

US EPA ARCHIVE DOCUMENT

## Section 1 Introduction

### 1.1 Background

Deep draft ports accommodate more than 95 percent by weight, and 75 percent by value, of all US overseas trade. In 1994, the US port industry, alone, generated 16 million jobs and added \$515 billion in income. The significance of ports to the US economy cannot be understated, and ports recognize that by their nature and proximity to sensitive natural resources, proactive environmental management is an essential element of port management

In 1997, the American Association of Port Authorities (AAPA) received a grant from the US Environmental Protection Agency (EPA) to develop an Environmental Management Handbook (EMH) for the port industry. The EMH, completed in 1998, provided a wide range of guidance to ports in developing and implementing environmental management programs to protect and enhance the environment. The EMH included an entire section on managing environmental issues with tenants at Port Authorities. This section included a discussion of the roles of tenants and Port Authorities, lease negotiations, auditing and assessments, and training.

### 1.2 Need for Continued Action

While the EMH was well received and distributed to ports worldwide, very few ports have begun the process of implementing the recommendations from the document into a port-wide environmental compliance program. Therefore, the Port of Houston Authority (PHA) has prepared this Project XL proposal to develop a tenant environmental program for Port Authorities, based on our current environmental program. We believe that this will provide ports with a concrete example of how to implement and maintain an effective tenant environmental program and will present both processes for developing the program and alternatives that were evaluated in selecting our program elements. In addition, we believe a “peer-based” outreach is the most effective approach to widespread application of managing tenant environmental issues within the port industry.

### 1.3 Overview of the Port of Houston

The Port of Houston, extending approximately 25 miles south of the City of Houston, is a highly diverse entity consisting of both private and public terminals, with more than 7,000 ships and 100,000 barges traveling through the port each year. The port, shown in Figure 1-1, supports more than 205,000 jobs while injecting more than \$7.7 billion into the economy.

#### 1.3.1 – Surrounding Community

The City of Houston area has four million residents, with a diverse economic base ranging from computer technology to heavy industrial activities to a thriving tourist trade. Surrounding the port are numerous well-established neighborhoods and a wide mix of industrial and commercial activities.

The PHA facilities are also adjacent to residential communities. A brief description of facilities adjacent to these communities are as follows:

Turning Basin – Hispanic; Woodhouse – Hispanic/Anglo; Barbours Cut – Anglo; Galveston – Hispanic/Anglo

The (PHA) has made a significant investment within the surrounding community, where we provide:

- Mentoring and guidance in local elementary schools through a magnet school program.
- Financial and manpower support to a variety of educational and social organizations, conducting career days, festivals, tours, and other events.
- Free boat tours of the Houston Ship Channel six days per week.
- Financial and technical support to 12 local chambers of commerce.

As an active member of our community, the PHA has made a long-term commitment to the economic and social well-being of our neighbors. We believe that the tenant environmental compliance program will enhance our relationship with our tenants and the surrounding community by providing both a mechanism to discuss environmental issues, and ensuring that we meet our mission to protect and enhance the critical natural resources in and around our facilities.

0.2.2 The Port of Houston Authority

The PHA owns and operates public terminals and facilities along the Houston Ship Channel. In addition, there are literally dozens of private terminal owners who operate a variety of cargo facilities including a \$15 billion petrochemical facility. A total of 165 million tons of cargo are shipped through the port annually, of which 26 million tons of cargo passed through PHA facilities during 1998. With approximately 150 tenants, PHA oversees a significant number of different activities that could potentially affect the marine environment. However, the PHA has implemented a tenant environmental compliance program designed to protect and enhance the environment, as discussed in the following section.

**1.4 PHA’s Commitment to Environmental Protection**

PHA’s commitment to environmental protection is one of the cornerstones of its operating principles. The port has implemented a port-wide compliance program endorsed from the top of the organization throughout all operating divisions. The Port Commission adopted its Environmental Policy in 1989, and that policy has guided the Port’s efforts in protecting and preserving natural resources ever since.

In 1991, the Environmental Affairs Department developed the

<p><b>PHA Environmental Compliance Policy</b></p> <p>It is the policy of the Port of Houston Authority to conduct its business and manage its resources in an environmentally sound and sensitive manner. The Port Authority fully supports the environmental goals and objectives of the United States and the State of Texas as embodied in their respective laws, rules and regulations. In addition, it is the Port Authority's intent to:</p> <ul style="list-style-type: none"> <li>▪ Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations; and,</li> <li>▪ Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.</li> </ul> <p>The Port of Houston Authority is committed that its users, employees and lessees shall conduct themselves and their operations in compliance with the spirit and intent of this policy and the laws, rules and regulations which give it foundation.</p>
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Environmental Compliance Manual designed to implement the environmental policy and contains three main elements:

- Roles and responsibilities of key members of the Port staff, from the Executive Director to the Environmental Affairs Manager to other Directors and Department managers.
- Environmental Compliance Procedures that set up the framework for the Program.
- Environmental Regulatory Matrix that summarizes federal, state and local regulations that affect operations at PHA.

Following development of the Manual, the Environmental Affairs Department prepared a series of Management Handbooks that provide guidance to PHA managers and tenants on specific environmental issues. The Handbooks generally present the roles and responsibilities of key staff members, procedures to meet regulatory requirements, and inspection and training requirements. A total of 19 Handbooks have been developed including:

- PHA Hazardous and Non-Hazardous Waste Management
- Air Emission Inventory
- Asbestos Awareness Manual
- Asbestos Operation and Maintenance Plan
- Confined Space Awareness Program
- Dust Control Policy
- Emergency Response Procedures and Reportage and Response Guidelines
- Lead Based Paint Manual
- Noise Conservation Manual
- Oil Spill Prevention and Response Act (by facility)
- Pesticide/Herbicide Manual
- Petroleum Storage Tank Manual
- Respiratory Protection Program Workbook
- Spill Prevention, Control and Countermeasures Plan (by facility)
- Storm Water Construction Plans
- Storm Water Pollution Prevention Plans (by facility)
- Wastewater/Water Well Plan
- Wetlands Manual
- Written Hazardous Communications Workbook

To ensure that the requirements of the Environmental Policy, as well as the Environmental Compliance Program are being met, the Environmental Affairs Department conducted environmental compliance audits of all of its tenants in 1998 and is planning to conduct the second round of audits in January 2000. Following the second round of audits, a training program will be implemented to assist tenants with the environmental compliance issues identified at their facility. The training will be conducted by a third party, which will allow the tenants access to a consultant with expertise in their specific issue. In addition, the PHA will develop generic storm water management plans and monitoring plans for the various tenant sectors. This will provide the tenants with the necessary tools to implement an effective storm water management program.

### 0.3.1 PHA's Environmental Awards and Recognition

In recognition of our commitment to environmental protection, the PHA has received several environmental awards including:

- Comprehensive Environmental Management Award for overall proactive environmental management from the AAPA in 1999
- Environmental Enhancement Award for the 220 acre Demonstration Marsh project from the AAPA in 1996
- Community Involvement Award for the Houston Ship Channel Project from the AAPA in 1995.
- Clean Texas 2000 Award Finalist from the TNRCC for the Houston Ship Channel Project in 1999.
- The Parks People Award for the Houston Ship Channel Project in 1997.

The PHA's success to date suggests that environmental management programs modeled after our program will provide significant long-term environmental benefits to ports nationwide.

## **1.5 Selection of the Port of Houston Authority**

As described above, the PHA has implemented and is maintaining a highly effective environmental management program that is endorsed at the top and throughout the entire organization. The advantages of utilizing the PHA to develop the tenant program include:

- Established Program – PHA has an established environmental program that began in 1989. The Environmental Affairs Department has grown to 6; five professional staff and one technician. As part of the program, PHA has developed a port-wide policy, procedures to protect the environment, and a compliance program to ensure that regulatory requirements are met. Through this experience, the Port can offer substantial experience and guidance to our tenants and to other ports.
- Variety of Activities – As the largest port in the US in terms of foreign tonnage and the second largest port in total tonnage, as both an operating and landlord port and with 150 tenants, the PHA oversees the operations of the most diverse set of operations in the industry, from container operations, to roll on - roll off facilities, to extensive bulk grain transfer facilities. These operations have the potential to cause varying degrees of environmental effects, and these tenants have greatly varying knowledge of environmental regulations and requirements. This variety will allow other ports – both large and small – the ability to relate immediately to the activities and draw on the experience PHA has gained over the last 10 years.
- Active State Program – Because most federal regulatory programs are delegated to state authorities, ports are regulated primarily at the state level. Because of PHA's frequent interaction with the State of Texas Natural Resources and Conservation Commission (TNRCC), we have significant experience in dealing effectively at the state and local level and can provide that experience to other ports.

## **0.6 Contacts**

The PHA primary point of contact will be:

Ms. Laura W. Fiffick, CSP  
Environmental Affairs Manager  
Port of Houston Authority  
P.O. Box 2562  
111 East Loop N.  
Houston, Texas 77252-2562

Phone: (713) 670-2438  
Fax: (713) 670-2427  
Email: [lfiffick@poha.com](mailto:lfiffick@poha.com)

## 1.7 Proposal Organization

This proposal includes the following main sections:

- *Section 1* – Introduction
- *Section 2* – Project Description
- *Section 3* – Project XL Criteria
- *Section 4* – Requested Flexibility
- *Section 5* – Compliance and Enforcement
- *Section 6* – Schedule
- *Section 7* – Deliverables

## Section 2 Project Description

This section presents an overview of the proposed project and a detailed scope of services.

### 1.1 Summary of the Project

Utilizing our existing, award-winning efforts as the basis, PHA is proposing to develop a tenant environmental management program that can be used by other ports nationwide to improve environmental compliance with port tenants, and in turn receive a high degree of regulatory flexibility. The primary objective of the project is to develop an easy-to-use handbook that will describe the elements of and process for developing a highly effective tenant program. When other ports implement these same or equivalent elements, they will become eligible for similar regulatory flexibility.

By utilizing a tenant environmental management program with elements similar to those being set up by PHA, great strides and regulatory compliance can be achieved. This will allow the EPA and state regulatory agencies to focus on other industries and other critical environmental problems. Without this program, limited regulatory compliance is likely throughout the port industry, requiring greater scrutiny by federal and state regulators, and increased costs for enforcement.

### 2.2 Project Elements

The proposed model port project will have three main elements:

- *Project Agreement of All Parties* – Because PHA operations are regulated both at a state and federal level, agreements at all regulatory levels are required. The first key step will be the development of a Project Agreement between PHA, EPA and TNRCC on how the project will be conducted, how data will be handled, and most importantly, how enforcement of tenant non-compliance issues will be managed. This agreement is critical to the overall success of the project, since active participation by our tenants is essential.
- *Data Collection and Evaluation* – In this step, a tenant auditing program will be implemented on a quarterly basis (or more frequent if deemed necessary) to assess the current and ongoing compliance with state and federal regulations. This will include site visits, discussions with site personnel, and recommendations for program enhancements. A tenant training program will also be implemented to assist tenants with improving environmental compliance at their facility. Generic manuals will be developed when appropriate.
- *Development of the Tenant Program Report* – This report will include procedures and processes used to develop the tenant environmental management program, alternatives to the selected environmental compliance program, an assessment of improvement of tenant environmental compliance and the selection of the PHA's approach to tenant environmental compliance

A detailed description of each project element is presented below.

### *Task 1 – Project Initiation*

#### Task 1.1 – Project Agreement

The PHA will work closely with the EPA and TNRCC to develop a Project Agreement (PA) that will define the following critical elements:

- Goals and objectives for the project.
- Procedures used to develop the tenant compliance program.
- Use of data gathered as part of the data collection tasks.
- Enforcement actions by EPA and TNRCC for non-compliance issues cause by tenants that are identified during the data collection tasks.
- Remedial actions required by tenants/PHA for non-compliance issues.
- Incentives for ports in Texas and nationwide for implementing similar programs including limits on liability from tenant activities, thresholds or limits on the types of non-compliance issues that should be reported to EPA/TNRCC, and specific reporting requirements and templates.
- Certification processes.

PHA will arrange for and conduct meetings with the EPA and TNRCC to begin the development of the PA. PHA will develop the first draft of the PA for review by the EPA and TNRCC. PHA will work with EPA and TNRCC to finalize the PA before initiation of the remainder of the project.

#### Task 1.2 Tenant Selection

The PHA, in conjunction with our tenants, will select 20 tenants to focus on during the first phase of this project. These tenants selected will be identified by a number. The tenants selected will vary in size and environmental issues. The PHA has the authority to enter leased premises per our lease agreement. In addition, PHA leases require tenants to comply with all environmental regulations.

Halfway through the project, an evaluation of the progress of the 20 tenants will be made. At this point a decision will be made on the success of each media evaluated. It is expected that 20 additional tenants will be added for the final phase.

### *Task 2 – Data Collection and Evaluation*

#### *Task 2.1 – Records Review and Initial Site Visits*

The PHA acquired the services of a third party to conduct a review of the audit of PHA's tenants conducted in 1998 and to be conducted in January 2000. A copy of the checklist used during the 1998 audit is attached in Appendix A. The third party, with the assistance of PHA Environmental



Staff, will ensure the PHA has a well-documented description of the activities at each tenant property and environmental compliance issues. The third party will also make recommendations to improve the checklist used during the 1998 audit. The results of both assessments have and will be entered into a database system (Caribou). The information from these two audits will be used as a baseline for tenant environmental compliance.

These audits are Port audits, not formal inspections to take the place of EPA/TNRCC inspections.

Finally, a summary memorandum will be developed providing a detailed description of the results of the first two tenant audits and will include identification of existing and potential areas of non-compliance. The memorandum will also include a recommended re-audit schedule for each of the tenants. The schedule will range from quarterly to bi-annually. The re-audit schedule will be based on the degree of the environmental issues and risk to the environment of tenant properties. The third party and PHA will meet after the memorandum is developed to ensure that the contents are accurate.

#### Task 2.2 – Tenant Training Program

Based on the results of Task 2.1, the PHA will develop a tenant-training program to assist tenants with understanding environmental compliance issues. The list of training classes provided will be based on the issues identified during the audits. The classes will be provided by a third party to allow the tenant access to environmental consultants who may be able to assist them with their issues and to limit the PHA's liability. The PHA will select, with the assistance of interested tenants, a variety of environmental consultants with expertise in environmental issues of concern. Tenant training programs will be offered throughout the project when necessary.

#### *Task 2.3 – Generic Written Program Guidance*

Again, based on the results of Task 2.1, the PHA will develop generic plans written by a third party when deemed necessary. As an example, the PHA will be developing generic storm water management plans and monitoring plans for tenant sectors identified during the audits. The generic plans will be distributed to the tenants to assist with the development of their own plan. Other such plans for different environmental issues may be developed as the need is identified.

#### *Task 2.2 - Re-audits*

As recommended from Task 1.1, re-audits will be conducted by PHA Environmental Staff or a third party, if necessary. The re-audits will be entered into the Caribou database system to keep track of compliance issues and improvements. The memorandum described in Task 2.1 will be updated, as necessary. The final memorandum will be used as part of the tenant environmental program report described in Task 3.

#### *Task 2.5 - Develop Environmental Protection Policy and Compliance Objectives*

Utilizing the PHA's environmental policy developed in 1989 and the objectives developed in 1998, specific tenant environmental compliance goals related to the potential environmental risks identified in Tasks 2.1 and 2.2 will be developed. The goals will focus on improving the highest risk issues, and will include specific environmental staff responsibilities .

#### *Task 2.7 - Develop Comprehensive Program to Reduce Risks*

Based on the PHA's current tenant environmental program and the audits conducted, the PHA will develop a Tenant Environmental Compliance Program to include the following:

- Comprehensive plan with specific commitments to eliminate the risks.

- Monitoring and compliance assurance program designed to routinely evaluate progress made in reducing/eliminating risks. This program will include a tracking process for each individual non-compliance issue.
- Process of re-auditing.
- Training of PHA and tenant staff.
- Development of generic plans as needed.
- Mechanism to update program elements based on the monitoring program.

### *Task 3 – Develop Tenant Compliance Program*

#### *Task 3.1 – Tenant Compliance Report*

Utilizing the analyses conducted in Task 2, PHA will develop a tenant compliance program report. The report will have seven main sections as described below:

- *Section 1* – Introduction, including the reasons for developing a tenant compliance program and the purpose of the document.
- *Section 2* - Overview of port activities presenting PHA and tenant activities.
- *Section 3* – Development of the tenant environmental compliance program, including detailed procedures for creating a similar program for other ports.
- *Section 4* – Non-compliance issues and risks, comparing tenant activities with environmental risks.
- *Section 5* - Alternative environmental compliance programs, including management approaches and techniques that can be used to implement similar programs.
- *Section 6* – PHA’s environmental compliance program that will become the tenant compliance program. Included in the program will be templates
- *Section 7* – Agreements with EPA and TNRCC related to discovery of non-compliance issues and enforcement

#### *Task 3.2 – Outreach to Other Ports*

PHA will develop a brochure outlining the contents of the tenant compliance program and the incentives to participate in the program. PHA will distribute the brochure to public port authorities across the country. In addition, the PHA will be available to assist other ports in helping to initiate similar programs.

## Section 3 Project XL Criteria

### 3.1 Superior Environmental Performance

The proposed Tenant Environmental Compliance Program will demonstrate Superior Environmental Performance (SEP) by providing dramatic improvements in environmental compliance, proactive environmental management, and significantly reduced regulatory enforcement requirements. Because of the nature of port activities, which are characterized most often as highly industrialized centers, the risks to sensitive natural resources are significant. Port authorities are faced with keeping port industries - and their own facilities - in compliance with existing regulations, and then focusing on providing proactive environmental management to protect and enhance those critical natural resources.

Port facilities face a wide variety of compliance issues in all medias. Examples of each are as follows: Air: offroad engines-offloading bulk materials-dust; Water: wastewater treatment-stormwater-equipment washdown-spills; Waste: maintenance shops wastes-spills.

The PHA has proven that port authorities can play a significant role in improving compliance and protecting the natural environment. The best way to demonstrate their effectiveness is to present PHA's successes to date. In 1994, the PHA embarked on a critical element of its environmental management program – they conducted an environmental compliance audit of all PHA-owned and operated facilities.

As an example, at the Barbours Cut Terminal, PHA identified 22 potential non-compliance issues ranging from drum labeling to improper storage of batteries to improper manifesting of wastes. The PHA then committed to improve conditions at this facility, and conducted a series of follow-up audits and inspections to ensure that progress was being made. In 1999, the number of non-compliance issues found during the independent audit was reduced to one, a decrease of 95.5%.

The PHA believes that with this Project XL an accurate baseline for tenant compliance will be established as was for PHA facilities in 1994 and documented improvements will be achieved. These improvements in environmental compliance will subsequently improve the quality of the environment and protection of natural resources. Examples of improvements made at the PHA include the following:

- 1) Proper disposal of wastes
- 2) Spill minimization and elimination
- 3) Increased recycling efforts
- 4) Protection of stormwater

Implementing this Project XL will make tenants more environmentally responsible for their operations, and will provide the tools to achieve this goal.

The tenants will also be a part of the TNRCC's permanent pollution prevention program (P4). This program will assist and encourage tenants to reduce wastes and recycle, further improving the environment.

The PHA will set a goal of a 20% improvement in tenant compliance issues. This goal will be evaluated and reassessed as the project progresses.

The PHA is similar in many respects to other ports across the US, with significant industrial activities located immediately adjacent to sensitive natural resources. This success story clearly demonstrates that in the absence of a solid environmental management program, significant non-compliance is likely. However, with the commitment of the port authority, significant strides can be made to dramatically improve compliance. Once compliance is achieved, a port authority can focus their attention on proactive management – protection and enhancement – of sensitive natural resources.

We believe that a tenant compliance program – one in which ports implement proactive environmental management techniques – will provide Superior Environmental Performance nationwide.

## **2.2 Flexibility and Other Benefits**

Port management requires a careful balance between the business of being competitive within a highly competitive industry, while meeting stringent environmental regulations and protecting its nearby sensitive natural resources. While ports can easily dictate the environmental compliance requirements for the facilities they own and operate, they must carefully weigh how they investigate and enforce environmental regulations related to their tenants. “Over-enforcement” can lead tenants to seek new ports to conduct their business, where oversight is reduced, while “under-enforcement” can result in relaxed environmental management leading to potential problems and subsequent liabilities both to the tenants and the port.

The proposed tenant compliance program will result in significant benefits to the PHA and the port industry as a whole by providing:

- Specific agreements on limits of liability including redefining the owner/operator language for port authorities to exclude tenant activities.
- Thresholds related to the type and severity of non-compliance issues that must be reported.
- Simplified templates for reporting non-compliance issues.
- Limits on record keeping.
- Specific guidelines and examples that can be used by other ports to quickly and efficiently develop an effective environmental compliance program.
- Detailed procedures to guide other ports in the development process.
- Alternatives to the compliance program selected by the PHA.
- Templates/Databases to record efforts made in the compliance program such as in conducting compliance audits and follow-up inspections, and for monitoring the effectiveness of the program.

(For specific information on regulatory flexibility, please see Section 4)

In addition, this project provides the EPA and the TNRCC with certain critical benefits:

- Increased awareness and compliance with environmental regulatory programs at ports within Texas and nationwide.
- Public relations benefits for proactive environmental management techniques.

- Reduce manpower requirements for inspections of ports that have implemented this program, and significantly lower enforcement actions to bring ports into compliance.

### **3.3 Stakeholder Involvement**

Because ports are generally regulated at three levels – federal, state and local - this project will require considerable involvement by a variety of stakeholders. The following regulator stakeholders were identified who should be involved in the project development:

- US Environmental Protection Agency
- U.S. Coast Guard
- Texas Natural Resources Conservation Commission
- City of Houston
- Harris County Pollution Control
- Resource Agencies

In addition, because the PHA is involved in a variety of development projects, the following chambers of commerce, local citizen groups, and other interested parties will be invited to participate in this project:

- American Association of Port Authorities
- Greater Houston Partnership
- Port of Galveston
- La Porte Chamber of Commerce
- East End Chamber of Commerce
- North Channel Chamber of Commerce
- Houston Hispanic Chamber of Commerce
- Texas Southern University
- University of Houston Clear Lake
- Galveston Bay Foundation
- Galveston Bay National Estuary Program
- Citizens Environmental Coalition
- San Jacinto College

Also, because this effort will have significant consequences from our tenants, the following Associations:

- West Gulf Maritime Association
- Greater Houston Port Bureau

In addition, 20 tenants will be invited to participate in the first phase and 20 additional tenants in the second phase.

Finally, because of the desire for this project to be immediately transferable to other ports nationwide, the PHA will include representatives from both the American Association of Port

Authorities and at least three other ports nationwide, including at least one other port authority in Texas.

The PHA will develop and implement a stakeholder involvement program to keep all parties abreast of the activities and recommendations from this project. An informational meeting will be held during the pre-proposal stage. A stakeholder kickoff meeting will be held immediately following proposal acceptance. Additional stakeholder meetings will be conducted as required at key junctures of the project, such as at the completion of the draft report to discuss recommendations and make required changes. Also, a stakeholder meeting will be held after the final product is completed to inform all parties about the program to be implemented and to discuss the responsibilities of the PHA and port tenants in making this project a long-term success.

### **3.4 Innovation and Pollution Prevention**

This project will result in one critical innovation – namely a tenant compliance program – and a variety of pollution prevention strategies.

#### *Innovation*

A port is a unique operating entity – it often conducts activities that can affect the environment, but more often a port acts as a landlord for other corporations whose activities could cause environmental impairment. To provide a program that can cover these activities requires a considerable degree of innovation. The tenant compliance program is a first of its kind effort, utilizing the experience of the PHA as a guide, and is designed to provide a mechanism for port authorities to provide long-range protection for their facilities, without assuming the additional liabilities inherent in the landlord-tenant relationship.

#### *Pollution Prevention*

As discussed previously, the Environmental Management Handbook developed by the American Association of Port Authorities provided a series of solid recommendations for pollution prevention at ports. However, there were no real incentives for ports to implement these recommendations. By implementing this tenant compliance program, including the regulatory flexibility covered in the following section, the EPA and the TNRCC will provide significant incentives to implement this program across the state and across the country.

As noted in the scope of services in Section 2, the first step in the program will be to conduct an environmental compliance audit that will provide a baseline to assess the overall environmental conditions at a port. This audit is the single most critical element in pollution prevention, providing the port with a clear understanding of the activities at their facility that can affect environmental quality. As part of the audit, ports would be encouraged to establish an environmental compliance database that will allow careful tracking of progress.

The second step will be to develop training and re-auditing for port tenants, utilizing the Environmental Management Handbook as a guide. Finally, because day-to-day environmental compliance will become routine, the ports that implement this program will be free to focus on future environmental protection and enhancement programs.

Finally, the selected 20 tenants will be encouraged to participate in the TNRCC's Permanent Pollution Prevention Program (P4) starting in the spring of 2000. This program will assist with waste minimization and increase recycling efforts.

## *2.5 Transferability*

Transferability is one of the main objectives of this project – allowing and encouraging other ports nationwide to implement an equivalent program to improve environmental conditions throughout their facilities. The project will include a step-by-step guide to implement an equivalent program at other ports, and will include a variety of alternative program elements that could be used, depending on the desires and funding levels available to individual ports. In addition, through the involvement of AAPA, the benefits and successes of this program can be discussed in a wide-ranging and open forum, thereby encouraging further support and involvement by other ports.

Not only will this program be transferable to other ports, it could be used by a number of other industries with similar landlord-tenant issues, including airports and landlords of large commercial/industrial development facilities.

## *2.6 Feasibility*

The tenant compliance program has been endorsed and encouraged by the Port Commission and PHA Executive Director, Mr. H. Thomas Kornegay. The PHA Environmental Affairs Manager, Ms. Laura Fiffick, has been directed to lead this effort and use the necessary staff resources to ensure its success. In addition, the PHA Counsel, Ms. Martha T. Williams, Director of Protection Services, Mr. Ted Walters and the Real Estate Manager, Ms. Brenda McDonald have agreed to support the development of an effective program.

The PHA staff have the technical and managerial skills necessary to complete this project and implement the tenant compliance program at PHA, particularly since they have been implementing an effective and award-winning program. In addition, the PHA will obtain the assistance of a highly qualified technical consultant to provide an independent audit of the facility as well as the procedures used by the Environmental Affairs Department. Thus, the PHA will have direct and immediate access to the required technical staff and skills necessary to complete this project.

Finally, because the PHA must follow a variety of state regulations, Mr. Ken Zarker of the TNRCC has already been contacted as part of the planning for this project. In addition, appropriate members of TNRCC will be included in the stakeholder program.

## **3.7 Evaluation, Monitoring and Accountability**

### *Accountability*

The PHA recognizes that accountability is a key facet of this project. However, the PHA, and most ports, do not have direct operational control over their tenants, and the tenants perform most of the activities that could cause environmental liabilities. Therefore, our commitments will focus on actions that PHA will take to identify potential environmental problems, and rectify those problems within the limits of our control. Our commitments include:

- Conduct tenant compliance audits of all PHA properties. The audits will be conducted primarily by PHA staff, but independent consultants may be used to verify the accuracy of the inspection program.
- Develop an environmental compliance database. The PHA will develop a database to maintain all of the compliance data gathered during previous audits and ongoing environmental inspection programs. An overview of the data will be available on the PHA website, and the entire database will be available to the EPA upon request. The PHA will maintain and update the database at least annually.
- Document non-compliance and report violations. Subject to agreed-upon reporting protocol (type and severity of the problem, time required to report problem, data to be provided, etc.), the PHA will provide a report to the appropriate regulatory agency identifying the violation, the entity responsible for the violation, and remedial actions taken by the tenant and/or the PHA, and follow-up recommendations. The frequency and level of detail of the report will be developed in future discussions with EPA and TNRCC.
- Conduct follow-up inspections of violation sites. The PHA will conduct a re-inspection of tenants where violations were noted on a quarterly basis to determine their status in dealing with the problem. These follow-up inspections will be accumulated for annual reporting discussed below.
- Conduct outreach program. Through the AAPA, as part of conferences or seminars, and as requested by other ports, the PHA will provide technical assistance in the development of equivalent environmental management programs for other ports.
- Annual report. The PHA will submit annual reports for the length of the program indicating progress made toward port-wide environmental compliance. The report will describe all of the PHA's environmental tenant compliance activities, identify major issues that have been identified and addressed, and describe the most frequent issues, including ways to improve conditions. Finally, the report will contain an objective evaluation of the project's success to date, and will encourage stakeholders to comment on ways to improve the process.

### *Monitoring and Tracking*

As described above, monitoring and tracking will be conducted in two ways. First, all data gathered as part of the program will be kept in a database that will allow effective tracking of environmental issues and the progress made toward reducing the impacts from port operations. Second, an annual report will be developed by the PHA describing the previous year's success, and the efforts to be used in the following year, including any revisions to the program. PHA will allow stakeholders to comment on the draft report, and a final report will contain both the reviewers comments and responses by the PHA.

### **6.1 Shifting of Risk Burden**



There will be no shifting of the risk burden. In fact, because this program will be multi-media, we expect that overall environmental risks to all media will be reduced. In addition, the risks will not be transferred from one community to another. Rather, the overall risks from the facility to all surrounding communities will continue to be reduced.

## Section 4 Requested Flexibility

This project will result in a document that clearly and concisely presents the elements of a tenant environmental compliance program utilizing the real life experiences of one of the largest ports in the country. The document will allow other ports to quickly implement the most appropriate program to meet their operational and environmental protection needs, while reducing the overall cost of the program.

Federal and Texas environmental statutes impose a variety of obligations on the owners and operators of installations at which regulated activities are conducted. Most of these statutory obligations fall into one of five broad categories:

- 1) permitting requirements for new or existing operations;
- 2) obligations to comply with environmental regulatory requirements or prohibitions;
- 3) environmental reporting obligations;
- 4) environmental recordkeeping obligations; and
- 5) obligations to remediate environmental contamination.

Each of the statutes which authorize regulatory programs to effectuate these statutory obligations define certain key terms and phrases (e.g., owner, operator, source, person, etc.) which allow the implementing agencies to specify the specific categories of entities to which these obligations apply.

The PHA proposal would involve a commitment to implement certain environmentally beneficial practices and policies, in return for which the EPA and the TNRCC would use their statutory authority to minimize the liability and compliance obligations of participating landlord ports for the acts or omissions of their tenants.

Federal and state environmental laws impose a wide variety of obligations on the owners and operators of facilities at which regulated activities are conducted. We conclude that the U.S. EPA and the TNRCC may generally exempt landlord ports from air/water pollution and hazardous waste management requirements with respect to the operations of port tenants, which the port does not control or supervise. Obviously, a landlord port authority must comply with environmental laws with respect to its own operations. Such a port authority must also comply with laws, which apply to tenant operations, which the port does control or supervise. However, we conclude that both agencies have legal authority and discretion to exempt from these requirements a port whose only connection to a tenant is that of landlord. The federal superfund law (CERCLA) does not appear to offer this kind of liability insulation to a passive landlord port.)

The PHA is suggesting two options for EPA and TNRCC to consider in the regulatory flexibility section of this proposal. They are as follows: (1) redefine owner/operator to exclude Ports following this proposal or (2) establish an agreement between a Port and EPA and TNRCC to exclude participating Ports from criminal and civil penalties specifically related to tenant activities. This could be in the form of a written policy or specific agreements. Both of these options are further described below.

#### *4.1 Redefine Owner/Operator*

For the requested agreements on the limits of the PHA's environmental liability, the EPA and TNRCC may either provide written interpretations of existing laws or amend existing regulations to clarify that the PHA is not liable for a tenant's actions. The particular legal requirements related to liability and suggested language to clarify that the PHA's liability for tenant's action is limited include:

- The Clean Water Act and the Texas Water Code make it unlawful for any person to discharge a pollutant into water without prior authorization. The provisions under these statutes focus on the actions of the dischargers, not on the actions of passive landlords or landowners. Suggested regulatory language that would clarify that the PHA is not responsible for unauthorized discharges made by a tenant includes:

##### Federal Rules:

A Participating Port is not a person who discharges pollutants from a tenant's operations for purposes of the NPDES permitting program. In accordance with 40 C.F.R. § 122.21(b), it is a tenant's responsibility to obtain NPDES permits. [40 C.F.R. § 122.21(a) & (b)].

A Participating Port is not required to obtain a permit for discharges of dredged or fill material for a tenant's activities. [33 C.F.R. § 323.3].

A Participating Port does not discharge oil or hazardous substances from a tenant's facility, if the Participating Port complies with the requirements of an approved XL Program. [33 C.F.R. § 153.103(g)].

A Participating Port is not a person in charge of a tenant's facility or the owner or operator of a tenant's facility, if the Participating Port complies with the requirements of an approved XL Program. [33 C.F.R. §§ 153.203 & 153.303]

##### TNRCC Rules:

A Participating Port is not the owner, operator, or person or individual in charge of or responsible for a discharge or spill into waters in the state from a tenant's facility, if it complies with the requirements of an approved XL Program. [30 TAC § 327.1 & 327.2]

A Participating Port is not the owner or operator of an underground storage tank owned by a tenant, if it complies with the requirements of an approved XL Program. [30 TAC § 334.2]

- RCRA and the Texas Solid Waste Disposal Act impose hazardous waste handling requirements on generators, transporters, and treatment, storage, and disposal ("TSD") facilities. These statutes do not regulate the activities of a passive landlord, such as the PHA, with respect to a tenant's operations. Suggested regulatory language that would clarify that the PHA is not subject to RCRA or Texas Solid Waste Disposal Act requirements for hazardous wastes handled by a tenant include:

Federal Rules:

A Participating Port is not a generator or transporter of hazardous waste or the owner or operator of a facility which treats, stores or disposes of hazardous , if it complies with the requirements of an approved XL Program. [40 C.F.R. § 260.10; *see also* 40 C.F.R. parts 261, 262, 263].

A Participating Port is not the owner or operator of an underground storage tank owned by a tenant, if it complies with the requirements of an approved XL Program. [40 C.F.R. § 280.10 & 280.12].

State Rules:

A Participating Port is not a generator, transporter, or owner or operator of a storage, processing or disposal facility, nor does a Participating Port cause, suffer, allow, or permit the storage, processing, or disposal of any industrial solid waste or municipal hazardous waste, if it complies with the requirements of an approved XL Program 30 TAC §§ 335.1, 335.2, & 335.41(d)].

- The Federal and Texas Clean Air Acts prohibit air emissions of pollutants without authorization. The provisions of these statutes focus on the owners and operators in charge of the facility from which the emissions occur and on the facility itself. Suggested regulatory language that would clarify that the PHA is not responsible for air emissions from a tenant's operations include:

Federal Rules

A Participating Port is not the owner or operator of a stationary source, nor is a Participating Port part of a stationary source, if it complies with the requirements of an approved XL Program. [40 C.F.R. § 52.21(b)].

### State Rules

A Participating Port is not the owner or operator of a source or facility, nor is a Participating Port part of a source or facility, if it complies with the requirements of an approved XL Program. [30 TAC §§ 101.1, 116.10 122.10.]

#### ***Section 4.2 Exclusion from Criminal and Civil Penalties***

To address the limits on liability, the PHA requests that the TNRCC and EPA provide assurances to the PHA, either through rulemakings, written agreements or policy changes, that the agencies will not pursue enforcement actions against the PHA for tenant violations, even if such an enforcement action would be allowed by rule or regulations. Specifically, the PHA requests TNRCC and EPA agree that the agencies will not exercise their discretion to pursue criminal or civil penalties against a Participating Port for a tenant's actions.

#### ***Section 4.3 Thresholds***

A written definition of the reporting thresholds is essential in order to ensure that the PHA clearly knows what actions performed by its tenants must be reported to the TNRCC under the XL Program. The PHA suggests that the TNRCC establish the thresholds based on existing TNRCC enforcement policy. For instance, in accordance with current TNRCC penalty policy, violations are divided into three categories of harm (major, moderate, and minor). In addition, a violation may be a single event or a continuing violation. Continuing violations are divided into three categories (major, moderate, or minor). The PHA suggests that it be required under the XL Program to report all tenant violations it is aware of that fall into the moderate and major harm categories. In addition, the PHA could agree to report any minor harm violation that is considered a continuing violation.

As a result, the PHA would agree to report tenant violations that impose a significant threat to human health or the environment or that are considered a minor continuing violation under current TNRCC enforcement policy, the PHA would not be required to report minor tenant violations in which there is no significant threat to human health or the environment. The reporting thresholds should be based on the PHA's knowledge obtained as a result of carrying out its normal landlord and its obligations under the XL Project.

The PHA will develop, with the assistance of EPA, TNRCC and the stakeholders, simplified templates for reporting non-compliance issues. In addition, any limits on record keeping will be developed as the project progresses. It is also important to note that the PHA is not requesting a change in the current reporting threshold already established by the EPA and TNRCC.

## Section 5 Compliance and Enforcement Profile

The PHA has instituted a highly effective environmental management program, and has committed to continued improvement throughout the years. However, the PHA has received four notices of violation or administrative orders including:

- NOV from TNRCC for uncovered trucks at a tenant-owned grain transfer facility
- NOV from the Harris County Pollution Control for an accidental fire during a remediation project
- Administrative Order for a malfunction in a remediation system that resulted in a discharge that exceeded permit limits
- Administrative Order for improper discharge from a PHA permitted wastewater treatment plant which was generated by a tenant-owned shrimp processing facility to a wastewater treatment plant

Tenants involved in the Project XL program will be screened for any NOV's or administrative orders.

## Section 6 Schedule

This project will be implemented over a period of five years described below:

### **Informational Meeting for Stakeholders**

Completed by October 1999

### **Final Project Agreement**

Completed by September 2000

### **Baseline Audits**

Completed by March of 2000

### **Initial Training Program**

Completed by July 2000

### **Generic Plans**

Completed as needed.

### **Annual Reports**

Completed by March of each year

### **Stakeholder Meetings**

Immediately following Final Project Agreement and Semi-annual thereafter.

### **Mid point Assessment**

2002

## Section 7 Deliverables

The following documents/items will be generated from this project:

- 1) Baseline audit results
- 2) Annual reports
- 3) Training handouts
- 4) Report documenting process
- 5) Compliance status reports
- 6) Generic Manuals/Plans