ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
WASTEWATER PRETREATMENT UPDATE, USEPA AMENDMENTS (January 1, 2001 through June 30, 2001)	)	R02-3 (Identical-in-Substance Rulemaking-Public Water Supply)
	)	
	)	

NOTICE

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Michael G. Rosenberg
Alan J. Cook
Metropolitan Water Reclamation District
100 East Erie Street
Chicago, Illinois 60611

Michael McCambridge
Hearing Officer
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the APPEARANCE of the Illinois Environmental Protection Agency and of the Metropolitan Water Reclamation District of Greater Chicago and a MOTION FOR EXPEDITED CONSIDERATION in the above matter on behalf of the Illinois Environmental Protection Agency and the Metropolitan Water Reclamation District of Greater Chicago, a copy of which is herewith served upon you.

ENVIRONMENTAL PROTECTION AGENCY
OF THE STATE OF ILLINOIS

By: Connie L Tonsor

Connie L. Tonsor
Associate Counsel
Special Assistant Attorney General
Division of Legal Counsel
ARDC # 6186313

Date: October 29, 2001

Illinois Environmental
Protection Agency
1021 North Grand Ave East
P.O. Box 19276
Springfield, IL 62794-9276

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
WASTEWATER PRETREATMENT	)	R02-3
UPDATE, USEPA AMENDMENTS	)	(Identical-in-Substance
(January 1, 2001 through June 30, 2001)	)	Rulemaking-Public Water Supply)
	)	

APPEARANCE

The undersigned, as one of its attorneys, hereby enters her Appearance on behalf of the Illinois Environmental Protection Agency.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Connie L. Tonsor

Connie L. Tonsor
Associate Counsel
Division of Legal Counsel

DATED: October 29, 2001

Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
WASTEWATER PRETREATMENT	)	R02-3
UPDATE, USEPA AMENDMENTS	)	(Identical-in-Substance
(January 1, 2001 through June 30, 2001)	)	Rulemaking-Public Water Supply)
	)	
	)	

~~APPEARANCE~~

I hereby file my appearance in this proceeding on behalf of the Metropolitan Water Reclamation District of Greater Chicago.

Metropolitan Water Reclamation District of Greater Chicago

Michael G. Rosenberg, Attorney

DATED: October 26, 2001

Metropolitan Water Reclamation
District of Greater Chicago
Michael G. Rosenberg
Alan J. Cook
100 East Erie Street
Chicago, Illinois 60611
(312)751-6588

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
WASTEWATER PRETREATMENT UPDATE, USEPA AMENDMENTS (January 1, 2001 through June 30, 2001)	)	**R02-3 (Identical-in-Substance Rulemaking-Public Water Supply)**
	)	
	)	

MOTION FOR EXPEDITED CONSIDERATION

NOW COME the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by one of its attorneys, Connie L. Tonsor and the Metropolitan Water Reclamation District of Greater Chicago ("MWRDGC") by its Attorney, Michael G. Rosenberg, and pursuant to 35 Ill. Adm. Code 101.512, move for Expedited Consideration of the United States Environmental Protection Agency ("US EPA") Pretreatment Program Reinvention Pilot Projects Under Project XL, amendments to 40 CFR Part 403, 66 Fed. Reg. 50334 (October 3, 2001) in the instant docket. In support of the Motion the Illinois EPA and the MWRDGC state the following:

1. Pursuant to Sections 7.2 and 13.3 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/7.2, 13.3, the Illinois Pollution Control Board ("Board") shall adopt regulations which are identical in substance to federal regulations or amendments that are promulgated by USEPA and that are necessary to implement Sections 307(b), (c), (d), 402(b)(8) and 402(b)(9) of the Federal Water Pollution Control Act ("FWPCA"), as amended, 33 USC §§ 1317, 1342 (Clean Water Act Sections 307, 402). 415 ILCS 5/13.3.

2. On October 4, 2001, the Board, in the instant docket, proposed for public comment federal wastewater pretreatment amendments that the USEPA had adopted in the period from January 1, 2001 through June 30, 2001.

3. The Board noted: "As of the date of this opinion and accompanying order, we have not identified any USEPA actions since June 30, 2001 that further amend the wastewater

pretreatment rules. When the Board observes an action outside the nominal timeframe of a docket that would require expedited consideration in the pending docket, the Board will expedite consideration of those amendments. Federal actions that could warrant expedited consideration include those that directly affect the amendments involved in this docket, those for which compelling reasons would warrant consideration as soon as possible and those for which the Board had received a request for expedited consideration." *R02-3* at p. 3.

4. On August 20, 2000, the Illinois EPA, the USEPA and the MWRDGC entered a final agreement endorsing the MWRDGC's proposed Project XL modification of its pretreatment program. (Exhibit A)[1] The MWRDGC has an application for modification of its pretreatment program pending before USEPA Region 5. Project XL is a process by which publicly owned treatment works ("POTWs") that have mastered the administrative and procedural requirements of the national pretreament regulations, incorporated into Illinois regulations in 35 Ill. Adm. Code 310, may implement local pretreatment programs with effectiveness measured against environmental results rather than strict adherence to programmatic and administrative measures.

5. MWRDGC is one of fifteen POTWs that have participated in the Project eXcellence and Leadership ("Project XL") process on the national level. It now seeks to implement test pilot ideas that will focus resources on activities that it and the Illinois EPA believe would provide greater environmental benefits than are achieved by complying with current regulatory requirements.

6. An amendment to 40 CFR 403 was needed to adopt the flexibility at the federal level for the Project XL. An identical-in-substance amendment of the Illinois regulations in 35 Ill. Adm. Code 310 is needed prior to the Illinois EPA being able to incorporate the Project XL program into an existing permit for the MWRDGC.

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[1] Note: The signing process necessitated preparation of copies of the final document prior to the signing ceremony. The Illinois EPA has included the signature pages with the Final Agreement in Exhibit A.

7. On October 3, 2001, the USEPA adopted amendments to 40 CFR 403 by adding Section 403.20. The amendment, effective on October 3, 2001, provides that the approval authority may allow any publicly owned treatment works ("POTW") with a final "Project XL" agreement to implement a pretreatment program that includes legal authorities and requirements which are different than the administrative requirements otherwise applicable under part 403. The approved modified program must be incorporated as an enforceable part of the POTW's NPDES permit. 66 Fed. Reg. 50339. The October 3, 2001 amendment allows a pilot project for the MWRDGC that the USEPA has characterized as "crucial to EPA's ability" to test new strategies that reduce the regulatory burden and promote economic growth while achieving better environmental and public health protection. 66 Fed. Reg. 50335. (Exhibit B)

8. The Illinois EPA and the MWRDGC urge the Board to include the revisions of 40 CFR 403, found at 66 Fed. Reg. 50334 in this rulemaking docket. Implementation of the Project XL agreement as soon as possible will further the goals of the environment and streamline the process of effective administration of the pretreatment program.

Wherefore, the Illinois Environmental Protection Agency and the MWRDGC respectfully move that the Board include the October 3, 2001 Pretreatment Program Reinvention Pilot Projects Under Project XL, 66 Fed. Reg. 50334, amendment in R02-3.

Illinois Environmental Protection Agency

By: _____
Connie L. Tonsor

Metropolitan Water Reclamation District of Greater Chicago

By: _____
Michael G. Rosenberg

October 25, 2001

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AFFIDAVIT

I, Richard C. Sustich, being duly sworn on oath, state as follows:

1. I am Assistant Director of Research and Development, Industrial Waste Division, with the Metropolitan Water Reclamation District of Greater Chicago.

2. As part of my position I have worked with the Project XL program and am familiar with the factual assertions stated in the Motion for Expedited Consideration.

3. I swear and affirm that the factual information within the Motion is true and correct and that I am competent to testify to the same.

Richard C. Sustich

SUBSCRIBED AND SWORN to
Before me this 25 day of October, 2001

Notary Public

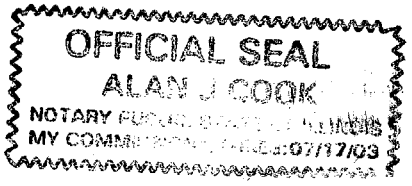

Exhibit A

Metropolitan Water Reclamation District of Greater Chicago

Project XL
Final Project Agreement
August 30, 2000

In Collaboration with:
United States Environmental Protection Agency
Illinois Environmental Protection Agency

Table of Contents

I. Purpose of Project XL and the FPA

A. Purpose of Project XL

Project XL, which stands for "eXcellence and Leadership," is a national pilot program to test the extent to which regulatory flexibility, and other innovative environmental approaches, can be used to achieve superior environmental performance and reduced economic burden. Through site-specific agreements with project sponsors, EPA is able to gather data and project experience that will help the Agency redesign current approaches to public health and environmental protection. Under Project XL, sponsors—private facilities, multiple facilities, industry sectors, federal facilities, communities and states—can implement innovative strategies that produce superior environmental performance, provide flexibility, cost savings, paperwork reduction or other benefits to sponsors, and promote greater accountability to stakeholders.

B. Purpose of this Final Project Agreement

This Final Project Agreement (Agreement) is a joint statement of the plans, intentions and commitments of the U.S. Environmental Protection Agency (EPA), Illinois EPA (IEPA), and the Metropolitan Water Reclamation District of Greater Chicago (District) to carry out this pilot Project approved for implementation at the District. This Project will be part of EPA's Project XL program to develop innovative approaches to environmental protection.

The Agreement does not create legal rights or obligations and is not an enforceable contract or a regulatory action such as a permit or a rule. This applies to both the substantive and the procedural provisions of this Agreement. While the Parties to the Agreement fully intend to follow these procedures, they are not legally obligated to do so. For more detail, please refer to Section VI. Implementation.

Federal and State flexibility and enforceable commitments described in this Agreement will be implemented and become effective through site-specific regulations and modification of the existing NPDES permits for the District's facilities.

All Parties to this Agreement will strive for a high level of cooperation, communication, and coordination to assure successful, effective, and efficient implementation of the Agreement and the Project.

II. Executive Summary

This Final Project Agreement (FPA) is an outgrowth of the EPA's June 23, 1998, Federal Register Notice (Volume 63, Number 120) requesting proposals from Publicly Owned Treatment Works (POTWs) for XL projects based on environmental performance measures for Pretreatment Programs. The intent of this effort is to investigate ways of increasing the effectiveness of the national Pretreatment Program and thus to obtain greater environmental benefit. EPA is willing

to provide POTWs regulatory relief from programmatic requirements (e.g., specific monitoring frequencies, specific control mechanism issuance requirements, etc.), so that they can implement alternative programs that increase environmental benefits.

The District is a POTW that treats wastewater from domestic, commercial, and industrial sources located in the city of Chicago and 126 surrounding communities in Cook County, Illinois. The District has maintained an industrial waste Pretreatment Program for more than 30 years. Discharges from the District's water reclamation plants (WRP) are in full compliance with all applicable standards of their respective National Pollutant Discharge Elimination System (NPDES) permits, and biosolids generated by District WRPs conform to the Exceptional Quality (EQ) criteria of the Standards for the Use and Disposal of Sewage Sludge (40 CFR 503). Through its Pretreatment Program, which it is required to operate under its NPDES permits, the District regulates process wastewater discharges from approximately 530 Significant Industrial Users (SIU), including 358 Categorical Industrial Users (CIU), as of June 1, 2000. In 1996, the United States Environmental Protection Agency (EPA) awarded the District the National Excellence Award for Pretreatment Programs in the Large Category (greater than 100 SIUs).

Based on the success of its traditional command-and-control Pretreatment Program, the District is in a position to develop and evaluate a pilot program incorporating many of the regulatory reinvention initiatives recommended by the EPA, the Association of Metropolitan Sewerage Agencies (AMSA), the Water Environment Federation (WEF), and the regulated industrial community.

The intended result of this project is the achievement of environmental performance better than would otherwise be achieved under the District's current program. A further principle for the District's participation in Project XL is that participation must not result in a net increase in Pretreatment Program costs, while there is substantial likelihood that participation could result in a long-term reduction in Pretreatment Program costs. Therefore, resources for any additional activities under Project XL can only be provided through operational and regulatory flexibility in existing Pretreatment Program activities, with reallocation of freed resources. These reallocated resources, in turn, will be committed to achieving improvements beyond current environmental performance.

Current environmental performance, including maintenance of Part 503 EQ sludge criteria, must be maintained. Program modifications or activities with the potential for degradation of environmental performance will not be considered under this Project XL pilot project.

In this XL pilot project, four interrelated activities will demonstrate the application of performance-based oversight flexibility within the District's existing Pretreatment Program framework. Resources currently allocated to programmatic activities with low potential for environmental benefit will be reallocated to new Pretreatment Program activities with a greater potential for environmental benefit. These four activities are summarized briefly below.

1. To effectuate this project, EPA and IEPA need to give the District regulatory flexibility with regard to its obligation under the General Pretreatment Regulations to provide regulatory oversight to small Categorical Industrial Users (CIUs) into the District's WRPs. While oversight flexibility may not result in direct environmental benefit, such flexibility will allow the District to reallocate currently committed resources to other activities with greater potential for environmental benefit.

2. The format of the District's Pretreatment Program Annual Report will also need to be revised to include detailed information regarding environmental performance that is not currently required in the Annual Report. To offset the District's commitment to include this additional information in its Annual Report, detailed oversight information regarding SIUs will need to be limited to only the population of SIUs that were found in significant noncompliance at any time during the report year.

3. Approximately 276 of the 358 CIUs regulated under the District's Pretreatment Program are electroplating/metal finishing facilities. Under the EPA's Common Sense Initiative, EPA and the Metal Finishing Sector have established the national Strategic Goals Program (SGP) to facilitate sector-wide environmental performance improvement, including promoting "beyond compliance" performance by sector leaders. The District has actively supported the objectives of the SGP and is currently implementing an SGP program in the greater Chicago area, in cooperation with EPA and the IEPA.

To further promote the objectives of EPA's Sector Initiatives, the District will create Strategic Performance Partnerships (Partnerships) with metal finishing facilities that fully achieve the individual facility goals outlined in the SGP. Under these Partnerships, the District will work cooperatively with demonstrated sector leaders to develop, test, and implement alternative measurement systems for demonstrating environmental performance. The District also intends to extend Partnership opportunities to CIUs in other industry sectors in coordination with EPA's Sector Initiatives.

4. Like most POTWs across the nation, the District, through its Pretreatment Program, has achieved substantial environmental gains relative to the non-conventional pollutants and heavy metals, which have been regulated under the NPDES and the District's local limits for many years. However, the same cannot be systematically said for other priority pollutants that may be of concern on a local scale. To address these pollutants, the District will develop Toxic Reduction Action Plans (TRAPs).

Under TRAPs, the Parties (District, EPA and IEPA) will use existing environmental data (i.e., District emission and discharge data and multi-agency ambient environmental monitoring data) to identify priority pollutants which are documented to be present in quantities or concentrations that may be a risk to the District's facilities or the ambient environment but not currently subject to regulation, and rank these pollutants in order of importance to stakeholders. As resources become available through the regulatory flexibility described above, the District will commit to

specific reductions in the levels of these pollutants in WRP emissions and discharges through source control. Since these activities would be outside the existing regulatory structure, the District will be free to use informal action (i.e., educational outreach and pollution prevention) for these efforts. The Parties recognize that non-regulatory activities may not achieve the anticipated pollutant reductions, but the lessons learned could provide direction for further efforts and opportunity for future projects.

III. Existing Pretreatment Program Requirements

The following section describes the current status of the District's existing approved Pretreatment Program. Full annual reports for the District's Pretreatment Program, beginning in 1995 are available through the District's Public Information Office, (312) 751-6633.

A. Industrial Waste Survey Requirements

Under its existing approved Pretreatment Program, the District must identify all nonresidential users tributary to its facilities, determine the nature of their activities and the pollutants discharge therefrom into the sewerage system, and advise each user of applicable Pretreatment Standards and its obligation to comply with said standards. The District accomplishes this survey through ongoing surveillance of non-residential areas of its service area, through periodic review of telephone directories, trade association publications, and the Illinois Manufacturers' Association directory. The District also annually solicits a listing of all business licenses granted by the 126 individual municipalities within its service area for review. Facilities identified as potential industrial users are then sent a Facility Classification Questionnaire (FCQ) and directed to describe in detail the nature of their operations. FCQ forms are processed through a formal review process and are verified through on-site inspections by District personnel.

Consistent with 40 CFR 403.8, under the District's Ordinance, a nonresidential user is classified as a Significant Industrial User (SIU) if it meets any of the following criteria:

1) The Industrial User (IU) is subject to regulation under a federal Categorical Pretreatment Standard.

2) The IU discharges greater than 25,000 gallons per day of process wastewater into the sewerage system.

3) The IU contributes 5 percent or more of the hydraulic load or organic capacity of the receiving WRP.

4) The District has designated the IU as having a reasonable potential for adversely affecting the operations of the District's WRPs or for violating any standard or requirement contained in the Ordinance.

An IU is a Categorical Industrial User (CIU) if it is subject to regulation under a federal Categorical Pretreatment Standard (#1 above). All CIUs are SIUs.

B. Permitting Procedures

Facilities identified as potential SIUs through the industrial waste survey process described above are required to submit detailed Discharge Authorization Requests (DAR) (permit applications) and to obtain Discharge Authorizations (DA) (permits) from the District for the regulation of process wastewaters. DAs are issued for a period not exceeding five years and contain specific limitations on the volume of wastewater and concentrations of pollutants discharged from both categorically regulated and non-regulated industrial processes. DAs also contain specific reporting and self-monitoring requirements applicable to the SIU.

C. Monitoring Requirements

Under the District Sewage and Waste Control Ordinance (Ordinance) and DAs issued to individual SIUs, each SIU is required to conduct self-monitoring of its process wastewater discharge and to submit Continued Compliance Reports (CCR) twice annually. For process wastewater discharges less than 200,000 gallons per day (gpd), the SIU must self-monitor the wastewater discharge on at least three days during a two-week period for each semi-annual CCR. For process wastewater discharges exceeding 200,000 gpd, the SIU must self-monitor the wastewater discharge on at least six days during a two-week period for each semi-annual CCR. All monitoring must conform to the provisions of 40 CFR 403.12 and all analytical methods must conform to the provisions of 40 CFR 136. An authorized representative of the SIU must certify all data contained in the CCR as accurate and complete.

The District inspects each SIU and monitors the process wastewater discharge from each SIU on at least four days, annually; to verify continued compliance with the terms and provisions of the DA issued to the SIU. All monitoring must conform to the provisions of 40 CFR 403.8 and all analytical methods must conform to the provisions of 40 CFR 136.

D. Enforcement Procedures

The District's formal Enforcement Response Plan (ERP) was submitted to EPA, Region 5 in December 1989 and was incorporated into the District's Ordinance in 1991. The ERP describes the enforcement actions available to the District for response to instances of IU noncompliance. These actions range from informal Notices of Noncompliance for non-significant noncompliance to formal Cease and Desist (C&D) Orders for significant noncompliance. The C&D Order requires the submittal of a formal Compliance Schedule, certified by an authorized representative of the IU and a professional engineer registered in the state of Illinois, and the submittal of a Final Compliance Report, including the results of self-monitoring conducted to verify that compliance has been attained. The ERP also contains a Response Option Matrix that identifies the minimum enforcement response that may be considered in response to certain critical types of

noncompliance, such as those instances involving pass-through and interference.

The District has statutory authority to assess civil penalties in the range from $100.00 to $2,000.00 for each day of violation, in administrative proceedings before its Board of Commissioners, and to seek civil penalties in the range from $1,000.00 to $10,000.00 per day of violation, in civil actions in the Circuit Court. While the District does not have statutory authority to initiative criminal proceedings, it does have authority and established policy for referral of potential criminal actions to the State's Attorney's Office or the United States Attorney.

E. Reporting Requirements

As indicated above, under the District's Ordinance and DAs, SIUs are required to submit CCRs semi-annually, to demonstrate continued compliance with applicable Pretreatment Standards.

Under its NPDES permits, the District must submit an annual Pretreatment Program Report to its Approval Authority (currently EPA, Region 5), detailing the District's conformance with the Pretreatment Program provisions contained in 40 CFR 403.8. The annual report must include detailed information describing the District's resource commitment to the Pretreatment Program as well as detailed information describing the compliance status of each SIU.

F. Local Limits Development Process

The District's Ordinance was first adopted in 1969 and has contained technically-based local limits since 1971. These local limits were developed through a stakeholder process involving representatives of the District, the regulated community and academia, and are considered protective of worker health and safety, WRP operations, and the environment. Local limits are reviewed annually by the District's Research and Development Department to ensure appropriateness.

G. Current Resources

As reported in the District's Pretreatment Program Annual Report for 1999, the District has devoted the following resource levels to administration of its Pretreatment Program.

Resource	Commitment
Field Surveillance Staff	49.83 Full Time Equivalent Positions (FTE)
Enforcement Administration Staff	23.25 FTEs
Analytical Laboratory Staff	11.14 FTEs
Legal Administration Staff	0.95 FTEs
Total Pretreatment Program Budget	$7,258,622

IV Project XL Pilot Project Description and Proposed Resources

A. Project Description

The following describes the XL pilot project, and notes how the District activities will differ from current operations.

There will be no change in the District's Industrial Waste Survey Requirements (described above in Section III. A.), Enforcement Response Plan (described above in Section III. D.), and Local Limits Development and Review Process (described above in Section III. F.).

1. Reduced Oversight of De Minimis and Non-Significant Categorical Industrial Users

This project is intended to provide regulatory flexibility to the District with respect to the oversight of small CIUs that have very low potential to violate Pretreatment Standards and Requirements or adversely impact the operations of the District's WRPs and the environment. Under current regulations all CIUs are classified as SIUs. This pilot project creates two categories of CIU that are not significant industrial users (SIU). For purposes of this project there are two categories of small CIUs: (1) de minimis and (2) non-significant categorical industrial users.

Currently, the District receives wastewater from 358 CIUs. In this XL project, the District is seeking to reduce the oversight requirements for "de minimis" and "non-significant" CIU facilities. This part of the XL proposal is consistent with EPA's proposal regarding "non-significant" categorical industrial users in its July 22, 1999, Pretreatment Streamlining Proposal (64 FR 39564). These reduced oversight requirements will not deregulate any CIU in the sense that they are no longer required to comply with Categorical Pretreatment Standards. Rather, this

approach will reduce both the CIU's and the District's burden in demonstrating compliance with the applicable standards.

A CIU will be considered as de minimis if it discharges no untreated categorical wastewater and it discharges a total of less than 100 gallons per day of process wastewater, or if it is only subject to certification requirements of applicable categorical standards. In addition, the CIU will not have been in significant noncompliance (SNC), as defined at 40 CFR 403.3(t), with applicable effluent discharge standards or requirements for the prior eight consecutive calendar quarters.

The oversight reductions for those CIUs that meet the de minimis criteria would include:

- Non-expiring Discharge Authorizations (DAs)
- Reduction in frequency of self-monitoring from twice per year to at the District's discretion. These CIUs would be required to report annually to verify their de minimis status.
- The District will perform a minimum of one random site visit annually. The site visit will include, at a minimum, verification of proper operation of wastewater pretreatment facilities necessary to maintain compliance with applicable standards and a grab sampling of the CIU's discharge to the sewerage system.

The District is also seeking reduced oversight requirements for small capacity "non-significant," CIUs. To qualify as a non-significant CIU, the process wastewater subject to Categorical Pretreatment Standards that is discharged from the facility:

- Shall not exceed 0.01 percent of the hydraulic capacity of the receiving WRP or 10,000 gallons per day, whichever is less,
- Shall not exceed 0.01 percent of the organic treatment capacity of the receiving WRP, and
- Shall not, for all applicable pollutants, exceed 0.01 percent of the five-year average headworks loading at the receiving WRP.

The maximum allowable discharge criteria for non-significant CIUs tributary to each of the District's seven WRPs are shown in Appendix I.

In addition:

- The CIU will not have been in significant noncompliance (SNC), as defined at 40 CFR 403.3(t), with applicable effluent discharge standards or requirements for the prior eight consecutive calendar quarters.

The District will reassess conformance of each non-significant CIU with the above four criteria at least annually.

The oversight reductions for those CIUs that meet the non-significant criteria would include:

- Non-expiring Discharge Authorizations (DAs)
- Reduction in frequency of self-monitoring and submittal of compliance reports from twice per year to once per year
- Reduction in frequency of full facility inspection and sampling by the District from once per year to once every two years
- During non-inspection years, the District will perform a minimum of one random site visit and sampling.

Conformance with the conditions set forth in the definitions of de minimis and non-significant CIU will be reassessed at least annually by the POTW. If a facility no longer falls within the scope of the de minimis or non-significant CIU definition because of a change in the nature of its operations or if the facility is found in significant noncompliance (SNC), the facility's status as a de minimis or non-significant CIU will be revoked and the facility will revert to full CIU status.

The District estimates that 80 of the 358 CIUs currently regulated under the District's Pretreatment Program would qualify for de minimis or non-significant status. At the time of FPA signature, it is estimated that 2 of these 80 CIUs would qualify as de minimis and 78 of these 80 CIUs would qualify as non-significant.

Under this XL pilot project, the District will continue to ensure that each facility is in compliance with standards by issuing a Discharge Authorization (DA) (permit) to each SIU as described above in Section III. B. Permitting Procedures. Currently, under the General Pretreatment Regulations, the District issues DAs to all significant industrial users, both categorical and non-categorical, for a period not exceeding five years. The DAs will continue to contain specific limits for the volume of wastewater that can be generated, maximum allowable concentrations for pollutants in the wastewater, and requirements for self-monitoring and submittal of compliance reports.

Under current District practice, even if nothing at the facility has changed when the DA expires, the DA must be reapplied for and reissued. Under this Project XL pilot project, however, de minimis and non-significant CIUs will be issued "non-expiring" DAs. "Non-expiring" permits will be subject to review at the District's discretion and amended as appropriate.

This XL pilot project would also allow reductions in frequency only of the self-monitoring and reporting requirements for non-significant CIUs from twice per year to once per year. In all other respects, non-significant CIUs will be required to conduct self-monitoring equivalent to current practice, as described above in Section III. C. Monitoring Requirements. (For process wastewater discharges less than 200,000 gallons per day (gpd), the SIU must self-monitor the wastewater discharge on at least three days during a two-week period for each CCR. For process wastewater discharges exceeding 200,000 gpd, the SIU must monitor self-monitor the wastewater discharge on at least six days during a two-week period for each CCR. All monitoring must conform to the provisions of 40 CFR 403.12 and all analytical methods must conform to the provisions of 40

CFR 136. An authorized representative of the SIU must certify all data contained in the CCR as accurate and complete.)

Currently, the District inspects each SIU at least yearly and samples process wastewater on at least four separate days each year. Under this XL pilot project, the inspection frequency would be reduced from once a year to once every two years for non-significant CIUs, and the sampling frequency will be reduced to once every other year for these IUs. The inspections conducted under this XL pilot project will be equivalent to those currently conducted, as described above in Section III. C. Monitoring Requirements. Only the frequency of the inspections would change under the XL pilot project.

As in the Pretreatment Streamlining proposal, the de minimis and non-significant CIUs will still be required to comply with applicable categorical Pretreatment Standards and related reporting requirements. The District will also still be required to perform oversight for these CIU's as currently required:

- Notification to CIUs of their status and requirements,
- Receipt and review of required reports,
- Random sampling and inspection, and
- Investigation of noncompliance as necessary.

The proposed classification of full, non-significant, and de minimis CIUs, along with the oversight flexibility described above, is summarized in Table 1.:

Where a de minimis CIU or non-significant CIU is found to be in SNC, the District will modify the IU's DA to reflect full SIU status. The IU would then be required to not be in SNC for 8 consecutive quarters and to meet all other applicable criteria to regain its status as a de minimis or non-significant CIU.

In addition, under the District's Sewage and Waste Control Ordinance, IUs are required to notify the District at least 30 days prior to any change in operations or discharge practices and to receive written approval of such change from the District. A de minimis CIU's DA will be subject to review or revision if its operations change significantly (new processes or increased discharge loadings or flow rates that exceed the de minimis cutoffs.) If such a change alters the IUs eligibility as a de minimis or non-significant IU, the District will make such a notification to the IU and the IU will revert back to full CIU status. Such a notice by an IU will also prompt the District to evaluate the appropriateness of the IU's current DA. A modification of the DA by the District will be initiated if appropriate. The SIU will be required to comply with the additional requirements caused by reversion to full SIU status, within 6 months of the date of reversion.

TABLE 1

SELECTION CRITERIA FOR FULL, NON-SIGNIFICANT, AND DEMINIMIS CATEGORICAL INDUSTRIAL USER DESIGNATION

	De Minimis CIU	Non-Significant CIU	Full CIU
Qualification	No discharge of untreated categorical wastewater and <100 gpd total process wastewater discharge, or subject to certification requirements only, no SNC for four consecutive six month periods	<0.01% of POTW design flow, 0.01% of POTW headworks organic load, 0.01% of headworks load of categorically regulated pollutants, no SNC for four consecutive six-month periods	Subject to categorical pretreatment standards and not qualified as DCIU or NCIU
Permit length	Control Authority discretion	Non-expiring, subject to Control Authority review every five years	Five years
Minimum self-monitoring requirements	Control Authority discretion	Once/year	Twice/year
Minimum reporting requirements	Annual DCIU certification	Annual Periodic Compliance Report	Twice annual Period Compliance Report
Minimum Control Authority monitoring	One random site visit/sampling annually	One full inspection/sampling every two years; one random site visit/sampling during non-inspection years	Full inspection/sampling annually

One of the anticipated results of the reduced oversight of de minimis and non-significant CIUs is that some facilities that do not initially meet these criteria may be prompted to implement pollution reduction and water conservation measures in order to obtain de minimis or non-significant CIU status. This will result in decreased loadings of regulated pollutants into the WRPs. While the oversight flexibility will not result in direct environmental benefit, it will allow the District to allocate saved resources toward activities that have greater potential for benefiting the environment.

2. Revisions to Pretreatment Program Annual Report

In accordance with the Federal pretreatment regulations and its NPDES permits, the District is required to submit a Pretreatment Program Annual Report (Annual Report) to its Approval Authority (EPA Region 5) each year. Along with details about staff and funding committed to the pretreatment program, the Annual Report includes detailed information about the compliance status of each regulated SIU. (Requirements for contents of the report appear in 40 CFR 403.12(i)).

In this XL project, IEPA will propose to amend their rules to require the Annual Report to provide specific information for only those SIUs found to be in significant noncompliance (SNC) during the reporting year. Currently, detailed information and the compliance status related to all SIUs (a total of approximately 530) within the District's jurisdiction are included in the Annual Report. Under this project, the District would continue to collect all of the information required in 40 CFR 403.12(i), and it would make the information available to EPA, Illinois EPA, and the public as required. The Report would not, however, include specific information about the facilities that are not in SNC.

Information currently reported in the Annual Report, not published in the revised Annual Report, would be available through the District's Public Information Office (312-751-6633). A Freedom of Information Act request would not be required to obtain this information.

As a result of this revision, the number of facilities covered in the Annual Report would vary from year to year, depending on the number of facilities that are in SNC in a given year. Instead of providing specific compliance information on the approximately 530 SIUs currently regulated by the District, with this change the number of SIUs covered in the Annual Report would have been 227 in 1995, 208 in 1996, and 56 in 1997.

A second revision to the Annual Report as a result of this Agreement is to include additional environmental data in the report that are not currently required. The District has been collecting these data for a number of years for its own knowledge. The data will provide more meaningful information about the quality of the wastewaters being discharged and the quality of the waters in the receiving surface water bodies.

The additional information will include summary data relating to the 18 performance measures

identified by the Association of Metropolitan Sewerage Agencies in its report entitled "Case Studies in the Application of Performance for POTW Pretreatment Programs" (1997). These 18 performance measures are listed in Appendix II. The detailed reporting format for this additional information will be developed with input from the Stakeholders.

This Agreement does not waive any of the requirements of the IEPA Construction Permit Program. The District and the IEPA are considering doing another pilot project under the State's Regulatory Innovation Pilot Program that would delegate management of the Construction Permit Program for certain CIUs.

3. Alternative Environmental Monitoring Systems

Under the General Pretreatment Regulations, SIUs must conduct self-monitoring according to rigorous sampling and analytical protocols provided by EPA. The self-monitoring currently required involves traditional, "end-of-pipe" sampling of effluent. The District believes this type of monitoring may not be ideal because it is relatively costly, it can only be done on an infrequent basis (due to its cost), it is inconvenient, and it generally provides little to no feedback to the SIU for improving its processes.

This XL project intends to pilot test alternative environmental monitoring approaches. This portion of the project will be possible through reallocating the saved resources from the reduced oversight of de minimis and non-significant CIUs and the revisions to the Pretreatment Annual Report.

One possible alternative to traditional effluent discharge monitoring is to use statistical process control data which is collected by the SIU at critical points within its process train, often at intervals far more frequent than effluent discharge monitoring. These data serve to regularly track process performance and product quality at the SIU, and could potentially serve to assess pretreatment system performance and wastewater quality.

In order to implement the alternative monitoring systems, the District plans to form Strategic Performance Partnerships (Partnerships) with a number of facilities involved in sector Strategic Goals Programs (SGP). Currently the only well-developed sector SGP initiative in the Chicago area is for the metal finishing sector. Under the Common Sense Initiative (CSI), EPA and the Metal Finishing Sector have developed the first sector-wide SGP. The SGP established both facility-specific and sector-wide performance goals that extend beyond traditional compliance with environmental regulations. While the metal finishing sector is currently the only sector with a well-developed SGP, this Project XL pilot project intends to develop Partnerships with other facilities from EPA's Sector Initiatives as SGPs are developed and associated facilities become interested in implementing alternative monitoring systems.

The District will extend the objectives of EPA's Sector Initiatives through the Partnerships. Under these Partnerships, the District will work cooperatively with demonstrated sector leaders to

develop, test and implement alternative measurement systems for demonstrating environmental performance. The District will work only with those facilities that have fully achieved the goals of their respective SGPs. Facilities involved in SGP initiatives tend to be forward-thinking and have demonstrated a willingness to try to perform above and beyond what is required.

During the development phase of the alternative monitoring system, data both from the alternative system and from traditional effluent sampling will be collected. If the Partnership shows, to the satisfaction of the Parties to this Agreement, that an AMS provides equal or better measurement of environmental performance, the Partnership will develop Alternative Performance Expectations for the facility that utilize the alternative means to demonstrate compliance with applicable pretreatment standards. As part of its mandated regulatory oversight function, the District would continue to assess compliance with applicable pretreatment standards through effluent discharge monitoring appropriate to the applicable standards.

EPA and IEPA will modify the existing pretreatment regulations to enable the District to implement the Project XL program. Regulatory modifications will allow: 1) Alternative Performance Expectations established to the satisfaction of the Partnership to be considered by the District, EPA and IEPA as a means through which the facility will demonstrate compliance with applicable Pretreatment Standards and 2) Partnership facilities to obtain authorization to use Alternative Performance Expectations to demonstrate compliance with categorical standards. This authorization will be given only upon approval of the District, EPA, and IEPA. The District, EPA, and IEPA must be satisfied that the Partnership developed data that the Alternative Performance Expectations will satisfactorily demonstrate compliance with categorical standards. The ultimate intent of the pilot tests is to develop systems that fulfill current self-monitoring and reporting requirements.

Potential Partnership facilities and the District are concerned about any new categorical pretreatment standards or requirements that may be promulgated in the future. Of greatest concern to the District and industry are the Metal Products & Machinery (MP&M) standards, which could eventually supercede standards that currently apply to metal finishers. If a proposal to modify an existing categorical pretreatment standard or to adopt a new categorical pretreatment standard conflicts with the environmental monitoring system being tested or implemented by a facility under this XL Agreement, the District and Partnership facilities hope to receive a deferral of the new or modified standard or requirement for the Partnership facility in cases where it conflicts with the goals of the SGP for the duration of the Partnership effort.

EPA is not able to prospectively commit to waiving new or revised pretreatment standards that may be promulgated. However, as stated in a September 9, 1998, memo from EPA's Office of Water, Engineering and Analysis Division, that Office is working with the Office of Reinvention, Office of Policy, EPA Region 5, and outside Parties, to incorporate the objectives of the Metal Finishing Strategic Goals Program into the MP&M regulation. Such incorporation could conceivably involve recognizing achievement of certain best industry practices as a basis for determining whether or how a facility must comply with the MP&M regulations.

The District will propose Partnerships with eligible facilities upon demonstration that they are fully achieving the Metal Finishing SGP goals. Each Partnership will produce a work plan for the AMS within six months of entering into a Partnership that is acceptable to the District, Partnership facilities, EPA, and IEPA. The work plan will include schedules and strategies for piloting various AMSs, and identify reporting mechanisms for the AMS pilots to EPA and IEPA. The work plan will be distributed to the Stakeholders. Stakeholders are described in Section V. C. Stakeholder Involvement, below. Stakeholders at this time include the following: the District, EPA, IEPA, Citizens for a Better Environment, North Business and Industrial Council, and Chicago Metal Finishers Institute.

4. Identification, Ranking, and Control of Non-Regulated Pollutants

Through its pretreatment program, the District has greatly reduced the amounts of non-conventional pollutants and heavy metals regulated under their NPDES permits and under Pretreatment Standards. The objective of the last component of the XL pilot project will be to make headway on reducing pollutants not covered by either NPDES permits or local limits, but which are of concern locally. Implementing this part of the plan will also be done using funds and resources saved from the first two parts of the proposal.

The District proposes to implement Toxic Reduction Action Plans (TRAPs). Under TRAPs, the Stakeholders will establish identification and pollutant selection criteria. The Parties will review existing data and identify non-regulated pollutants of local concern, as well as ecosystem-wide pollutants of concern. The Parties will initially identify no more than five pollutants of concern based on a number of factors, including: (1) their detectable presence in the influent, effluent, or biosolids at District WRPs, (2) their detectable presence in and potential to adversely impact WRP receiving streams, (3) their potential to become regulated pollutants in NPDES permits issued to District WRPs, and (4) their designation as pollutants of concern under national environmental policy initiatives such as the Great Lakes Initiative. It should be clear, however, that TRAPs are intended to address pollutants that are not currently subject to regulation under the NPDES Program and that TRAPs are not intended as a substitute for enforcement of either Categorical Pretreatment Standards or local limits developed under the National Pretreatment Program.

The Parties will identify and rank the pollutants in order of importance based on criteria developed by the Stakeholders. The Stakeholders will attempt to identify the source(s) of the identified and ranked pollutants, and establish pollutant reduction targets.

The District and impacted entities will then attempt to reduce discharges and emissions of these pollutants through a variety of non-traditional strategies developed by the Stakeholders and impacted entities. Some of the strategies that may be considered include: (1) pollution prevention outreach to industrial and commercial sources; (2) consumer education programs and increased household hazardous waste collections; and (3) point source-point source effluent trading agreements.

If a CIU is afforded regulatory flexibility of reduced monitoring and reporting, and subject to less frequent inspection, as described above in Section IV, A. Reduced Oversight of De Minimis and Non-Significant Categorical Industrial Users, and/or participates as a Partnership facility in the development of AMS as described above in Section IV. C. Alternative Monitoring Systems, they will be expected to fully participate in any of the voluntary emission reduction activities proposed under TRAPs which are applicable to their facility. If such a CIU does not fully participate in applicable TRAPs emission reduction activities, their status as a de minimis or non-significant CIU and/or AMS Partnership facility will be subject to revocation.

The District will convene the Stakeholders within three months of FPA signature for development of the selection criteria. The Parties, in consultation with the Stakeholders, as described above, will endeavor to identify the pollutants to be addressed under TRAPs and pollutant sources with 12 months of project implementation, and identify reduction strategies within 18 months of project implementation.

B. Proposed Resources

The District is not proposing any changes to its current overall resource commitment to the Pretreatment Program. Through application of the regulatory flexibility regarding small CIUs, the District anticipates that resources currently committed to mandated programmatic activities will become available for activities not currently being performed by the District. These activities include participation in the previously described Partnerships with industry and the implementation of TRAPs.

The cost of administering TRAPs will be segregated from and not included in the Pretreatment Program cost recovery component applicable to SIUs, but will be recovered through the District's User Charge Program, which is applicable to all users of the District's services.

The District estimates that initially, it will save 0.5 full time equivalent (FTE) Engineering and 2.0 FTE Field Surveillance Section from this pilot project's regulatory flexibility. These resources will be equally apportioned to the AMS and TRAPs portions of this project.

V. PROJECT XL CRITERIA

A. Superior Environmental Performance

Under this XL project, Superior Environmental Performance (SEP) will be achieved through the alternative environmental monitoring systems and the identification, ranking and reduction of non-regulated pollutants. The other two components of the XL proposal (reduced oversight of de minimis and non-significant CIUs, and revisions to the Pretreatment Program Annual Report) will create regulatory flexibility that will yield time and costs savings to the District. These savings will then be dedicated to the SEP-generating parts of the project. In addition, the reduced

oversight of de minimis and non-significant CIUs may provide incentive for some CIUs to reduce their pollutant loadings and water usage in order to classify as de minimis or non-significant so that they can benefit from the resulting regulatory flexibility.

The alternative monitoring system will provide environmental data on a more frequent basis and/or provide data that are more accurate, more precise, and/or more meaningful than traditional environmental monitoring data. Integration of process control data with effluent discharge data will provide Partnership participants with better tools for process management and will likely result in improved process performance, with concurrent decreased loading of regulated pollutants and reduced water consumption. It is also anticipated that the alternative monitoring system will increase worker safety.

If the opportunity to try out alternative monitoring systems is considered desirable by the metal finishing sector, the Partnerships may function as an incentive prompting more facilities to join the SGP initiative. In addition, the Partnerships formed to test the alternative environmental monitoring systems in this XL project should lead to an increase in the success of the SGP initiative. This XL project can thus take "partial credit" for the successes of the SGP. Environmental gains that should be achieved under the metal finishing SGP include:

- Reduced amount of hazardous and toxic waste generated and released
- Decreased water and energy consumption
- Decreased worker exposure to toxic materials
- Improved resource utilization
- Decreased demand for raw materials
- Reduced overall loading to the District system
- Improved quality of effluent and biosolids

Identifying and reducing non-regulated pollutants will result in environmental gains from the non-traditional strategies the District will use to reduce emissions of identified pollutants.

In order to prevent a decrease in environmental performance due to the reduced oversight of de minimis or non-significant CIUs, the District will not accept any environmental degradation from these facilities. Current environmental performance will be maintained. If the District observes any negative indicators, they will take necessary steps to address the situation, including halting the project.

Currently the District's WRPs are operating in compliance with effluent and Excellent Quality biosolids, as defined under 40 CFR 503. The District is committed to maintaining, at a minimum, this level of environmental performance. Currently the District monitors the environmental performance of their WRPs by taking daily influent and effluent samples. The samples are analyzed for all pollutants regulated under the District's NPDES permits. Additionally, WRP biosolids are analyzed every 16 days (Digester Composite Output), for metals regulated under 40 CFR 503. The District has already established performance targets for digester output which

include a safety factor that ensures continued production of Exceptional Quality biosolids. If the digester output at a WRP exceeds the established target for any parameter, the District will initiate an investigation, including the installation of continuously operated automatic samplers, as appropriate, at point sources' tributaries to the WRP to identify the facility responsible for the increased pollutant loading. Appropriate enforcement action will be taken against facilities violating their operating permits, including, but not limited to their removal from the XL pilot project.

It is anticipated that inclusion of additional environmental data in the Annual Report will have a positive effect on environmental performance. The new report will be more detailed and more useful to the public.

B. Cost Savings and Paperwork Reduction

The reduced oversight of de minimis and non-significant CIUs will reduce the time and cost to the District for inspections and effluent sampling. Instead of one inspection per year and four effluent sampling events per year for approximately 80 facilities, the District will conduct discretionary inspections and sampling at de minimis CIUs, and will inspect and sample each non-significant CIU once every two years. In addition, the self-monitoring for de minimis CIUs will be reduced at the discretion of the District, and non-significant CIUs will have half the amount of self-monitoring and reporting. District resources to review and follow-up on those reports will be reduced.

The proposed revisions to the Annual Report will result in both increases and decreases in paperwork, labor, and costs for District. The additional data in the report will result in some increases in labor, cost, and paperwork. However, by requiring that the Annual Report only report on those facilities that were in significant noncompliance during the year, significant savings in paperwork, labor, and costs will be gained. Instead of including enforcement data for over 500 facilities each year, the Annual Report will likely report on 100 facilities or less.

It is also anticipated that the alternative monitoring systems developed in this project will be less costly to conduct than the current traditional monitoring.

C. Stakeholder Involvement

The following organizations were invited to participate in a stakeholder group with the District, EPA, and IEPA to develop the FPA: Chicago Metal Finishers Institute (CMFI), Citizens for a Better Environment (CBE), Center for Neighborhood Technology, Chicago Law Clinic, Illinois Waste Management and Research Center, Illinois Department of Commerce and Community Affairs, North Business and Industrial Council (NORBIC), and Back of the Yards Neighborhood Council. Meetings were also advertised and open to the public. Meetings to discuss the FPA were held in Chicago on April 6, May 3, and June 14, 2000. CMFI, CBE, and NORBIC, participated in the FPA development to a substantial degree, and thus are presently considered

participating Stakeholders. Along with the District, EPA, and IEPA, these three groups are Stakeholders for the purposes of this document and project, although other organizations and individuals with an interest in the project are welcome to participate as stakeholders during project implementation.

Stakeholder involvement will continue in project implementation. Success of the AMSs depends on development of Partnerships with facilities involved in the Chicago area that have fully achieved the SGP goals for their respective industry sectors. The CMFI, CBE, and NORBIC also expressed interest in participating in the TRAPs process as outlined in Section IV. D. above.

D. Innovation/Multi-Media Pollution Prevention

The AMS will be innovative and support pollution prevention. In addition, the project's identification and control of non-regulated pollutants should decrease amounts of non-regulated pollutants in wastewater that are of local concern. This approach is proactive pollution prevention. The non-traditional approaches for making these environmental gains are innovative.

E. Transferability

The approaches and management practices in this project, such as modifying the existing pretreatment regulations to allow Partnership facilities authorization to use Alternative Performance Expectations, will be readily transferable to other POTWs and industries.

Similarly, if plans to reduce oversight for de minimis and non-significant CIUs, and to modify the Annual Report Format are successfully implemented, this information could also be readily transferred to other POTWs. Finally, plans to reduce non-regulated pollutants through TRAPs may be transferred to other POTWs; the EPA may find it appropriate to promulgate future regulations requiring tighter controls on some pollutants identified in the TRAPs process.

F. Feasibility

The District is financially, technically, and administratively able to conduct this Project XL pilot. They have made a commitment to make available sufficient resources and appropriately qualified staff to implement this project.

Implementing the alternative monitoring system component of the proposal should be feasible. Its success will be tied to the success of the Chicago SGP in attracting metal finishers willing and able to fully achieve the SGP goals, as well as the success and interest from other lesser and undeveloped sector initiatives.

Identifying and ranking non-regulated pollutants should also be possible. Implementing the source control plans will be challenging due to the lack of direct regulatory endpoints, which support requests for source reductions. Voluntary pollution prevention efforts conducted by

POTWs in the past have, however, experienced a good degree of success.

The District has indicated that the requested regulatory flexibility should be sufficient to enable it to implement the planned environmental improvements.

G. Monitoring, Reporting, and Evaluation

The District will continue to monitor the performance of their WRPs, and conduct basin sampling as necessary as described above in Section V. A. above. Reporting on this monitoring and sampling will be available upon request to the District. If a WRP performance has declined, this information will be reported immediately in writing to the Parties and Stakeholders.

Work plans for AMS will be prepared within six months of establishment of Partnerships with individual CIUs.

The pollutants to be addressed under the TRAPs and pollutant sources will be identified within 12 months of project implementation. TRAPs pollutant reduction strategies will be identified within 18 months of project implementation.

H. Shifting of Risk Burden

This XL pilot project should not result in any adverse shifts in loadings across media. It is likely that the 80 or so de minimis and non-significant CIUs that would be subject to reduced monitoring and oversight are located throughout the seven WRP districts and do not all discharge to one WRP. The environmental benefits will be evenly distributed across the community and watershed. Current requirements in the District pretreatment program for protecting worker health and safety will remain in place. It is anticipated that the AMSs developed in this pilot project will be superior to current monitoring practices with respect to worker safety.

VI. Implementation

Implementation of this agreement will rely on EPA to issue a rule that would modify existing regulations and the IEPA to adopt this rule. This rule will grant regulatory flexibility to IEPA and the District to: 1) provide oversight flexibility for IUs meeting de minimis or non significant CIU criteria, 2) allow the District to use an alternative format for its Pretreatment Annual Report, and 3) allow Alternative Performance Expectations established to the satisfaction of the Partnership to be considered by the District, EPA, and IEPA as a means through which the facility will demonstrate compliance with applicable Pretreatment Standards, and Partnership facilities to obtain authorization to use Alternative Performance Expectations to demonstrate compliance with categorical standards. The Parties intend that once this is in place, IEPA will issue revised regulations and an amended NPDES wastewater treatment facility permit to one of the wastewater treatment plants operated by the District, and the District will need to apply for a substantial pretreatment program modification, revise its sewer use ordinance, and issue amended Discharge

Authorizations to de minimis and non significant CIUs. All of these actions are necessary to fully implement the provisions of this project.

The Illinois Pollution Control Board will be involved in State rulemaking to allow the District to implement the regulatory flexibility of this Project XL pilot project. The Board is mandated to adopt regulations that are "identical in substance" to the federally promulgated pretreatment regulations.

VII. Events Preventing Project Implementation/ Unavoidable Delays

This section applies to the provisions of this FPA that do not encompass enforceable regulatory mechanisms. Enforceable mechanisms, such as permit provisions or rules, shall be subject to modification or enforcement as provided in applicable law.

"Unavoidable delay" for purposes of the project described in this FPA is defined as any event arising from causes beyond the control of any Party or Parties that delays or prevents the implementation of the project described in this FPA despite the Parties' best efforts to put their intentions into effect. An unavoidable delay can be caused by, for example, a fire or acts of war. An unavoidable delay does not include any increase in costs necessary to undertake and successfully complete the project in a timely fashion.

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

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

VIII. Enforceability of the FPA

This Agreement in itself does not create or modify legal rights or obligations, is not a contract or a regulatory action, such as a permit or a rule, and is not legally binding or enforceable against any Party. Rather, it expresses the plans and intentions of the Parties 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 Parties intend to follow with respect to dispute resolution and termination (see Sections XI and XII). However, while the Parties fully intend to adhere to these procedures, they are not legally obligated to do so.

EPA intends to propose for public comment the rule needed to implement this 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, 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 Party 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 Party.

IX. Duration of Agreement

This FPA will be in effect for the period of five years, unless terminated earlier by the Parties. At least 180 days prior to the end of the five-year period of this FPA, the District may apply for renewal or extension of the Project period. A renewal or extension of the Project period will be treated as a modification of the FPA, and is addressed in Section X below.

X. Amendments or Modifications to the Agreement

This Project is an experiment designed to test new approaches to environmental protection and there is a degree of uncertainty regarding the environmental benefits and costs associated with activities to be undertaken in this Project. Therefore, it may be appropriate to amend this Agreement at some point during its duration. Issues and amendments may be raised by the Parties or the Stakeholders.

This Final Project Agreement may be amended by mutual agreement of all Parties at any time during the duration of the Project. The Parties recognize that amendments to this Agreement may also necessitate modification of legal implementation mechanisms (such as a rule or permit) or may require development of new implementation mechanisms. If the Agreement is amended, EPA, the District, and IEPA expect to work together with other regulatory bodies and stakeholders to identify and pursue any necessary modifications or additions to the implementation mechanisms in accordance with applicable procedures. If the Parties agree to make a substantial amendment to this Agreement, the general public will receive notice of the amendment and be given an opportunity to participate in the process, as appropriate.

In determining whether to amend the Agreement, the Parties will evaluate whether the proposed amendment meets Project XL acceptance criteria and any other relevant considerations agreed on by the Parties. All Parties to the Agreement will meet within ninety (90) days following submission of any amendment proposal (or within a shorter or longer period if all Parties agree) to

discuss evaluation of the proposed amendment. If all Parties support the proposed amendment, the Parties will (after appropriate stakeholder involvement) amend the Agreement.

XI. Termination of Agreement

A. Expectations Concerning Termination

This FPA is not a legally binding document and any Party may withdraw from the FPA at any time. If Parties do withdraw from the FPA, the regulation and/or permit will remain enforceable until modified. However, it is the desire of the Parties that this FPA should remain in effect through the expected minimum Project term, and, during that time, be implemented as fully as possible. Although each Party retains its discretion to terminate the FPA at any time, it is the intent of the Parties that this Project will not be terminated unilaterally during the expected minimum project term of this FPA unless one of the following conditions set forth below occurs:

1. Failure (taking into account its nature and duration) by any other Party to (a) comply with the provisions of the implementation mechanisms for this Project, or (b) act in accordance with the provisions of this FPA;

2. Discovery of the failure of any other Party to disclose material facts during development of the FPA;

3. Failure of the Project to provide enhanced environmental benefits and/or performance consistent with the expectations of this FPA;

4. Enactment or promulgation of any environmental, health, or safety law or regulation after execution of this FPA which renders the Project legally, technically, or economically impracticable; or

Unless the Parties determine that continuation of the Project past the minimum Project term is warranted, this FPA will be terminated as of the end of the minimum Project term.

EPA, Illinois EPA and the District do not intend to withdraw from the Agreement if the District does not act in accordance with this Agreement or its implementation mechanisms, unless the actions constitute a substantial failure to act consistently with intentions expressed in this Agreement and its implementing mechanisms. The decision to withdraw will, of course, take the failure's nature and duration into account.

The District will be given notice and a reasonable opportunity to remedy any "substantial failure" before EPA's or IEPA's withdrawal. If there is a disagreement between the Parties over whether a "substantial failure" exists, the Parties will use the dispute resolution mechanism identified in Section XII of this Agreement. EPA and the Illinois EPA retain their discretion to use existing enforcement authorities, including withdrawal or termination of this Project, as appropriate. The

District retains any existing rights or abilities to defend itself against any enforcement actions, in accordance with applicable procedures.

B. Termination Procedures

The Parties agree that the following procedures will be used to terminate the Project prior to the minimum Project term, and further that the implementation mechanisms will provide for withdrawal or termination consistent with these procedures:

Any Party desiring to terminate this FPA is expected to provide written notice of its intent to terminate to the other Parties and Stakeholders at least 60 days prior to termination.

If requested by any one Party during the 60 day period noted above, the dispute resolution proceedings provided in Section XII herein, may be initiated to resolve any dispute relating to the intent to terminate. If, following any dispute resolution or informal discussion, the Party still desires to terminate, the terminating Party will provide written notice of final termination to all Parties to the FPA.

If any Party terminates its participation in this FPA, the remaining Parties will consult with the District to determine whether the FPA should be continued in a modified form consistent with applicable federal and state law, or terminated.

The termination procedures set forth in this Section apply to the decision to terminate participation in the FPA. Procedures to be used in modifying or rescinding the legal mechanisms used to implement the Project will be governed by the terms of those legal mechanisms and applicable law.

C. Post-Project Compliance Period

Orderly Return to Compliance in the Event of Early Termination:

In the event of any termination not based upon the end of the expected minimum Project term (initially five years), there will be an Interim Compliance Period to provide sufficient time consistent with permit modification procedures set forth in 40 CFR § 122.1 et seq. for the District to come into compliance with the regulations deferred under the Project. By the end of the Interim Compliance Period, the District will comply with the applicable standards set forth in 40 CFR Part 403 and the applicable Illinois Administrative Code governing the Pretreatment Program. Within three months of the termination date, EPA and the Illinois EPA will issue an order, permit or other legally enforceable mechanism establishing an implementation schedule for the District's orderly return to compliance. The Interim Compliance Period is 15 months from the date on which EPA, the Illinois EPA or the District provides written notice of final termination of the Project in accordance with the terms of this FPA. It is the District's intent to be in full compliance with all applicable requirements above as soon as practicable, as will be set forth in

the implementation schedule.

Orderly Return to Compliance in the Event of Completion of Project Term:

In the event of termination based upon the end of the Project term, the District will achieve compliance with all applicable requirements within 15 months of the end of the minimum Project term, unless the Project is modified in accordance with Sections IX and X. Amendment and Resources. The District is expected to anticipate and plan for all activities necessary to come into compliance upon completion of the Project, sufficiently in advance of the end of the Project term. The District may request a meeting with EPA and the Illinois EPA to discuss the timing and nature of any actions that the District will be required to take to come into compliance with regulatory requirements that have been deferred under this Project and should request such a meeting at least 60 days in advance of the anticipated completion date of the project term. The Parties expect that they will meet within 30 days of receipt of the District's written request for such a discussion. At and following such meeting, the Parties expect that they will engage in reasonable good faith discussion to identify the extent to which requirements deferred under this Project will apply after termination of this Project.

XII. Dispute Resolution

Any dispute that arises with respect to the meaning, application, implementation, interpretation, amendment, termination or modification of the FPA will, in the first instance, be the subject of informal discussions. To initiate informal discussions, any Party that believes it has a dispute with any other Party will contact all Parties, to identify and explain the matter(s) in dispute. This initial contact should involve staff at the appropriate level for the nature of the dispute.

If the dispute cannot be resolved by these staff within 30 days of the initial contact (or such longer time as agreed to by the disputants, then any Party escalate the dispute to the respective chief administrative officials (signatories to this Agreement). Written notices shall be provided to these officials and the Stakeholders that explain the issue in dispute and provide a proposal for resolution. The EPA Region 5 Administrator shall convene a meeting or conference call as soon as practicable. These officials may prepare a final opinion that specifies that agreed resolution or other appropriate findings in a timely manner.

Nothing in this section will be construed to alter the Parties' expectations regarding the ability to terminate or withdraw from the FPA set forth in the provision of Section XI Termination of Agreement.

XIII. Right of Other Legal Remedies Retained

Except as expressly provided in the legal implementation mechanisms, nothing in the FPA affects or limits the District's, EPA's, or IEPA'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 or the District.

Although the District does not intend to challenge agency actions implementing the Project (including any rule amendments or adoptions, permit actions, or other action) that are consistent with this FPA, the District nevertheless reserves any right it may have to appeal or otherwise challenge any and all agency actions implementing the Project. Nothing in this FPA is intended to limit the District's right to administrative or judicial appeal or review of those legal mechanisms in accordance with the applicable procedures for such review.

XIV. Transfer of Project Benefits and Responsibilities

It is expected that the implementation mechanisms will allow for the transfer of the District's rights and obligations under the Project to any future owner or operator upon request of the District and such owner/operator, provided that the following conditions are met:

- The District will provide written notice of any such proposed transfer to EPA and the Illinois EPA at least 45 days prior to the effective date of the transfer. The notice is expected to include identification of proposed transferee, a description of the proposed transferee's financial and technical capability to assume the obligations associated with the Project, and a statement of the transferee's intention to sign the FPA as an additional Party.

- Within 30 days of receipt of the written notice, it is expected that the EPA and IEPA will determine whether the transferee has demonstrated adequate financial and technical capability to carry out the Project, willingness to sign the FPA, and is otherwise an appropriate XL partner. It is expected that the implementation mechanisms will provide that, so long as the demonstration has been made to the satisfaction and unreviewable discretion of the Agencies, and upon consideration of other relevant factors, the FPA will be modified to allow the proposed transferee to assume the rights and obligations of the District. In the event that transfer is disapproved by any agency, withdrawal or termination may be initiated, as provided in Section XI, A and E.

- Upon approval of transfer under this section, EPA, the Illinois EPA, and the District will amend the rule, permit and other implementing mechanism(s) (subject to public notice and comment) to legally transfer the rights and obligations of the District under this project to the proposed transferee. The rights and obligations of this project remain with the District prior to their final, legal transfer to the proposed transferee.

XV. Reporting and Periodic Reviews

The District is required to periodically report the progress of its pilot program, as set forth below. The District's periodic report will describe its Local Pilot Pretreatment Program activities and

accomplishments, including activities and accomplishments of any participating agencies and public involvement. The report will include an analysis of all environmental data collected over the reporting period and activities conducted to reduce pollutant loadings to the environment and any other activities that address the objectives of the Local Pilot Pretreatment Program.

The report following the fourth year of pilot program implementation will also include the findings of the pilot. This report will specifically address all objectives of the pilot program and provide measures related to the effectiveness of the program, as implemented, in meeting the objectives. The report will also include recommendations concerning the implementation of the Pretreatment Program at the local level.

The minimum report requirements will be detailed in the District's NPDES permit. This requirement will be similar to the current requirement for the District to annually report to the Approval Authority the status of its Pretreatment Program (see 40 CFR 403.12(i). At the discretion of the NPDES permitting authority, the report may be required more frequently than once per year. The District must continue to submit regulatory reports on the requirements of its Pretreatment Program that are unaffected by this FPA, as required under 40 CFR 403.

XVI. Effective Date

This FPA shall become effective upon the date it is dated and signed by EPA's Regional Administrator for Region 5.

XVII. FPA Contacts

The Parties to this Final Project XL Agreement are the United States Environmental Protection Agency (EPA), the Metropolitan Water Reclamation District of Greater Chicago and the Illinois Environmental Protection Agency.

The project contacts are as follows:

Metropolitan Water Reclamation District of Greater Chicago
Richard Sustich
Assistant Director of Research and Development
Industrial Waste Division
111 East Erie Street
Chicago, Illinois 60611
312-751-3030

XVIII. Signatories to this FPA

Francis X. Lyons, Regional Administrator, US EPA
Region 5

8/30/00
Date

Tom Skinner, Director
Illinois Environmental Protection Agency

8/30/00
Date

Hugh H. McMillan, General Superintendent
Metropolitan Water Reclamation District of Greater Chicago

8/30/00
Date

Hon. Gloria Alitto Majewski, Chairman
Committee on Finance
Metropolitan Water Reclamation District of Greater Chicago

8-30-2000
Date

ATTEST: Mary C. West
Clerk of the Board
Metropolitan Water Reclamation District of Greater Chicago

8-30-2000
Date

Appendix I

METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO

PROPOSED MAXIMUM ALLOWABLE DISCHARGE FOR DIMINIMUS CIU DESIGNATION
(Expressed as pounds per day, except flow [gallons per day])

Parameter	Calumet WRP	John E. Egan WRP	Hanover Park WRP	James C. Kirie WRP	Lemont WRP	North Side WRP	Stickney WRP
Flow	10,000	3,000	1,200	7,200	230	10,000	10,000
BOD	38.881	6.274	1.543	6.347	0.239	28.129	201.767
Arsenic	ND[1]	ND	0.00	ND	ND	ND	ND
Barium	0.021	0.002	0.001	0.004	0.000	0.014	0.088
Cadmium	0.000	0.000	ND	0.000	0.000	0.000	0.002
Chromium	0.002	0.000	0.000	0.001	ND	0.004	0.117
Copper	0.015	0.003	0.001	0.005	0.000	0.013	0.116
Cyanide	0.070	0.001	0.000	0.001	0.000	0.005	0.032
Fluorine	0.132	0.028	0.001	0.062	0.001	0.278	1.072
Iron	0.781	0.051	0.009	0.098	0.003	0.249	3.492
Lead	0.001	ND	ND	ND	0.000	ND	0.039

Appendix I (Continued)

METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO

PROPOSED MAXIMUM ALLOWABLE DISCHARGE FOR DIMINIMUS CIU DESIGNATION
(Expressed as pounds per day, except flow [gallons per day])

Parameter	Calumet WRP	John E. Egan WRP	Hanover Park WRP	James C. Kirie WRP	Lemont WRP	North Side WRP	Stickney WRP
Manganese	0.038	0.003	0.001	0.005	0.000	0.015	0.130
Mercury	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Nickel	0.001	ND	ND	ND	ND	ND	0.022
Oil & Grease	6.554	0.986	0.302	1.285	0.003	6.665	26.421
Phenols	0.179	0.002	0.001	0.004	0.000	0.013	0.316
Selenium	ND	ND	0.000	ND	ND	ND	ND
Silver	ND	0.000	0.000	0.000	ND	0.001	0.006
Zinc	0.098	0.004	0.001	0.009	0.000	0.030	3.088
Benzene	0.007	ND	ND	ND	ND	ND	0.001
Chloroform	0.001	0.000	0.000	0.000	0.000	ND	0.004

Appendix I (Continued)

METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO

PROPOSED MAXIMUM ALLOWABLE DISCHARGE FOR DIMINIMUS CIU DESIGNATION
(Expressed as pounds per day, except flow [gallons per day])

Parameter	Calumet WRP	John E. Egan WRP	Hanover Park WRP	James C. Kirie WRP	Lemont WRP	North Side WRP	Stickney WRP
Dichlorobromomethane	ND	ND	ND	ND	ND	ND	0.000
1,2-Dichloropropane	ND	ND	ND	ND	ND	ND	0.001
Ethyl benzene	0.001	ND	0.000	0.000	ND	0.001	0.002
Methylene chloride	0.002	0.003	0.000	0.001	ND	0.002	0.009
Tetrachloroethylene	0.001	0.000	0.000	0.000	0.000	0.003	0.007
Toluene	0.010	0.000	0.000	0.000	0.000	0.003	0.013
1,2-trans-Dichloroethylene	0.000	0.000	0.000	0.000	ND	0.001	0.002
Trichloroethylene	0.000	0.000	0.000	0.000	ND	0.004	0.005
2,4-Dimethylphenol	0.006	ND	ND	ND	ND	ND	ND
Phenol	0.050	0.000	0.000	0.000	0.000	0.001	0.066
1,1,1-Trichloroethane	0.000	ND	ND	ND	ND	0.000	0.001

Appendix I (Continued)

METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO

PROPOSED MAXIMUM ALLOWABLE DISCHARGE FOR DIMINIMUS CIU DESIGNATION
(Expressed as pounds per day, except flow [gallons per day])

Parameter	Calumet WRP	John E. Egan WRP	Hanover Park WRP	James C. Kirie WRP	Lemont WRP	North Side WRP	Stickney WRP
Anthracene	ND	ND	ND	ND	ND	ND	0.000
Benzo-(a)-anthracene	0.000	ND	ND	0.000	ND	ND	ND
Benzo-(a)-pyrene	0.000	ND	ND	ND	ND	ND	ND
Benzo-(k)-fluoranthene	0.000	ND	ND	ND	ND	ND	ND
Butylbenzyl phthalate	0.000	0.000	0.000	0.000	0.000	0.002	0.003
Chrysene	0.000	ND	ND	0.000	ND	ND	0.000
Diethylphthalate	0.001	0.000	0.000	0.000	0.000	0.001	0.003
Di-n-butyl-phthalate	0.000	0.000	0.000	0.000	0.000	0.001	0.002
Di-n-octyl-phthalate	0.000	0.000	0.000	0.000	0.000	ND	0.000
Fluoranthene	0.001	ND	ND	0.000	ND	ND	0.001
Naphthalene	0.002	ND	0.000	ND	ND	ND	0.001
Phenanthrene	0.001	ND	ND	0.000	0.000	ND	0.002

Appendix I (Continued)

METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO

PROPOSED MAXIMUM ALLOWABLE DISCHARGE FOR DIMINIMUS CIU DESIGNATION
(Expressed as pounds per day, except flow [gallons per day])

Parameter	Calumet WRP	John E. Egan WRP	Hanover Park WRP	James C. Kirie WRP	Lemont WRP	North Side WRP	Stickney WRP
Pyrene	ND	ND	ND	0.000	ND	ND	0.001
PCB-1254	0.000	ND	ND	ND	ND	ND	0.000
PCB-1260	0.000	ND	ND	ND	ND	ND	0.000
PCB-1016	0.000	ND	ND	ND	ND	ND	ND
γ-BHC	ND	0.000	ND	ND	ND	ND	ND

Appendix II

Performance Measures to be Incorporated into the Annual Pretreatment Program Report

1. Trends in mass loadings of metals and other toxic and non-conventional pollutants in POTW effluent; and comparisons to allowable levels in NPDES permits.

2. Trends in emissions of hazardous pollutants to the air, particularly for volatile pollutants from unit processes and metals from incineration.

3. Trends in mass loadings of metals and other toxic contaminants to POTW influent, as a total, and, where possible, divided into domestic, commercial, industrial, and storm contributions to the total; and comparison to allowable loadings as calculated during the headworks analysis, where such analysis is available.

4. Reductions in annual average metals levels in biosolids, with an indication of any trend towards or compliance with the most stringent nationwide biosolids standards.

5. Percent compliance with NPDES permit discharge requirements.

6. For each POTW, whether the POTW is failing Whole Effluent Toxicity (WET) discharge criteria due to industrial sources.

7. Percent compliance with non-pathogen biosolids quality limits for the management method currently used, with sites divided into categories based on applicable regulations, calculated as the number of samples in compliance out of all samples (i.e., the average for that calendar year).

8. Percent compliance at each IU with categorical discharge limits.

9. Percent compliance at each IU with all permit discharge limits.

10. Percent of IUs in compliance with reporting requirements.

11. Number and percent of IUs in SNC for the current year that were also in SNC for the previous year.

12. Whether an effective method is being used to prevent, detect, and remediate incidents of violations of the specific prohibitions attributable to industrial or commercial sources (e.g., fire, explosion hazards, fume toxicity, etc.).

13. Whether an effective procedure is being used to identify non-domestic users and to update the list of regulated users.
14. Number of sample events conducted by the Control Authority per SIU per year, and percent

Performance Measures to be Incorporated into the Annual Pretreatment Program Report

of all sample events that were conducted by the Control Authority.

15. Number of inspections per SIU per year.

16. Whether the Control Authority has site-specific, technically based local limits, based on the most recent regulatory changes and latest NPDES permit requirements; or a rationale for the lack of such limits.

17. Whether the POTW or Control Authority has significant activities or accomplishments that demonstrate performance beyond traditional goals and standards.

18. Whether or not the POTW has an effective public involvement program in place.

Appendix III

Glossary

Approval Authority: The Director in an NPDES State with an approved State pretreatment program and the appropriate EPA Regional Administrator in a non-NPDES State or NPDES State without an approved State pretreatment program. [40 C.F.R. 403.3(c)]

Approved POTW Pretreatment Program: A program administered by a POTW that meets the criteria established in 40 C.F.R. 403.8 and 403.9 and which has been approved by a Regional Administrator or State Director in accordance with 40 C.F.R. 403.11. [40 C.F.R. 403.3(d)]

Categorical Pretreatment Standards: Limitations on pollutant discharges to POTWs promulgated by EPA in accordance with Section 307 of the Clean Water Act, that apply to specific process wastewater discharges of particular industrial categories [40 C.F.R. 403.6 and 40 C.F.R. Parts 405-471.].

Clean Water Act (CWA): An act passed by the U.S. Congress to control water pollution. It was formerly referred to as the Federal Water Pollution Control Act of 1972 or Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500), 33 U.S.C. 1251 et. Seq., as amended by: Public Law 96-483: Public Law 97-117; Public Laws 95-217, 97117, 97-440 and 100-04.

Control Authority: A POTW with an approved pretreatment program or the approval authority (State or EPA Region) in the absence of a POTW pretreatment program [40 C.F.R. 403.12(a)].

Indirect Discharge: The introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c), or (d) of the Act. [40 C.F.R. 403.3 (g)]

Industrial User: A source of indirect discharge. [40 C.F.R. 403.3 (h)]

Local Limits: Discharge limits imposed by municipalities upon industrial or commercial users that discharge to the municipal sewage treatment system.

National pretreatment Standard or Pretreatment Standard: Any regulation containing pollutant discharge limits promulgated by EPA in accordance with Section 307 (b) and © of the Clean Water, that apply to industrial users. This term also includes the prohibited discharge standards under 40 C.F.R. 403.5. [40 C.F.R. 403.3 (j)]

Pretreatment: The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants to a POTW. [40 C.F.R. 403.3 (q)]

Appendix III (Continued)

Glossary

Publicly Owned Treatment Works (POTW): Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a State or municipality. This includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

Sludge (Biosolids): The solid, semi-solid, or liquid residue generated during the treatment of wastewater.

Wastewater: The used waste and water-carried solids from a community (including domestic, commercial, and industrial sources) that flow to a treatment plant. Storm water, surface water, and groundwater infiltration also may be included in the wastewater that enters a wastewater treatment plant.

Exhibit B

(F) One or more of the following wastes listed in § 261.32—wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157)—Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that can not be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight; or

(G) Wastewaters derived from the treatment of one or more of the following wastes listed in § 261.32—organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156).—Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter.

* * * * *

(g) * * *

(4) any mixture of a solid waste excluded from regulation under § 261.4(b)(7) and a hazardous waste listed in subpart D of this part solely because it exhibits one or more of the characteristics of ignitability, corrosivity, or reactivity as regulated under paragraph (a)(2)(iv) of this section is not a hazardous waste, if the mixture no longer exhibits any characteristic of hazardous waste identified in subpart C of this part for which the hazardous waste listed in subpart D of this part was listed.

* * * * *

[FR Doc. 01–24068 Filed 10–2–01; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 403

[FRL–7073–3]

RIN 2090–AA16

Pretreatment Program Reinvention Pilot Projects Under Project XL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule will change the National Pretreatment Program regulations to allow Publicly Owned Treatment Works (POTWs) that have completed the Project eXcellence and Leadership (Project XL) selection process, including Final Project Agreement (FPA) development, to modify their approved local Pretreatment Programs. These POTWs will be allowed to modify their programs, and implement the new local programs as described in their FPAs. In today's rule, EPA recognizes that many POTWs with approved Pretreatment Programs have mastered the administrative and procedural requirements of the National Pretreatment regulations. Several of these POTWs want the opportunity to implement local pretreatment programs with effectiveness measured against environmental results rather than strict adherence to programmatic and administrative measures. These POTWs have expressed an interest in Project XL to test new pilot ideas that focus resources on activities that they believe would provide greater environmental benefits than are achieved by complying with current regulatory requirements. This rule is intended to provide the regulatory flexibility that will enable these and other test programs to move forward. Currently, five POTWs are actively involved in this Project XL process. The flexibility provided by this rule revision is limited to fifteen POTWs that meet the Project XL criteria.

DATES: This final rule is effective October 3, 2001.

ADDRESSES: A docket containing the rule, Final Project Agreements, supporting materials, public comments and the official record is available for public inspection and copying at the EPA's Water Docket, EB–57 (East Tower Basement), 401 M Street, SW., Washington, DC 20460. The record for this rulemaking has been established under docket number W–00–30, and includes supporting documentation. The public may inspect the administrative record from 9 am to 4 pm Monday through Friday, excluding Federal holidays. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (202) 260–3027. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page. Project materials are also available for review for today's action on the world wide web at *http://www.epa.gov/projectxl/*.

Supporting materials are also available for inspection and copying at U.S. EPA, Headquarters, 401 M Street, SW., Room 1027 West Tower, Washington, DC 20460 during normal business hours. Persons wishing to view the materials at the Washington, DC location are encouraged to contact Mr. Chad Carbone in advance by telephoning (202) 260–4296.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Frazer, (202) 564–0599, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., (MC 4203), Washington, DC 20460. Further information on today's action may also be viewed on the world wide web at *http://www.epa.gov/projectxl/*.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are governmental entities responsible for implementation of the National Pretreatment Program and POTWs subject to Pretreatment Standards and requirements that have completed the Project eXcellence and Leadership (Project XL) selection process, including Final Project Agreement (FPA) development, to modify their approved local pretreatment programs. Regulated categories and entities include:

Category	Examples of regulated entities
Local government	Publicly Owned Treatment Works.
State and Tribal government.	States and Tribes acting as Pretreatment Program Control Authorities or as Approval Authorities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section.

On October 6, 2000, the Environmental Protection Agency proposed a rule (65 FR 59791) that set forth the mechanism through which POTWs that complete the Project XL process can seek modification of their programs following the procedures in 40 CFR 403.18, and implement the new

local programs as described in their FPAs. Today's final rule promulgates regulations that are identical to the proposed rule.

Outline of Today's Rule

The information presented in this preamble is organized as follows:

I. Authority

This regulation is being promulgated under the authority of sections 307, 402 and 501 of the CWA.

II. Background

A. What Is Project XL?

Project XL, which stands for "eXcellence and Leadership," is a national pilot program that tests innovative ways of achieving better and more cost-effective public health and environmental protection through site-specific agreements with project sponsors. Project XL was announced on March 16, 1995, as a central part of EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995) and 60 FR 55569 (November 1, 1995). The intent of Project XL is to allow EPA and regulated entities to experiment with pragmatic, potentially promising regulatory approaches, both to assess whether they provide superior environmental performance and other benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects are intended to allow EPA to collect more data on a more focused basis prior to national rulemaking. Today's regulation would enable implementation of five specific XL projects as well as future projects that successfully complete the Project XL process. These efforts are crucial to EPA's ability to test new strategies that reduce the regulatory burden and promote economic growth while achieving better environmental and public health protection. EPA intends to evaluate the results of this and other XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

B. What Is EPA Announcing?

In the June 23, 1998, **Federal Register** (63 FR 34170), EPA requested proposals for XL projects from 15 POTWs based on environmental performance measures for the pretreatment program. The process for reviewing and choosing acceptable pilot program candidates included input from POTWs, State and EPA Regional Pretreatment Coordinators, as well as opportunity for public participation. As discussed in more detail below, five POTWs have advanced to the final steps of the Project XL process. In today's rule, EPA announces revisions to the national pretreatment regulations at 40 CFR part 403 that will allow the current and future selected Local Pilot Pretreatment Programs to be implemented. The flexibility provided by this rule revision is limited to 15 POTWs that meet the Project XL criteria. POTWs must submit revised pretreatment programs for approval and obtain modified permits to authorize the POTW to implement its pilot program instead of its currently Approved POTW Pretreatment Program. However, please note that the affected States may first need to revise their own regulations or statutes to authorize the pilot programs for pretreatment XL project sponsors before this rule can be implemented in their jurisdictions.

C. Stakeholder Involvement in the Project XL Process

EPA believes stakeholder involvement in developing Local Pilot Pretreatment Programs is crucial to the success of the programs; therefore, as part of the Project XL proposal, a POTW must clearly explain its process for involving stakeholders in the design of the pilot program. This process should be based upon the guidance entitled, Regulatory Reinvention (XL) Pilot Projects, set out in the April 23, 1997, **Federal Register** notice (62 FR 19872). The support of parties that have a stake in the program is very important. Once EPA has accepted a candidate based on its detailed proposal, the POTW, EPA, the State and local stakeholders typically develop a Final Project Agreement (FPA). The FPA is a non-binding agreement that describes the intentions and commitments of the implementing parties. Stakeholders may include communities near the project, local or State governments, businesses, environmental and other public interest groups, or other similar entities. Stakeholders will also have formal opportunities to comment on provisions of the FPA that are incorporated in the POTW's revised pretreatment program under the procedures established at 40 CFR 403.18 and this rule.

D. Summary of Public Comments

EPA proposed this regulation on October 6, 2000 (65 FR 59791). The preamble to the proposed rule explains the changes in the regulations. The public comment period was open for a period of 30 days and closed on November 6, 2000.

EPA received a total of three comments regarding this rule. The commenters included two States and a trade group that represents municipalities. Two of the commenters fully support the revised regulation which will allow the Project XL process to move forward and provide a means to test new ways to streamline the pretreatment program and provide greater environmental benefits. The other commenter believes that both major and minor modifications to expired NPDES permits are prohibited and requests that 40 CFR 403.20 be clarified to allow approved Pretreatment Program Modifications that may be processed as minor NPDES Permit modifications in accordance with 40 CFR 122.63(g), to be also processed in cases when the associated NPDES Permits are expired. In response to this comment, EPA agrees that the Federal NPDES regulations do not contemplate modifications to expired NPDES permits and EPA understands that many States have permitting backlogs. However, EPA does not believe that an exception to the NPDES permitting regulations is appropriate in this narrowly tailored rulemaking amending the pretreatment regulations. Rather, EPA believes that States with NPDES permit backlogs would make POTWs that qualify under this rule a high priority and reissue those permits promptly so that those

facilities can implement the changes to their permits allowed under this rule.

E. What Is the National Pretreatment Program?

The National Pretreatment Program is part of the Clean Water Act's (CWA's) water pollution control program. The program is a joint regulatory effort by local, State, and Federal authorities that requires the control of industrial and commercial sources of pollutants discharged to municipal wastewater plants (called "publicly owned treatment works" or "POTWs"). Control of pollutants prior to discharge of wastewater to the municipal sewer system minimizes the possibility of pollutants interfering with the operation of the POTW and reduces the levels of toxic pollutants in wastewater discharges from the POTW and in the sludge resulting from municipal wastewater treatment.

F. What Are the Current Pretreatment Program Requirements?

The minimum requirements for an approved POTW Pretreatment Program currently are published at 40 CFR 403.8(f). POTWs with approved Pretreatment Programs must maintain adequate legal authority, identify industrial users, designate which industrial users (IUs) are "Significant Industrial Users" (SIUs) (under 40 CFR 403.3(t)) and perform required monitoring, permitting and enforcement. Other sections of part 403 require POTWs with Approved Pretreatment Programs to sample and apply nationally applicable pretreatment standards to the industrial users discharging pollutants to the POTW collection system. POTWs are also required to develop local limits in accordance with 40 CFR 403.5. As announced today, EPA will allow Approval Authorities to require a POTW to meet requirements in an environmental performance-based pilot program instead of certain administrative programmatic requirements currently required in a POTW's Approved Pretreatment Program under 40 CFR part 403.

G. How Do the Current Requirements Relate to Environmental Objectives?

As described in 40 CFR 403.2, the general pretreatment regulations promote three objectives:

(a) To prevent the introduction of pollutants into POTWs which will interfere with the operation of POTWs, including interference with the use or disposal of municipal sludge;

(b) To prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with such works; and

(c) To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

These objectives require local programs to be designed so they are preventative in nature, and therefore, any pilot program also would need to maintain this preventative approach. The specific requirements for an Approved POTW Pretreatment Program are intended to achieve these objectives. Individual pretreatment programs, however, are not routinely required to report on the achievement of environmental measures.

The 1991 National Pretreatment Program Report to Congress provides extensive data related to the sources and amounts of pollutants discharged to POTWs, the removal of pollutants by secondary treatment technology, and the general effectiveness of the pretreatment program. The 1991 Report did, however, point to a serious lack of comprehensive environmental data with which to fully assess the effectiveness of both the national and local pretreatment programs. These Project XL pilots will help to provide data for this purpose.

H. Why Is EPA Allowing POTW Local Pilot Pretreatment Programs at this Time?

Some POTWs have mastered the administrative aspects of the pretreatment program (identifying industrial users, permitting, monitoring, etc.) and want to move into more environmental performance-based processes. These POTWs have expressed an interest in focusing their resources on activities that they believe would provide greater environmental benefit than is achieved by complying with the current requirements. Some POTWs want to be able to make decisions on allocating resources based on the risk associated with the industrial contributions they receive or other factors. Others want to be able to focus more resources on ambient monitoring in their receiving waters and/or to integrate their pretreatment programs with their storm water monitoring programs. In general, these POTWs want the opportunity to redirect limited resources away from currently required activities that they do not believe are benefitting the environment and toward activities that may achieve measurable improvements in the environment.

EPA developed the Project XL program to provide regulated entities the flexibility to conduct innovative pilot projects. Today's rule represents an attempt to spur innovation in the pretreatment program, to increase environmental benefits and, in conjunction with the streamlining proposal (see 64 FR 39564), to determine, if further streamlining of the program is needed, how streamlining can achieve environmental improvements and in what direction those future streamlining efforts should be directed.

I. Are There Any POTWs Currently Going Through Project XL Approval Process?

In order to implement the pretreatment XL projects, EPA is promulgating this rule to provide regulatory flexibility under the Clean Water Act. Currently, five (5) POTWs have requested flexibility through the Project XL FPA approval process. The POTWs are: The Narragansett Bay Commission (NBC) in Rhode Island; the Jeffersontown Wastewater Treatment Plant (WWTP), owned and operated by the Louisville and Jefferson County Metropolitan Sewer District (MSD) in Kentucky; the Metropolitan Water Reclamation District of Greater Chicago (Chicago) in Illinois; the City of Albuquerque (Albuquerque), New Mexico; and the City of Denton (Denton), Texas. The FPA for NBC lays out the following flexibilities: (1) Reduced self-monitoring requirements for ten (10) categorical industrial users (CIUs) for tier 1 facilities, (2) reduced inspection frequency for ten (10) CIUs tier 1 facilities from once every year to once every two years, and (3) allow participating CIUs tier 1 facilities to not sample for pollutants not expected to be present. Under the FPA for MSD, the POTW is requesting flexibility to (1) use an alternative definition for significant industrial user (SIU), (2) allow participating CIUs to not sample for pollutants not expected to be present and (3) use an alternative definition of significant noncompliance (SNC). The Chicago FPA describes flexibility that includes (1) use of an alternative definition for *de minimis* categorical industrial user (CIU), and (2) reduced self-monitoring and self-reporting requirements for participating CIUs and (3) use of alternative monitoring methods. The Albuquerque FPA lays out flexibility to (1) use an alternative definition of SIU, (2) use an alternative definition of SNC, (3) reduce permitting requirements for participating IUs, (4) use alternative monitoring methods and (5) reduce reporting requirements for participating IUs. The Denton FPA lays out flexibility to (1) reduce its monitoring of participating IUs and (2) reduce its inspection of participating

IUs. In exchange for these flexibilities, each individual POTW has committed to produce certain proportional amounts of superior environment performance as laid out in the FPA and maintain all legal and preventative environmental health and safety standards. Complete project site-specific descriptions can be found on the web at: http://www.epa.gov/projectxl/.

J. What Are the Environmental Benefits Anticipated Through Project XL?

These XL projects are expected to achieve superior environmental performance beyond that which is achieved under the current CWA regulatory system by allowing POTWs the ability to identify environmental goals and allocate the necessary resources on a site specific basis. Specifically, these projects are expected to produce additional benefits by (i) reducing pollutant loadings to the environment or some other environmental benefit beyond that currently achieved through the existing pretreatment program (including collecting environmental performance data and data related to environmental impacts in order to measure the environmental benefit), (ii) reducing or optimizing costs related to implementation of the pretreatment program with the savings used to attain environmental benefits elsewhere in the watershed in any media, and (iii) providing EPA with information on how the pretreatment program might be better oriented towards the achievement of measures of environmental performance.

EPA's intent is to allow Local Pilot Pretreatment Programs to be administered by those POTWs that best further those objectives. Each pilot program's method of achieving the environmental benefit should be transferable so that other POTWs may be able to implement the method and also achieve increased environmental benefits.

K. What Is the Project Duration and Completion Date?

Under Project XL, local Pilot Pretreatment Programs may be approved to operate for the term expressed in the FPA. Prior to the end of the FPA approval period (at least 180 days), the POTW may apply for a renewal or extension of the project period in accordance with the terms of the FPA. If a POTW is not able to meet the performance goals of its Local Pilot Pretreatment Program, the Pretreatment Approval Authority (either EPA or the authorized State) could allow the performance measures to be adjusted if the primary objectives of the Local Pilot Pretreatment Program would be met. The revised Local Pilot Pretreatment Program would need to be approved in accordance with the FPA and the procedures in 40 CFR 403.18.

If the primary objectives of the proposal are not being met, the Approval Authority would direct the POTW to discontinue implementing the Local Pilot Pretreatment Program and resume implementation of its previously approved pretreatment program. The Pretreatment ApprovalAuthority would need to ensure that the POTW's NPDES permit includes a "reopener" clause to implement this procedure.

The results of the pilots, including recommendations in POTW reports, may be used to determine the direction of future Pretreatment Program streamlining and/or reinvention.

L. How Could the Project Be Terminated?

Either the Approval Authority or the POTW may terminate a project earlier than the final project agreement's (FPA) anticipated end date. Parties will follow procedures for termination set out in the FPA. The implementing permits will also reflect the possibility of early termination. When the NPDES permitting agency modifies the POTW's NPDES permit to incorporate the flexibility allowed by today's rule, it must include a "reopener" provision that requires the POTW to return to compliance with previously approved pretreatment program requirements at the expiration or termination of the FPA, including an interim compliance period, if needed. Additional details are available in the site-specific FPAs.

III. Rule Description

Today's rule modifies 40 CFR part 403 to allow Pretreatment Approval Authorities (EPA or State) to grant regulatory flexibility to Project XL POTWs with approved FPAs. The regulatory flexibility would allow such POTWs to implementPretreatment Programs that include legal authorities and requirements that are different than the administrative requirements in 40 CFR part 403. The POTW would need to submit any such alternative requirements as a substantial program modification in accordance with the procedures outlined in 40 CFR 403.18. The approved modified program would need to be incorporated as an enforceable part of the POTW's NPDES permit. The Approval Authority would approve or disapprove the pilot program using the procedures in 40 CFR 403.18.

For example, the POTW would work through the Project XL process as described above. The POTW either would or has already developed the necessary FPA with stakeholder participation (local interest groups, State representatives, EPA, any other interested parties). The POTW would use the FPA as the blueprint when developing a revision of the POTW's approved local pretreatment program. The POTW would submit the revised program to its Approval Authority (State or EPA region) requesting a substantial program modification using the procedures outlined in 40 CFR 403.18. The Approval Authority would review the program modification request to determine that it contains the provisions of the blue-print FPA and make a determination to approve or deny the request. The proposal for modification would be publicly noticed following the procedures in 40 CFR 403.11 and 40 CFR 403.18. After the close of the public comment period, the Approval Authority would consider and respond to public comments and revise the POTW's pretreatment program accordingly. Then the POTWs NPDES permit would be modified by adding the modified pretreatment program as an enforceable part of the permit.

IV. Additional Information

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review.

B. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. This rule reduces the regulatory costs to POTWs of complying with the pretreatment requirements and affects only a small number of POTWs. It only affects those POTWs that elect to participate in the voluntary Project XL Program. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. § 804(2). This rule will be effective on October 3, 2001.

D. Paperwork Reduction Act

This rule does not impose any new information collection burden. This rule merely changes the National Pretreatment Program regulations to provide flexibility to allow POTWs that have completed the Project XL selection process, including FPA development, to modify their approved local Pretreatment Programs. The POTW must submit any such alternative requirements as a substantial program modification in accordance with the procedures outlined in 40 CFR 403.18. The Office of Management and Budget (OMB) has previously approved the information collection requirements for 40 CFR 403.18 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2040–0009 (EPAICR No. 0002.09) and 2040–0170 (EPA ICR No. 1680.02). In addition, OMB has approved the ICR entitled "Regulatory Reinvention Pilot Projects Under Project XL: Pre-treatment Program," and assigned OMB control number 2010–0026 (EPA ICR No. 1755.05).

Copies of the ICR document(s) may be obtained from Sandy Farmer, by mail at the Office of Environmental Information Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at *farmer.sandy@epa.gov,* or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr. Include the ICR and/or OMB control number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Further, UMRA generally excludes from the definition of "Federal intergovernmental mandate" duties that arise from participation in a voluntary Federal program. The Project XL Program is a voluntary Federal program. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to UMRA section 203.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23,1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria,

the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule, as defined by Executive Order 12866, and because it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

G. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 because it provides flexibility to participate in a voluntary program designed to reduce administrative requirements for facilities that have negotiated agreements with, among other parties, their State and local governments. Thus, Executive Order 13132 does not apply to this rule.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, or on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule provided flexibility to participate in a voluntary program designed to reduce administrative requirements and provide superior environmental performance for facilities that have negotiated agreements with, among other parties, their State and local governments. Thus Executive order 13175 does not apply to this rule.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standard. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards. EPA requested comment on this aspect of the rulemaking, but did not receive any such comments.

J. Administrative Procedure Act

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553, generally requires that an Agency publish a rule at least 30 days prior to its effective date. However, this requirement does not apply to rules which grant an exemption from existing requirements or rules for which the Agency finds "good cause" to make the rule effective within 30 days of publication. Because today's rule essentially provides a variance procedure from existing administrative requirements for certain POTWs, today's rule grants an exemption and is not subject to the requirement to publish 30 days prior to the effective date of the rule. EPA also believes that it is important to make this rule effective as soon as possible so that the affected POTWs and their State and local governments can begin to make the changes to permits and undertake other necessary measures to allow the FPAs to be implemented. As a result, this rule is effective on the date of publication.

K. Executive Order 13211

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 403

Environmental protection, Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: September 27, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, part 403, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

1. The authority for Part 403 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 403.20 is added to read as follows:

§ 403.20 Pretreatment Program Reinvention Pilot Projects Under Project XL.

The Approval Authority may allow any publicly owned treatment works (POTW) that has a final "Project XL" agreement to implement a Pretreatment Program that includes legal authorities and requirements that are different than the administrative requirements otherwise applicable under this part. The POTW must submit any such alternative requirements as a substantial program modification in accordance with the procedures outlined in § 403.18. The approved modified program must be incorporated as an enforceable part of the POTW's NPDES permit. The Approval Authority must include a reopener clause in the POTW's NPDES permit that directs the POTW to discontinue implementing the approved alternative requirements and

resume implementation of its previously approved pretreatment program if the Approval Authority determines that the primary objectives of the Local Pilot Pretreatment Program are not being met or the "Project XL" agreement expires or is otherwise terminated.

[FR Doc. 01–24713 Filed 10–2–01; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF89

Endangered and Threatened Wildlife and Plants; Endangered Status for the Ohlone Tiger Beetle (*Cicindela ohlone*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status pursuant to the Endangered Species Act (Act) of 1973, as amended, for the Ohlone tiger beetle (*Cicindela ohlone*). This species is endemic to Santa Cruz County, California, and is threatened by habitat fragmentation and destruction due to urban development, habitat degradation from invasion of nonnative vegetation, and vulnerability to local extirpations from random natural events. This final rule extends the Federal protection and recovery provisions of the Act to this species.

DATES: This final rule is effective October 3, 2001.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Colleen Sculley, Fish and Wildlife Biologist, Ventura Fish and Wildlife Office, at the above address (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

The Ohlone tiger beetle (*Cicindela ohlone*) is a member of the Coleopteran family Cicindelidae (tiger beetles), which includes over 2,000 species worldwide and over 100 species in the United States (Pearson and Cassola 1992). Tiger beetles are day-active, predatory insects that prey on small arthropods. Because many tiger beetles often feed on insect species that are injurious to man and crops, they are regarded as beneficial (Pearson and Cassola 1992; Nagano 1982). Adult tiger beetles are medium-sized, elongate beetles that can have a brilliant metallic green, blue, red, and yellow coloration highlighted by stripes and spots. Alternatively, they can be brown, black or dull colored (Knisley and Shultz 1997). Adults are ferocious, swift, and agile predators that seize small prey with powerful sickle-shaped jaws.

Tiger beetle larvae are also predatory. They live in small vertical or slanting burrows from which they lunge at and seize passing invertebrate prey (Essig 1926; Essig 1942; Pearson 1988). The larva grasps the prey with its strong mandibles (mouthparts) and pulls it into the burrow; once inside the burrow, the larva will feed on the captured prey (Essig 1942; Pearson 1988). Tiger beetles share similar larval body forms throughout the world (Pearson and Cassola 1992). The larvae, either white, yellowish, or dusky in coloration, are grub-like and fossorial (subterranean), with a hook-like appendage on the fifth abdominal segment that anchors the larvae inside their burrows.

Tiger beetle larvae undergo three instars (larval development stages). This period can take 1 to 4 years, but a 2-year period is the most common (Pearson 1988). After mating, the tiger beetle female excavates a hole in the soil and oviposits (lays) a single egg (Pearson 1988; Kaulbars and Freitag 1993; Grey Hayes, pers. comm. 1998). Females of many species of *Cicindela* are extremely specific in choice of soil type for oviposition (egg laying) (Pearson 1988). It is not known at this time how many eggs the Ohlone tiger beetle female lays, but other species of *Cicindela* are known to lay between 1 and 126 eggs per female (C. Barry Knisley, Randolph-Macon College, *in litt.* 2000). After the larva emerges from the egg and becomes hardened, it enlarges the chamber that contained the egg into a tunnel (Pearson 1988). Before pupation (transformation process from larva to adult), the third instar larva will plug the burrow entrance and dig a chamber. After pupation in this chamber, the adult tiger beetle will dig out of the soil and emerge. Reproduction may either begin soon after emergence or be delayed (Pearson 1988).

Tiger beetles are a well-studied taxonomic group with a large body of scientific literature; the journal *Cicindela* is devoted exclusively to tiger beetles. Scientists have studied the diversity and ecological specialization of tiger beetles, and amateur collectors have long been attracted by their bright coloration and swift movements. Tiger beetle species occur in many different habitats, including riparian habitats, beaches, dunes, woodlands, grasslands, and other open areas (Pearson 1988; Knisley and Hill 1992). A common habitat component appears to be open sunny areas for hunting and thermoregulation (an adaptive behavior to use sunlight or shade to regulate body temperature) (Knisley *et al.* 1990; Knisley and Hill 1992). Individual species of tiger beetle are generally highly habitat-specific because of oviposition and larval sensitivity to soil moisture, composition, and temperature (Pearson 1988; Pearson and Cassola 1992; Kaulbars and Freitag 1993).

The Ohlone tiger beetle is endemic to Santa Cruz County, California, where it is known only from coastal terraces supporting remnant patches of native grassland habitat. Specimens of this species were first collected northwest of the City of Santa Cruz, California, in 1987, and were first described in 1993 (Freitag *et al.* 1993). Both male and female specimens have been collected.

The adult Ohlone tiger beetle is a relatively small beetle measuring 9.5 to 12.5 millimeters (mm) (0.37 to 0.49 inches (in)) long. The adults have large, prominent eyes and metallic green elytra (leathery forewings) with small light spots (Freitag *et al.* 1993). Their legs are long, slender, and coppery-green. Freitag *et al.* (1993) describe features that distinguish this species from closely related species of *Cicindela purpurea* and other *purpurea* group taxa.

Two principal distinguishing features of the Ohlone tiger beetle are its early seasonal adult activity period and its disjunct distribution. While other tiger beetle species, such as *Cicindela purpurea*, are active during spring, summer, or early fall (Nagano 1982; Freitag *et al.* 1993), the Ohlone tiger beetle is active from late January to early April (Freitag *et al.* 1993). The Ohlone tiger beetle is the southernmost of *purpurea* group species in the Pacific Coast region; its distribution is allopatric (geographically separated) to those of similar species (Freitag *et al.* 1993).

Ohlone tiger beetle larvae are currently undescribed. However, tiger beetle burrows, measuring 4 to 6 mm in diameter (0.16 to 0.23 in), were found in the same habitat areas where adult Ohlone tiger beetles were collected (David Kavanaugh, California Academy of Sciences, pers. comm. 1997; Vince Cheap, *in litt.* 1997). The surface openings of these burrows are circular and flat with no dirt piles or mounds surrounding the circumference (Kim

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached APPEARANCES and MOTION FOR EXPEDITED CONSIDERATION upon the persons to whom it is directed, by placing a copy in an envelope addressed to:

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Michael G. Rosenberg
Alan J. Cook
Metropolitan Water Reclamation District
100 East Erie Street
Chicago, Illinois 60601

Michael McCambridge
Hearing Officer
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

and mailing it from Springfield, Illinois on October 29, 2001 with sufficient postage affixed first class mail.

Nancy J. Lampert

SUBSCRIBED AND SWORN TO BEFORE ME

this 29th day of October 2001.

Toni I. Leigh

NOTARY PUBLIC

THIS FILING IS SUBMITTED ON RECYCLED PAPER.

OFFICIAL SEAL
TONI I. LEIGH
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 9-20-2005