

US EPA ARCHIVE DOCUMENT

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460**

OFFICE OF
WATER

Dear: [see addressee list]

On behalf of the U.S. Environmental Protection Agency (EPA), I want to thank you for the comments you provided on the draft Final Project Agreement (FPA) with the United Egg Producers (UEP) under Project XL. After careful consideration of the comments we received, the Agency made some important changes to strengthen the project and signed the Final Project Agreement on October 25, 2000. A fact sheet summarizing the project is attached for your information.

In response to comments, we modified the final proposal in two important ways. First, in response to concerns that egg producing facilities with serious environmental noncompliance issues would be allowed to participate in this program, we have developed a two-step compliance screening process, using EPA's Project XL compliance screening criteria. The FPA now requires EPA to do an initial screen at the national level, which will be based on the Project XL criteria and will be designed to identify and screen out any facility that has a record of serious noncompliance. Then, as individual States develop their NPDES general permits for egg producing facilities, EPA Regions will work with the States to complete a second level screening using our Project XL criteria *and* any additional criteria that the State chooses to use. Taken together, we feel this is the most comprehensive compliance screen ever used for an XL project, and will ensure that eligibility to participate, including coverage under an NPDES general permit is limited to facilities that do not have poor compliance records.

In response to concerns about the absence of a measure by which to track compliance, we have added a performance indicator to track facility compliance with permit requirements. Under this measure, along with several other measures, EPA, States, and stakeholders will be able to track the compliance status of all participating facilities and to evaluate the overall integrity and success of the project on an annual basis. Adjustments to tracking measures will be made, as needed, over the life of the project.

In addition to these important changes to the FP A, the following is a brief summary of our response to other comments we received:

- ▶ In response to concerns that this is a voluntary program that fails to require compliance with the law, EPA wants to emphasize that this project is predicated on issuing a fully enforceable NPDES general permit that covers all qualified egg producing facilities. This program is "voluntary" to the extent that egg producers voluntarily agreed to develop comprehensive environmental management systems (EMS's), which will provide a greater degree of environmental protection than can occur under our NPDES general permit program alone. Under the terms of this project, qualifying egg producing facilities must: (1) comply with the terms of the NPDES general permit; and (2) develop and fully implement a multi-media environmental management system (EMS) that addresses a full range of significant environmental impacts, including those not subject to direct regulation under the CWA (e.g. odor and rodent control). Participation in this project will be strictly limited to facilities that continue to meet these stringent requirements. Moreover, each facility will need to pass a rigorous, independent 3rd party audit to confirm the fact that an EMS is in place and has been developed with input from stakeholders *before* the facility can apply for coverage under the NPDES general permit. Once permit coverage is granted, the facility will then be subject to both conventional NPDES compliance inspection and enforcement activities, as well as regular 3rd party follow-up audits to ensure continued EMS implementation.
- ▶ In response to comments that EP A and States should be issuing individual permits rather than NPDES general permits, this project will allow EPA and the States to bring a large number of confined animal feeding operations (CAFOs) in the egg producing category under NPDES permits much faster than would occur under our existing CAFO regulations. These regulations, which were published in the mid-1970s, are currently being revised, but the revised rules will not be finalized until late 2002 and issuance of permits under the revised rules is likely to take another two to three years or more after that. Therefore, in the absence of this XL project, it is unlikely that these facilities would be covered under NPDES permits as fast as they will under this project. And, when the NPDES general permit expires and the revised regulations are in place, permitting authorities will need to issue new NPDES general or individual permits that are based on the revised regulations. In the meantime, the FP A makes it clear that, at any point in the life of the NPDES general permit, the permitting authority can require any facility to obtain an individual NPDES permit if it fails to remain in compliance with its NPDES general permit and/or fails to adequately implement its EMS.
- ▶ In response to concerns regarding insufficient stakeholder involvement in the development of this XL project, we believe that one of the major assets of this project is that it requires each facility to provide for significant local stakeholder involvement in the permitting process. Each facility will be required to seek input from local stakeholders as it develops its EMS and to share information on the performance of the EMS with these stakeholders on an ongoing basis. Information concerning the results of the third party audits will be made available to the public

and to regulatory authorities.

Facilities must be able to meet all the requirements discussed above in order to be eligible to participate in this project. Facilities that do qualify, but do not remain in compliance with the terms of their NPDES general permit, are subject to enforcement action, including citizen suits. Where permittees fail to implement their EMS, they can be dropped from the program and required to obtain individual NPDES permits.

Finally, I would like to mention some other important features of this project. First, it calls for an immediate, significant expansion of UEP's industry education and outreach program, which will be designed to promote environmentally responsible use of manure by off-site land applicators. This program will provide off-site land applicators with current information on: suggested application rates for various crops; warnings about the potential adverse impacts from over-application of manure; and suggestions on effective best management practices (BMPs). The goal of this education and outreach program is to provide off-site land applicators of manure generated by egg producing facilities with the knowledge and information they will need to develop and implement fully effective Comprehensive Nutrient Management Plans (CNMPs).

Second, the FP A calls for UEP to develop and implement a water quality monitoring study, which will be designed to yield valuable data and information on the effectiveness of BMPs to help protect water quality. EPA, States, and other stakeholders will work with UEP to design and implement this study at selected land application sites around the country. The results and findings from these studies will provide valuable information for future Agency actions to protect water quality.

Again, thank you for interest in this important project. Additional information on this and other XL Projects can be found on the internet at www.epa.gov/projectxl including the complete FP A and supporting documents for the UEP XL Project.

Sincerely,

Diane Regas /s/ for

J. Charles Fox
Assistant Administrator