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Project XL Progress Report

New York State Department of Environmental Conservation (NYSDEC)



In 1995, the U.S. Environmental Protection Agency (EPA) embarked on a series of innovative initiatives in an effort to test new ways to achieve greater public health and environmental protection at a more reasonable cost. Through Project XL, which stands for eXcellence and Leadership, EPA enters into specific project agreements with public or private sector sponsors to test regulatory, policy, and procedural alternatives that will produce data and experiences to help the Agency make improvements in the current system of environmental protection. The goal of Project XL is to implement 50 projects that will test ways of producing superior environmental performance with improved economic efficiencies, while increasing public participation through active stakeholder processes. As of January 2001, EPA has reached its goal of 50 projects in the implementation phase. EPA Project XL Progress Reports provide overviews of the status of XL projects that are implementing Final Project Agreements (FPAs). The progress reports are available on the Internet via EPA's Project XL Web site at <http://www.epa.gov/Project XL>. Hard copies may be obtained by contacting the Office of Policy Economics and Innovation's (formerly the Office of Reinvention) Project XL general information number at 202-260-5754. Additional information on Project XL is available on the Web site or by contacting the general information number. The information and data presented in the January 2001 Progress Report is current as of December 2000.

Background

The New York State Department of Environmental Conservation (NYSDEC) was created on July 1, 1970, to bring together in a single agency all state programs directed toward protecting and enhancing the environment. The NYSDEC is responsible for the administration and enforcement of statewide regulations governing the disposal, transport, and treatment of hazardous wastes in an environmentally sound manner. Under the Resource Conservation and Recovery Act (RCRA), producers of sufficient amounts of hazardous waste at remote locations must transport the



Major Milestones

May 8, 1996
NYSDEC XL Proposal
Submitted

July 12, 1999
Final Project Agreement
Signed

January 10, 2000
EPA Rule Effective Date

January 10, 2005
Termination of FPA

waste directly to permitted treatment, storage, and disposal facilities (TSDFs) if it exhibits at least one of the following characteristics: ignitability; corrosivity; toxicity; or reactivity. The majority of hazardous waste generated at remote locations is the direct result of contaminated sediments accumulating at utility access points. In the case of electric power and telephone systems, the remote locations involved are usually access manholes, service boxes, and street vaults, which often contain sediments that fail the toxicity characteristic (TC) for lead, particularly in urban areas. In the case of oil and gas pipelines, the waste may consist of pipeline condensate, which collects in “drip” pipes downstream of pressure-regulating systems and which commonly exhibits ignitability and fails the TC for benzene. For electric power systems and oil and gas pipelines, polychlorinated biphenyl (PCB) contamination is also possible.

The responsible utility is required to transport all quantities of hazardous waste—no matter how small—directly to a TSDF for disposal. Authorization from a TSDF must be obtained before hazardous waste can be included in the manifest, often resulting in a delay in the removal of waste from the remote location. During this delay period, the possibility of either an accidental release of the waste or on-site vandalism is greatly increased, posing a risk to human health and the environment. RCRA regulations generally do not allow the shipment to, or consolidation of, hazardous waste at off-site facilities other than a permitted or interim-status TSDF or other designated facility. The NYSDEC project would allow public utilities (electric, telephone, and oil and gas) located in New York State to consolidate hazardous wastes generated at remote locations (e.g., manholes). The project would allow the utilities to consolidate the waste at a utility-owned central collection facility (UCCF) for up to 90 days before transport and disposal, rather than having to transport such wastes piecemeal directly to permitted treatment, storage, and disposal facilities (TSDFs).

The Experiment

The NYSDEC project would allow public utilities located in New York State to take the hazardous wastes generated at remote locations (e.g., manholes) and consolidate the waste at UCCFs for up to 90 days before transport and disposal, rather than having to transport such wastes in a piecemeal manner to permitted commercial hazardous waste TSDFs. Pending approval by EPA and NYSDEC (which includes ensuring that the company has no current compliance issues), any company that operates wholesale or retail oil and gas pipelines or that provides electric power or telephone service and is regulated by New York State’s Public Service Commission, or the New York Power Authority, is eligible for inclusion in this XL project.

EPA and NYSDEC expect this XL project to result in superior environmental performance in New York State, while providing cost savings to participating utilities, by:

- reducing the risk of accidental hazardous waste releases at remote locations where no staffed facilities exist;
- allowing the consolidation of similar waste at UCCFs, thereby reducing the number of vehicle trips required to transport hazardous wastes from remote locations to TSDFs;
- reducing the need for human resources, time, and paperwork, which in turn will allow utility and regulatory agency resources to focus instead on high-priority environmental issues; and
- requiring each participating utility to reinvest one-third of its direct cost savings into one or more new environmentally beneficial projects.

The Flexibility

The NYSDEC is working with EPA, New York State utilities, and the community to achieve superior environmental performance and to dispose of remotely generated hazardous waste in a more flexible, cost-effective manner. As an incentive to achieving superior environmental performance, NYSDEC is being offered regulatory flexibility in the area of hazardous waste management.

The statutory program, and the EPA office administering the program, that is affecting the NYSDEC XL project is the Resource Conservation and Recovery Act (RCRA) program, administered by EPA's Office of Solid Waste.

Hazardous Waste Consolidation: Under RCRA, producers of sufficient amounts of hazardous waste at remote locations must transport the waste directly to a permitted TSDF. The majority of hazardous waste generated at remote locations is the direct result of contaminated sediments accumulating at utility access points. In the case of electric power and telephone systems, the remote locations involved are usually access manholes, service boxes, and street vaults, which often contain sediments that fail the toxicity characteristic (TC) for lead, particularly in urban areas. In the case of oil and gas pipelines, the waste may consist of pipeline condensate which collects in "drip" pipes downstream of pressure-regulating systems and which commonly exhibits ignitability and fails the TC for benzene. For electric power systems and oil and gas pipelines, PCB contamination is also possible.

RCRA regulations generally do not allow the shipment to, or consolidation of, hazardous waste at off-site facilities other than a permitted or interim-status TSDF or other designated facility. Currently, utilities are allowed to accumulate hazardous waste without RCRA permits at the remote location where it is generated for up to 90 days (or, under certain circumstances, 180 days) prior to transporting the waste to a TSDF. The FPA between EPA, NYSDEC, and New York State public utilities expresses the parties' intention to allow participating public utilities to consolidate hazardous waste generated at remote locations at designated UCCFs for up to 90 days, subject to specified requirements. At staffed, secured UCCFs, the utilities could safely consolidate compatible types of hazardous wastes collected from different remote locations to ensure that the most efficient transportation and storage methods are employed. By consolidating hazardous wastes at UCCFs, the number of vehicle trips from remote locations to often distant TSDFs could be greatly reduced, thereby reducing mobile source emissions. Storing wastes at fully staffed and approved UCCFs will also greatly diminish the possibility of hazardous waste spillage or seepage at remote locations, from either accident or vandalism. Under this XL project, all other applicable Federal and state regulations governing collection, transport, and storage of hazardous materials will remain in effect.

Reporting: Under current regulations, each remote location that generates more than 100 kilograms of hazardous waste in a single month is issued its own EPA identification number. Each location must open a record file, both in state-only databases and in the Federal database Resource Conservation and Recovery Information System (RCRIS). In addition, the responsible utility must prepare a Hazardous Waste Report/ Biennial Report for each of the remote locations that generate more than 1,000 kilograms in a single month, including manholes and drip pipes. The RCRA-authorized state processes each report and enters the data into state databases, and EPA enters it into the Biennial Report System (BRS) database.

Following the implementation of this XL project, hazardous waste generated at remote locations that is transported to a UCCF can be accounted for in a combined Biennial Report from the utility. The utility, therefore, avoids having to submit a Biennial Report for each remote location. Unstaffed remote locations will use the same EPA identification number as the designated UCCF to which the wastes are transported. A separate Biennial Report must still be prepared for hazardous waste sent from a remote location directly to a permitted TSDF. This regulatory flexibility will streamline the reporting process, resulting in a reduction in duplicated paperwork and cost savings to the EPA, NYSDEC, and the utilities.

Environmental Stewardship: Under the XL agreement, each utility must reinvest one-third of its direct savings into other environmental enhancement or pollution prevention activities that go beyond what is legally required and that were not previously planned. Savings will be estimated by comparing the costs incurred before and after the implementation of the project. Expected savings should result from reductions in report production, paperwork, labor, vehicle trips, and storage costs.

Promoting Innovation and System Change

Project XL provides EPA opportunities to test and implement approaches that protect the environment and advance collaboration with stakeholders. EPA is continually identifying specific ways in which XL projects are helping to promote innovation and system change. The innovations and system changes emerging from the NYSDEC XL project are described below.

Alternative Handling of Wastes—Statewide Regulatory Flexibility. The NYSDEC project seeks to enable innovative management practices to safely and effectively deal with the problems associated with the generation of hazardous wastes at remote locations. These new management practices can benefit utilities across the country facing similar problems with the remote generation, transportation, and secure storage of hazardous wastes. This project provides the opportunity to examine whether immediate transport of hazardous waste to central collection facilities reduces accidental releases and risks to human health and the environment. Also, this project tests the effectiveness of regulatory flexibility within and across industry sectors (electric, telephone, and oil/natural gas) throughout an entire state.

Administrative Burden Reduction. A number of XL projects are testing different approaches to reducing the administrative permitting and reporting requirements imposed by Federal, state, and local regulatory agencies. The NYSDEC pilot project serves as a test bed for a utility-wide burden-reduction strategy for remote generators of hazardous waste. EPA and NYSDEC may also benefit from a reduction in administrative and financial resources as a result of this XL project. The purpose of this project is to test the environmental and economic feasibility of this administrative change.

Environmental Stewardship—Cost Savings Reinvestment. As part of the final FPA, a portion of the cost savings incurred by the utilities as a result of regulatory flexibility will be reinvested in new environmental initiatives. These new initiatives will be documented by the utilities according to established FPA guidelines and tracked by EPA and NYSDEC.

Project Commitment Summary

This table and the environmental performance section that follows summarize progress in meeting commitments described in the FPA for the NYSDEC XL project.

Commitment	Status
New York State Utilities Commitments	
Utilities must identify to local governments and communities those facilities they intend to designate as UCCFs, and must solicit public comment on the proposed plan.	Pending resolution of Petition for Review.
Eligible utilities wishing to participate in this XL pilot must submit to NYSDEC and EPA a formal notification of intent to enter into the project.	Pending resolution of Petition for Review.
New York State utilities must remain in compliance with all applicable Federal and state laws governing hazardous waste storage, transport and disposal.	Ongoing.

Commitment	Status
New York State Utilities Commitments	
Participating utilities must submit an annual Project XL Progress Report to NYSDEC and EPA within 90 days after the end of a project (calendar) year.	N/A. No New York State utilities have registered to participate (designated one or more UCCFs).
Utilities must maintain and make available for inspection for a period of 3 years copies of (1) all manifests for hazardous wastes transported to or from the UCCF; (2) the UCCF's annual Hazardous Waste Reports; and (3) any PCB test results for hazardous wastes brought to the UCCF from remote locations.	To be completed following project implementation.
Each participant must reinvest one-third of its direct savings into other environmental remediation or pollution prevention activities; these savings and reinvestments must be clearly identified in the annual Project XL reports.	To be completed following project implementation.
EPA Commitments	
EPA will issue a final rule providing regulatory flexibility under RCRA that will allow New York State utilities to consolidate hazardous waste generated at remote locations at designated UCCFs for up to 90 days.	Final rule (40 Code of Federal Regulations Part 262) was promulgated on July 12, 1999 and became effective on January 10, 2000.
NYSDEC Commitments	
NYSDEC may initiate implementation of this project through the adoption of an interim Enforcement Directive (ED).	Adopted February 23, 2000.
NYSDEC must propose and promulgate a specific state rule allowing for the change in state regulations governing hazardous waste management.	In progress.
NYSDEC must review and approve the applications submitted by utilities to redesignate their facilities as UCCFs.	To be completed following project implementation.
NYSDEC must conduct RCRA inspections at each designated UCCF at least once per New York State Fiscal Year during the term of the FPA.	To be completed annually following project implementation.
NYSDEC will prepare and submit to EPA Region 2 a statewide Project XL annual Progress Report within 180 days following the end of each project (calendar) year.	N/A. There are no active participants.

Environmental Performance

This section summarizes progress in meeting the environmental performance described in the FPA for NYSDEC. Two important steps in the initial phase of the project have been completed. First, EPA issued a final rule providing regulatory flexibility under RCRA that will allow New York State utilities to consolidate hazardous waste generated at remote locations at designated UCCFs for up to 90 days. This rule became effective January 10, 2000. Subsequently, NYSDEC issued an enforcement directive on February 23, 2000, which allows the state to proceed with the implementation of the XL project until it publishes its own state rule. This directive is valid for one year. On October 7, 1999, the Atlantic States Legal Foundation and other parties filed a Petition for Review of EPA's final Project XL Rule for New York State Public Utilities in the U.S. Court of Appeals for the District of Columbia Circuit. EPA is currently exploring the option of settlement with these petitioners. NYSDEC is accepting requests from the utilities to participate in the project. No information regarding performance measures will be available until after the utilities begin participating. Once results from the project are realized, they will be documented under the following sections:

Utility Participation: Participation in this XL project is open to all public utilities that provide telephone, electric power, or oil and gas services within New York State. Utilities that wish to participate must notify local governments and communities of their intent to designate specific UCCFs and must solicit public comment. NYSDEC will collect data on the number of utilities participating in the XL project by industry and the number of remote locations statewide for which hazardous waste was handled during the preceding project year.

Hazardous Waste Consolidation: Superior environmental performance will be achieved by allowing utilities to store hazardous waste for up to 90 days at UCCFs before transport and disposal. The FPA stipulates that each participating utility must submit an annual Progress Report that includes the total tonnage of hazardous waste generated at remote locations, along with the number of remote locations statewide that generated between 100 and over 1,000 kilograms of hazardous waste during a generation event.

Cost Savings/Reinvestment Highlights: Both New York State public utilities and Federal and state regulatory agencies will realize cost savings as a direct result of Project XL regulatory flexibility. These cost savings will be the result of significant reductions in paperwork, transportation and storage costs, and labor costs. Types of data collected will include an estimate of the monetary value, on a utility-wide basis (electric power, telephone, and oil and gas), of the direct savings realized by participation in this project, as well as a summary of the innovative environmental programs into which select utilities are reinvesting these savings (e.g., environmental compliance, remediation, pollution prevention activities).

Stakeholder Participation

The organizations directly involved in negotiating the FPA included NYSDEC, EPA, and the utility industry in New York State. Bell Atlantic, Consolidated Edison, and KeySpan Energy acted as the lead representatives for the telephone, electric power, and oil and gas pipeline industries, respectively. The development of the FPA was accomplished through implementation of the Public Participation and Outreach Plan, which provided the opportunity for participation by potential industrial participants, environmental organizations, and the general public. This Outreach Plan also provides for public participation in the designation and approval of eligible UCCFs. Before a facility can be designated as a UCCF, the responsible utility must notify local community members of its intentions by publishing an advertisement in a local newspaper, along with two additional means of community notification outlined in the FPA. Utilities must furnish NYSDEC and local governments with a list of all public comments received during the comment period, along with the utility's response to each received comment or question. The Outreach Plan stipulates that each participants's annual Project XL Progress Report be made available to any and all interested parties.

Six-Month Outlook

The key focus areas for continued successful implementation of the FPA over the next six months will be the following.

- EPA is currently exploring the option of settlement with the Atlantic States Legal Foundation and other parties who filed a Petition of Review of EPA's final Project XL Rule for New York State Public Utilities.
- New York State public utilities beginning the Project XL implementation process, including initiating public outreach and submitting notifications of intent to participate to NYSDEC.

Project Contacts

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- Nancy Birnbaum, U.S. EPA, Office of Policy, Economics, and Innovations, (202) 260-2601.
- Lawrence Nadler, NYSDEC, (518) 485-8988.
- Eric Dessen, Consolidated Edison Company (electric power utilities), (212) 460-4889.
- John Quatralo, Bell Atlantic (telephone utilities), (212) 338-7141.
- Dennis Harkawik Outside Counsel to KeySpan Energy (oil and gas utilities), Jaeckle Fleischmann and Jugel, LLP, (716) 843-3848.

Information Sources

The information sources used to develop this progress report include (1) the *December 1999 Project XL Progress Report—New York State Department of Environmental Conservation* (EPA-R-00-0017) and (2) the Final Rule adopted by EPA on July 12, 1999.

Glossary

Baseline: The measure by which future environmental performance can be compared.

Biennial Reporting System (BRS) Database: A national system that collects data on the generation, management, and minimization of hazardous waste. BRS captures detailed data on the generation of hazardous waste from large-quantity generators and data on waste management practices from treatment, storage, and disposal facilities.

Final Project Agreement (FPA): The FPA outlines the details of the XL project and each party's commitments. The project's sponsors, EPA, state agencies, tribal governments, other regulators, and direct participant stakeholders negotiate the FPA.

Hazardous Waste: Byproducts of society that can pose a substantial or potential hazard to human health or the environment when improperly managed. They either possess at least one of four characteristics (ignitability, corrosivity, reactivity, or toxicity), or appear on special EPA lists.

Manifest: An invoice of materials carried on a truck or train.

Media: Specific environments—air, water, soil—that are the subject of regulatory concern and activities.

Multimedia: Several environmental media, such as air, water, and land.

Polychlorinated Biphenyls (PCBs): Mixtures of synthetic organic chemicals with the same basic chemical structure and similar physical properties, ranging from oily liquids to waxy solids. Due to their non-flammability, chemical stability, high boiling point and electrical insulating properties, PCBs were used in hundreds of industrial and commercial applications, including electrical, heat transfer, and hydraulic equipment; as plasticizers in paints, plastics and rubber products; in pigments, dyes and carbonless copy paper; and in many other applications.

Remote Location: A location within a utility's right-of-way network that is not permanently staffed.

Resource Conservation and Recovery Act (RCRA): RCRA gives EPA the authority to control hazardous waste from the "cradle-to-grave." This includes the generation, transportation, treatment, storage, and disposal of hazardous waste. RCRA also promotes resource recovery techniques and methods to reduce the generation of hazardous waste. RCRA focuses only on active and future facilities and does not address abandoned sites.

Resource Conservation and Recovery Information System (RCRIS): A national program management and inventory system of RCRA hazardous waste handlers. RCRIS captures identification and location data for all handlers and a wide range of information on TSDFs regarding permit/closure status, compliance with Federal and state regulations, and cleanup activities.

Right-of-way Network: A fixed, integrated network of above-ground or underground conveyances, including land, structures, fixed equipment, and other appurtenances, controlled or owned by a utility, and used for the purpose of conveying its products and services to customers.

Small-quantity Generator: A generator that produces less than 1,000 kilograms of hazardous waste at a site per month or less than 1 kilogram of acutely hazardous waste per month; this includes standards for becoming a conditionally exempt small-quantity generator.

Toxicity Characteristic: One of four criteria (i.e., ignitability, corrosivity, reactivity, and toxicity) used to define wastes as hazardous. If the wastes are hazardous they are therefore subject to regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA) due to their potential to leach significant concentrations of specific toxic constituents.

Treatment, Storage, and Disposal Facility (TSDF): Permitted facilities engaged in the treatment, storage, or disposal of hazardous waste.

Utility: Any company that operates wholesale and/or retail oil and gas pipelines, or any company that provides electric power or telephone service and is regulated by New York State's Public Service Commission, or the New York Power Authority.

Utility-owned Central Collection Facility (UCCF): A utility-owned facility within the utility's right-of-way network to which hazardous wastes generated by the utility at remote locations within the same right-of-way network, are brought. The UCCFs act as consolidation points for a utility's waste prior to its transport and disposal, and mitigate the costs and inefficiencies associated with piecemeal transfer of the waste.