request more information and to arrange for an initial **confidential** meeting with NBC non-regulatory personnel. The following outlines the steps to be taken by interested companies to obtain the benefits of the NBC's Regulatory Relief Program:

- 1) Company contacts NBC Pollution Prevention Manager.
- 2) Initial meeting is held with NBC Pollution Prevention non-regulatory staff and company representatives.
- 3) NBC Pollution Prevention staff and company representatives review compliance record of the company.
- 4) NBC Pollution Prevention staff and company representatives identify areas for which regulatory/enforcement relief may be granted and areas for which regulatory/enforcement relief cannot be granted.
- 5) NBC Pollution Prevention staff performs a pre-assessment site visit at the company and identify problem areas with regard to NBC wastewater pretreatment rules and regulations.
- 6) Based upon the results of the pre-assessment site visit and information discussed, the company may choose to participate in the Regulatory Relief Program or terminate any association with the Regulatory Relief Program.
- 7) An environmental compliance inspection, which may satisfy the company's required annual inspection, is conducted by a Regulatory Relief Assessment Team comprised of company personnel, NBC Industrial Pretreatment and NBC Pollution Prevention personnel. Company may be subject to usual regulatory responses (i.e. Warning Letters, NOVs, etc.) for violations detected during this inspection at the discretion of the NBC.
- 8) If the company still expresses an interest in participating in the Regulatory Relief Program, a Participation Agreement is signed by the company and the NBC outlining the commitments each party agrees to undertake and honor, the type and extent of regulatory/enforcement relief being offered, and the length/duration of the project.

- 9) A Regulatory Relief Assessment Report is issued to the company referencing all areas where the company requires improved environmental compliance and recommending ways to achieve said improvement of the company's environmental performance.
- 10) NBC regulatory personnel, NBC Pollution Prevention personnel, and company work together to implement suggestions made in report.

Who Can Participate?

All industrial manufacturing companies located within the NBC district are potentially eligible for participation in the Regulatory Relief Program.

Are There Any Limits of the Regulatory/Enforcement Relief Available?

Although the Regulatory Relief Program is designed to promote environmental compliance through a flexible regulatory framework, some limitations exist regarding the extent of enforcement/regulatory relief available.

The participating company's compliance record with NBC's regulatory pretreatment requirements for the previous three years will determine the company's eligibility for the enforcement relief afforded by this program as follows:

1. Companies who have received warning letters and Notices of Violation from NBC regulatory staff *are eligible* for participation in the NBC Regulatory Relief Program.
2. Companies who have had an NBC Administrative Order issued against them *are eligible* for participation in the NBC Regulatory Relief Program with some limitations on the regulatory/enforcement relief available.
3. Companies who have had an NBC Administrative Order issued against them and in NBC's discretion have failed to cooperate with NBC regulatory staff *may be ineligible* for participation in this program.

These limitations are outlined in detail in the Regulatory Relief Program Project Policy and Guidelines.

The Regulatory Relief Program penalty mitigation provisions will not apply to a particular violation if:

1. The violation has caused actual serious harm or risk to public health, safety, or the environment; or

2. The violation may present an imminent and substantial endangerment to public health or the environment; or
3. The violation presents a significant health, safety or environmental threat (e.g. violations involving hazardous or toxic substances may present such threats); or
4. The violation involves criminal conduct.

What Commitment Must be Made by Industry?

- 1) A participating company must agree to remedy violations within the shortest practical period of time, and, where appropriate, to implement waste minimization and pollution prevention alternatives for achieving compliance and in all cases within the correction periods specified in the NBC Regulatory Relief Program Project Policy and Guidelines. Correcting the violation includes timely remediation of any environmental harm associated with the violation.
- 2) The company agrees to develop a Pollution Prevention Action Plan which includes all of the pollution prevention projects recommended by the Regulatory Relief Assessment Team. Those companies with an existing Waste Minimization Plan shall incorporate these projects into its existing plan.
- 3) The company agrees to develop and test one or more of the pollution prevention recommendations detailed in the Regulatory Relief Assessment Report that would go beyond its compliance requirements.
- 4) The company agrees to share the results of the project(s) with the Regulatory Relief Program partners.

What are the Costs to Participating Companies?

All technical and regulatory assistance provided to participating companies by NBC Pollution Prevention and regulatory personnel is free of charge.

The cost of any and all advice obtained by vendors recommended by the Regulatory Relief Assessment Team is borne by the participating company. All costs incurred in the development, installation, and operation of any equipment, systems, procedures, etc. as a result of this program are borne by the participating company.

What Type of Assistance is Offered?

In addition to offering limited enforcement relief the NBC will commit to assist participating companies to achieve compliance using the most cost effective approaches available. Pollution prevention and source reduction measures will be the primary tools used to solve discovered problems; however, waste management and wastewater treatment practices will also be reviewed and assessed.

NBC Project XL Close Out Report Attachment - 4
The Rhode Island Environmental Compliance Incentive Act Policy

The Rhode Island Environmental Compliance Incentive Act Policy

July 2002

The Rhode Island Environmental Compliance Incentive Act (Title 42 "State Affairs and Government", Chapter 42-17.8) was created to encourage regulated entities to perform voluntary self-evaluations of their compliance programs and management systems, and to thereby improve compliance with such statutes and/or regulations without fear of retaliation. This document is intended to assist entities wishing to take advantage of the Act by establishing basic RI DEM policies for handling the reporting and other activities required under the Act.

Incentives

Subject to eligibility requirements described below, if a regulated entity satisfies the conditions set forth in Sections 42-17.8-4 through 7 of the Act, and has thoroughly complied in a timely manner with any agreement or consent order entered into with the Department to resolve the violations disclosed by the regulated entity, the Department shall not:

1. Assess gravity-based penalties for any violation of environmental laws reported by the regulated entity;
2. Refer the regulated entity to the attorney general or other governmental authority for civil or criminal prosecution related to the violation(s) disclosed by the regulated entity; provided, however, that nothing in this section shall be construed to limit any attorney-client privilege or deliberative process privilege otherwise provided or established by law;
3. Request or use a regulated entity's environmental audit report(s) as a regular means of investigation or as a basis for initiating administrative, civil, or criminal actions.

The regulated entity should note the following:

- A. This Act is not an "Audit Privilege" statute. Information from audits and due diligence activities can be requested by DEM under certain circumstances and the reports are subject to administrative/court ordered production under certain circumstances.
- B. This Act requires DEM to respect a regulated entity's privacy with regard to its environmental compliance efforts so long as that entity in return respects the people and the environment of the State of Rhode Island by using sound environmental management practices as part of its normal operations, and by using good faith, best efforts to comply with regulatory requirements, discover violations, mitigate damage, and remediate any resultant environmental harm.
- C. This Act does not eliminate DEM's right to recover costs expended in responding to a violation and any amounts necessary to offset a regulated entity's economic benefit derived from its noncompliance with law or regulation.

Eligibility

A regulated entity can only take advantage of these incentives if the entity complies with conditions set forth in Sections 42-17.8-4 through 7 concerning "Eligibility Exceptions," "Discovery of Environmental Non-compliance," "Disclosure of Non-compliance," and "Compliance, Remediation and Mitigation of Violations," respectively.

Self-evaluation of an entity's operations and/or a regulated entity's discovery of violations must be the result of regular *due diligence* activities. *Due diligence* shall mean a regulated entity's regular, customary and systematic efforts to prevent, detect, and correct violations by consistently employing practices in its operation that ensures protection of the natural environment through the use of an *environmental management system*.

An *environmental management system* is defined (in Section 42-17.8-2) as a systemic and objective mechanism for assuring that compliance policies, standards and procedures are being carried out, including monitoring and auditing systems reasonably designed to detect and correct violations and periodic evaluation of the overall performance of the environmental management system. The environmental management system of any business shall include provisions for commitment of the management of the business to the environmental management system, to pollution prevention, and to the principle of sustainability. An environmental management system shall lead to an exemplary record of compliance with environmental laws which shall include, but shall not be limited to: (1) evidence that the business has not been found in violation of any environmental law, other than a secondary violation as defined in this statute, within the preceding three (3) years; and (2) has complied with the provisions of applicable general statutes, and any orders of the director under those statutes, with regard to any secondary violation, as defined in those statutes. An environmental management system must also meet the following criteria:

1. The system must implement specific policies and procedures for employees and agents that explain how to comply with environmental laws;
2. The system must identify those persons or positions within the business that are: (A) responsible for monitoring/overseeing compliance, (B) authorized to act to stop violations, achieve compliance, and mitigate violations, and (C) responsible to report violations to the business and/or regulators;
3. The system must lay out a procedure for employees to report violations to the business and/or regulators;
4. The system must explain how employees are educated about the system and the policies/procedures in it;
5. The system must layout a procedure for modifying the system itself to prevent reoccurrence of violations.

The activities must also be *voluntary* in nature. *Voluntary* activities are those activities not the result of legally mandated monitoring, sampling or reporting requirements prescribed by law, judicial or administrative order, or consent agreement. Examples of activities that would not be considered voluntary are, but are not limited to, violations of air permits discovered through a

continuous emissions monitor, or violations of NPDES discharge limits detected through required sampling.

Notification

In order to qualify for incentives, a regulated entity's discovery of violations must be followed by a written submission to the Department of an accurate and complete documentation regarding how it exercises due diligence to prevent, detect and correct violations according to the criteria outlined in Section 42-17.8-2. (Companies with environmental management systems in place will most likely keep this information as part of their internal documentation.) Written notices shall be sent to the following address:

Rhode Island Department of Environmental Management
Office of Technical and Customer Assistance
235 Promenade Street, Room 250
Providence, RI 02908-5767
Attn.: RI Environmental Compliance Incentive Act Notification

Disclosure

In order to qualify for incentives, a regulated entity must fully disclose discovered violations as follows:

1. Each specific violation shall be disclosed, in writing, within fifteen (15) days (or such shorter period provided by law) of discovery, identifying the violation itself, how the violation was discovered (audit, due diligence), supporting data, and all actions taken or to be taken by the entity to bring itself into compliance, mitigate harm, or remediate damage.
2. The violation must be disclosed prior to commencement of federal, state or local agency inspection; the issuance by a federal, state or local agency of an information request to the regulated entity; notice of citizen suit; filing of civil or criminal complaint by government entity or third party; the reporting of the violation to the Department by a third party; or the reporting of the violation to the Department by an independent source, provided that the date of discovery is documented in the official report of the Department.

Written notice must be submitted to OTCA within the specified time period. OTCA will distribute it to the appropriate offices. Written notices shall be sent to the above address.

Mitigation of Violations

Once disclosed, violations must be corrected within sixty (60) days. The entity shall certify to the Department in writing that the violations have been corrected, and take appropriate measures as determined by the Department, to remedy any environmental harm or threat to public health and safety resulting from the violation.

If more than sixty (60) days is required, or if compliance or remedial measures are lengthy, and/or complex, the entity may be required to enter into a publicly available compliance agreement with the Department, administrative consent order or judicial consent decree as specified in Section 42-17.8-7 of the Act. The entity must also agree, in writing, to take steps to prevent a recurrence of the violation(s), which may include improvements to its environmental auditing or due diligence efforts.

DEM/OTCA is available to answer questions related to the Environmental Compliance Incentive Act. OTCA also provides on-site technical assistance to help entities reduce pollution, as well as provide assistance with entities interested in developing sound environmental management systems. Feel free to contact OTCA at 222-6822 ext. 4412.

Frederick J. Vincent, Acting Director
Department of Environmental Management