

Mr. John D. Runkle
Post Office Box 3793
Chapel Hill, NC 27515

RE: Comments on Draft Buncombe County XL Final Project Agreement

Dear Mr. Runkle:

Thank you for your recent comments to the United States Environmental Protection Agency (EPA), Region 4 regarding the Buncombe County Municipal Solid Waste Management Facility (BCSWMF) draft Project XL Agreement for a project to allow a leachate recirculation system over an alternative landfill liner. EPA appreciates the time you have taken to provide input into the XL process. EPA would like to take this opportunity to reiterate the purpose and process of Project XL, as we believe this discussion will alleviate some concerns you have with the proposed Buncombe County Agreement.

Project XL is a national pilot program that allows state and local governments, businesses and federal facilities to develop innovative strategies to test better or more cost-effective ways of achieving environmental and public health protection. In exchange, EPA (and the state, as necessary) will issue regulatory, program, policy, or procedural flexibilities to conduct the experiment. These pilot programs are described in a document known as a Final Project Agreement (FPA).

Any agreement between parties regarding Project XL is simply a statement of intentions to carry out an XL project, indicating the seriousness of each party in implementing the activities in the document. The agreements are not legally enforceable or legally binding on any party, do not create any rights or obligations, and thus are not considered to be final Agency "actions." Any regulatory flexibility granted by EPA and/or the state to Buncombe County would require a separate legal implementing mechanism, such as a rule or permit/permit modification, which would be reviewable and legally enforceable. Any intention on the part of EPA and/or the state to propose such an action is clearly stated in any XL Final Project Agreement.

You raise a number of issues in your letter that EPA would like to address. Your letter relates to a preliminary draft of the agreement. You will have the opportunity to comment on the final draft of the Final Project Agreement, which EPA will make available by notice in the Federal Register. Your comments are reiterated below, followed by our response.

Comment

1. In order to show the quantitative baseline of what is occurring at the site now, Buncombe County needs to supply all of its current groundwater monitoring data and leachate analysis with a careful description of the groundwater contamination. It is apparent that there may be deficiencies in the leachate control system if any of the monitoring wells are showing elevated pollutants. The proposed recirculation plan would increase the amount of pollutants in the landfill and this could only exacerbate the potential groundwater contamination problems.

Response

1. The most recent data collected from the monitoring wells (Spring 2000) show no evidence of contamination of the landfill. No relief is being sought from the North Carolina regulations regarding monitoring of wells.

Prior to the November 1999 sampling event you cite in your letter, no contaminants have been detected at the facility. In addition, the methylene chloride and acetone levels were below the NC groundwater standards (note that the acetone was detected in a surface water sample, not a groundwater sample). Both acetone and methylene chloride are common laboratory contaminants and must be verified with future confirmatory results. Significantly, we understand that the Spring 2000 sampling results (not yet submitted to the NCDENR) do not confirm the previous results which supports the probability that the contaminants found in the Fall 1999 sampling may be attributable to laboratory error.

Comment

2. Rather than provide a quantitative baseline by which the EPA, the State of North Carolina and members of the public can judge the anticipated performance of the project, the proposed agreement contains a list of awards received by the County. This does little to shed any light on whether Buncombe County is capable of achieving the desired operational benefits of its project. Better decisions could be made after the County provided a complete compliance history at the present landfill, the past landfill, wastewater treatment plant and other County facilities.

Response

2. The baseline for determining superior environmental performance under Project XL is "What would have happened in the absence of XL?" This is described as Tier 1 in the Draft Final Project Agreement (III. How the Project will Meet the XL Criteria, A. Superior Environmental Performance, 1. Tier 1: Is the Project Equivalent?). The benefit anticipated from the project is then described as what may be achieved as a result of the flexibility to be granted and other

commitments to environmental stewardship or protection.

On the matter of compliance, Buncombe County as the project sponsor must satisfy an EPA and Department of Justice review of their compliance history. We found no outstanding compliance or enforcement issues at the BCSWMF (the only facility where an XL project is contemplated). If you have additional information for our consideration, please submit it.

Comment

3. The stakeholder involvement process to date has been deficient because there has not been any effort to bring in the necessary stakeholders. Members of the community surrounding the landfill have been called in late to the table, after many of the PROJECT XL - design and development negotiations have been completed. Under the April 1997 scheme, the surrounding community, and the groups that represent them such as BREDL, should be direct participants and be allowed to bring their views to the negotiations. This is further compounded by the County or EPA not providing a clear method for written or oral comments to be received by EPA or any of the other participants. None of the review material that I have looked through provides an address for any of the key EPA reviewers.

Response

3. To date, EPA has not had a negotiation or design meeting. EPA provided the sponsor with an outline of a Final Project Agreement, which the sponsor then modified and augmented to reflect their project. That preliminary draft is the document you commented on. EPA recently submitted informal comments on the same draft reviewed by you and your clients and we are awaiting a revised document. That document will be provided to any stakeholder at their request. Additionally, a public meeting has been tentatively scheduled for July 13, 2000 to discuss the project and allow for questions and answers.

EPA has an XL website containing information and documents generated to date. The address is "www.epa.gov/projectxl". In addition to site-specific information, the site contains contact lists, guidance, and information regarding other XL projects. If you

would prefer to speak to someone directly, you may call me at 404-562-8674 or Ms. Sherri Walker, EPA headquarters, at 202-260-4295.

Additional information concerning stakeholder involvement can be found on our website in the draft Buncombe County Stakeholder Involvement Plan. This plan provides an overview of activities and avenues for keeping interested stakeholders informed.

Comment

4. BREDL also has a direct interest in this agreement in that it violates a settlement agreement with the County and the State of North Carolina in an administrative appeal of the issuance of the permit in 1995. After a mediated settlement centering on the treatment of the leachate generated at the landfill, the County Board of Commissioners passed the attached resolution and BREDL withdrew its appeal. This was later modified by letter (attached to commentor's letter) by the County changed its position to use tankard trucks to haul the leachate to a treatment facility. BREDL and representatives of a local community group agreed to this change.

Response

4. We assume that the settlement agreement to which you refer is Resolution #96-9-1 adopted by the Board of Commissioners for the Buncombe County. Because EPA was not party to the administrative proceeding, we are not familiar with the issues that were raised in this case. However, from what we can tell from the Resolution and subsequent modification letter, they do not appear to preclude the proposed leachate recirculation project.

Comment

At this time, we ask EPA to reconsider this project under PROJECT XL. It is uncertain whether the project will "produce superior environmental results beyond those that would have been achieved under the current" regulations. In fact, the recirculation of leachate may cause increased groundwater pollution.

Response

EPA has determined that there is merit in undertaking this pilot project. In addition to the anticipated benefits outlined below, EPA believes the alternative liner proposed here provides protection equivalent to or superior than the currently required composite liner. The cost savings potential from use of the alternative liner is significant not only for the county government, but to the community. The potential reinvestment of those savings for educational programs and ongoing research are additional benefits to the community.

Please make note that recirculation of leachate is already allowed under current EPA regulations. What is not currently allowed is deviation from the liner prescribed in the regulations (without the proper authorization). The only flexibility being sought here is permission to use a different liner system. The different liner system has been modeled by the State of North Carolina and found to be *more* protective than the liner required by EPA. For these reasons and the ones listed below, EPA continues to believe this project is a good candidate for the XL program.

Combining leachate recirculation with gas recovery at a Subtitle D landfill provides numerous environmental benefits that Buncombe County hopes to realize on this project. Included among the benefits are:

- Rapid organic waste conversion/stabilization leading to rapid settlement, increased gas yield and capture, improved leachate quality, reduced post-closure costs, and reduction in the potential for uncontrolled releases of leachate and/or gas to contaminate the groundwater or air during the post-closure phase should a containment system failure occur.
- Maximizing landfill gas capture for better and more efficient energy recovery and reduction of fugitive air emissions. Reduction in air quality impacts from the facility is of primary importance since air inversions and the resulting degradation in air quality are common in the mountains. Buncombe County will explore potential energy recovery projects for the gas.
- Increased landfill disposal capacity due to rapid settlement during operational period leads to more economical operations, deferred capital costs for additional landfill capacity, and a delay in the siting and construction of a new facility.
- Improved leachate treatment and storage capacity within the landfill will reduce the quantity of leachate trucked to the publicly owned treatment works (POTW) and improve the quality of the leachate. This will result in fewer tanker trucks on the roads.
- Reduction in post-closure care, maintenance, and risk to human health and the environment through rapid waste stabilization.

As stated previously, Project XL is a national pilot program that allows state and local governments, businesses and federal facilities to develop innovative strategies to test better or more cost-effective ways of achieving environmental and public health protection. In exchange, EPA will issue regulatory, program, policy, or procedural flexibilities to conduct the experiment. In order for this to be accomplished, EPA and a project sponsor must realistically limit the number and scope of issues to be worked on in each individual pilot. The scope of each project is defined in a project sponsor's proposal and refined in a final project agreement. Due to these constraints, EPA may only be able to provide responses to comments within the scope of Buncombe County's XL Project. EPA, Buncombe County, and NC DENR encourage you to raise any issues and concerns you have in the appropriate forum.

We appreciate your having invested the time and effort into providing comments on the

draft XL Agreement for Buncombe County. Please call me at 404-562-8674 if you have any questions.

Sincerely,

Michelle M. Cook
Region 4 Project XL Coordinator

cc: Bill Holman, Secretary, North Carolina Department
of Environment and Natural Resources
Bob Hunter, Director, Buncombe County
General Services Department
Bill Sessoms, Division of Waste Management, North Carolina
Department of Environment and Natural Resources
Joe Wiseman, Camp Dresser & McKee