

Project XL Study Regarding Preconstruction PSD Monitoring Requirement
(Memorandum)

Signed December 19, 1997

MEMORANDUM

SUBJECT:

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Preconstruction PSD Monitoring Requirement

FROM:

Sylvia Lowrance
Deputy Assistant Administrator

TO:

Addressees

EPA is proposing to study a potential way to streamline existing preconstruction requirements for major sources of air pollution constructing in attainment areas using the flexibility provided by Project XL. The purpose of this memorandum is to solicit comment on the concept and determine the level of interest in the study. If and when EPA receives sufficient interest in the study, it will issue a more thorough document discussing the particulars of the study.

This memorandum will be available on the Project XL Homepage and the Technology Transfer Network (TTN) maintained by the Office of Air Quality Planning and Standards. In addition, please circulate it to the States in your Regions, as well as sources that you believe would be interested in participating in the study.

Project XL Background

President Clinton created Project XL on March 16, 1995, as part of his Reinventing Environmental Regulation initiative. This program provides a limited number of companies and other regulated entities an opportunity to test performance-based alternatives to current requirements that achieve superior environmental performance, cost savings, and greater accountability to the local community. EPA has committed to implement a target of fifty XL projects in four categories: XL for Facilities, XL for Sectors, XL for Federal Facilities and XL for Communities. Solicitation of proposals in the first three XL categories was announced in the Federal Register on May 23, 1995. A similar notice for XL for Communities proposals appeared on November 1, 1995. In the April 23, 1997 Federal

Register, EPA issued clarifications on certain elements of the XL program and renewed its initial invitation.

EPA has worked diligently to encourage and process Project XL proposals, but most submissions to date have been very complicated and as a result, have involved significant transaction costs to negotiate and implement. Through the study discussed below, EPA would experiment with a simple framework for streamlined approval of a group of XL proposals that could confer a simple, yet significant, benefit to a source as well as create superior environmental performance without the up-front transaction costs associated with review and approval of more complex XL proposals. EPA believes that this study could form the basis for regulatory reform, one of the goals of Project XL.

Summary of the Study

The study would involve regulatory requirements applicable to major sources of air pollution in attainment areas. Currently, before beginning construction of a new major source or a major modification at an existing major source in an attainment area, a source must undergo preconstruction review pursuant to the applicable Prevention of Significant Deterioration (PSD) program. See, e.g., 40 C.F.R. 52.21. This review, which involves permitting, technology requirements, and air quality monitoring and analysis, is time and resource intensive.

The prospect of having to operate their own monitoring networks and collect ambient data for up to one year prior to the submittal of a complete PSD application has long been a concern of industry, particularly in cases where there is no perceived need for the data in the air quality analysis at the site (e.g., the chance of exceeding an applicable increment or violating an applicable National Ambient Air Quality Standard (NAAQS) is thought to be negligible at a particular site). This monitoring responsibility imposes a significant time restriction on when a source can begin construction and in turn start operations. Moreover, the impact of this delay is even more critical in northern areas where the construction season is limited. Permitting authorities have agreed on occasion that the monitoring requirement may impose a substantial burden on industry in some circumstances. This modest XL study is aimed at reducing that waiting period for study participants in exchange for corresponding benefits to the environment.

The premise of the study is simple: to ascertain if the EPA and permitting agencies can predict whether certain types of construction will adversely impact air quality so as to allow for confirmatory monitoring rather than monitoring in advance of construction. In order to effectuate this study, EPA is proposing to utilize the XL process: by providing superior benefits to the environment and agreeing to offset any adverse impacts on air quality, a source could obtain a PSD permit and begin construction prior to completing all air quality analysis, which can take up to twelve months or more.

In the study, EPA and participating permitting authorities would make a preliminary determination -- based on available data that would otherwise not completely satisfy monitoring requirements -- that there would be no likely adverse impact on air quality from the proposed project. Once such a determination was made, under the study's framework, a source could obtain a PSD permit and

begin construction of the facility or modification prior to completion of any required air quality monitoring, as long as the source (1) satisfied all other applicable PSD permitting requirements, including installation and operation of the best available control technology (BACT), as agreed to by EPA and the permitting authority; (2) agreed to purchase impact offsets if the completed monitoring or modeling demonstrated a violation of the NAAQS or exceedance of any applicable increments; and (3) agreed to superior environmental performance that would at a minimum include the installation and operation of continuous emissions monitors (CEMS). Although the source would still be required to obtain the necessary monitoring data, it would not need to complete the monitoring prior to the permit issuance and beginning construction. Thus, in exchange for undertaking some superior environmental performance and agreeing to offset any prohibited impacts on air quality through the purchase of offsets, a source could begin construction, and in turn start operations, up to a year earlier than currently allowed under existing regulations.

EPA believes that the study can provide important information regarding streamlining the current preconstruction monitoring requirements. In the proposed NSR Reform package EPA solicited comment on the benefits and disadvantages of the current PSD regulations. See 61 Fed. Reg. 38250 (1996). The NSR Reform workgroup is reviewing the comments on the NSR Reform proposed rule, which generally favored increased flexibility. To a certain extent, EPA anticipates that the information obtained from sources participating in this XL study will prove useful in determining whether additional revisions of the existing preconstruction monitoring regulations for the entire PSD program are appropriate.

Limits on the Study

EPA anticipates selecting no more than ten participants for this study. At this time, the Agency anticipates applying at least the following restrictions to participation. First, the study would not extend to sources in nonattainment areas or areas considered unclassifiable or sources that may require Class I impact analysis.⁽¹⁾ Second, EPA would not select sources that are in violation of the PSD program. Third, EPA believes that the study should include only participants for which the State and EPA agree that the proposed construction is not likely to improperly exceed available air quality increments or violate the NAAQS. Such a determination would need to be based on representative monitoring information that would not necessarily meet the regulatory criteria; thus, participants should be able to provide some monitoring data for the appropriate area.

Superior Environmental Performance

Because superior environmental performance is a major element of the Project XL program, this memorandum presents some thoughts about what activities may satisfy the criteria for this study. First, EPA wants to encourage the development of new CEMS technology, as well as the increased use of existing technology. Note, however, that CEMS already required by BACT, new source performance standards or other applicable requirements could not be credited towards superior environmental performance. On the other hand, installing and operating CEMS on units otherwise not required to have CEMS may be part of an XL environmental project. While EPA may consider

development and use of an innovative CEMS technology as the entire superior environmental performance element in limited circumstances, where a source proposes to adopt existing CEMS technology it is not otherwise required to use, the source may also need an additional element to meet the superior environmental performance requirement. Such additional elements may include:

- Installation of the lowest achievable emission rate (LAER) technology, rather than BACT, as long as LAER is significantly more effective than BACT;
- Application of controls to additional units, as long as the additional controls result in a significant reduction in emissions;
- Significant benefits to other media;
- Pollution prevention projects;
- Use of innovative control technology;
- Purchase of offsets -- either when not required or in an amount greater than necessary to mitigate any adverse impacts of the proposed project.

Process

As stated earlier, once EPA determines that there is sufficient interest in the study to proceed, it will issue a more detailed description of the study and solicit requests from sources wishing to participate. At that time, the Agency will discuss further the possible mechanisms for implementing the study, including whether a rulemaking will be required. In the meantime, EPA welcomes comments or suggestions on the framework described in this memorandum.

For additional information on the study, contact Carol Holmes, who can be reached at the following address: Air Enforcement Division, Office of Enforcement and Compliance Assurance; United States Environmental Protection Agency; 401 M Street, S.W.; Mail Code 2242A; Washington, D.C., 20460; telephone (202) 564-2260; facsimile (202) 564-0053. For information on Project XL generally, contact Christopher Knopes, who can be reached at the following address: Emerging Sectors and Strategies Division; United States Environmental Protection Agency; 3202 Mall; 401 M Street, S.W.; Mail Code 2129; Washington, DC 20460; telephone (202) 260-2220; facsimile (202) 401-6637.

Addressees:

- Director, Office of Ecosystem Protection, Region I
- Director, Division of Environmental Planning and Protection, Region II
- Director, Air, Radiation, and Toxics Division, Region III
- Director, Air, Pesticides, and Toxics Management Division, Region IV
- Director, Air and Radiation Division, Region V
- Director, Multimedia Planning and Permitting Division, Region VI
- Director, Air, RCRA, and TSCA Division, Region VII
- Assistant Regional Administrator, Office of Pollution Prevention, State, and Tribal Assistance, Region VIII
- Director, Air and Toxics Division, Region IX

Director, Office of Air, Region X
Regional Counsels, Regions I-X
Director, Office of Environmental Stewardship, Region I
Director, Division of Enforcement and Compliance Assurance, Region II
Director, Enforcement Coordination Office, Region III
Director, Compliance Assurance and Enforcement Division, Region VI
Director, Enforcement Coordination Office, Region VII
Assistant Regional Administrator, Office of Enforcement, Compliance
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cc: Bruce Buckheit, 2242A
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John Seitz, 6301
Alan Eckert, 2344

(1) At this time, EPA is not eliminating the possibility of accepting a participant that is located in an area that could become nonattainment or "transitional" under the new NAAQS. This will be a factor in selecting study participants, however.

For further information, please contact: Mark Siegler, EPA/OECA/AED.

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