UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 13 1999

Gordon R. Garner, Executive Director
Louisville and Jefferson County Metropolitan Sewer District
700 West Liberty Street
Louisville, KY 40203-1911

Dear Mr. Garner:

Thank you for your XL proposal to redesign your pretreatment program at the Jeffersontown WWTF, establishing links between wastewater programs (such as collection system, storm water, sludge), and moving towards a more holistic watershed protection strategy (Chenoweth Run watershed). The purpose of this letter is to formally select the Louisville MSD proposal as a potential XL pilot and to invite you to work with the U. S. Environmental Protection Agency (EPA) staff and our assembled team to develop a draft Final Project Agreement (FPA) for EPA and stakeholder review. While this letter does not represent final EPA approval of the XL project, agency staff both at headquarters and at Region 4 believe the proposal has potential merit and deserves to be further developed in the form of an FPA.

Based on our understanding of your proposal we believe that this has the potential to be a good XL project for several reasons including:

- Through this project, MSD proposes to achieve additional reductions in key pollutant loadings from baseline levels and identify areas of ineffective resource utilization to free-up resources that can be applied to achieve greater environmental benefits.

- MSD will develop better information to provide a basis for reallocating resources to create environmental benefits, first where appropriate within the pretreatment program, and then elsewhere in the watershed.

- MSD wants to develop and test the methodology of this project on a small system, learn the lessons, and then transfer the methodology to other portions of its systems and other municipalities.

- MSD will reinvent its pretreatment program to provide a better mechanism to achieve cleaner water through comparison of total pollutant loading from the permitted dischargers in a particular section of the collection system to the pollutant loading at the collection system monitoring point, providing a better strategy for determining non-permitted pollutant sources.

- MSD will collect and analyze extensive collection system and discharge data to determine baseline levels of pollutant loadings and trends and then identify and evaluate more environmentally desirable loading patterns.

- MSD will prioritize monitoring to investigate and identify pollutant sources at the user type level and at the facility level.

- After monitoring and special investigations, if indicated as environmentally beneficial, MSD will invest cost-savings in pollution prevention outreach, education, and technical assistance. When and where environmental priorities and cost-effectiveness analysis indicates, MSD will invest cost-savings in watershed based improvements.

In order to obtain the flexibility necessary to achieve the results described above, EPA, Kentucky Natural Resources and Environmental Protection Cabinet, Division of Water, interested stakeholders, and MSD will need to work together to address several key elements of the project in a draft project agreement. These elements include:

1) **Superior Environmental Performance** – XL projects must produce some form of Superior Environmental Performance (SEP). MSD proposes to better manage its pretreatment program through a holistic watershed approach, leading to improved pollutant loading trends in the watershed. MSD has a specific strategy to achieve SEP which includes additional monitoring and pollutant source identification, pollution prevention outreach, education and technical assistance, and reinvestment of cost-savings in watershed based improvements. Specifically, MSD will establish a baseline for pollutant loadings using existing pollutant data and data collected during the first phase of the project. It is our understanding that MSD will not request regulatory flexibility until an agreed upon baseline has been developed. Once the baseline is established, MSD will develop loading projections and reductions, performance measures, and redevelop its pretreatment program. EPA will work with MSD to develop and articulate more specifically the environmental benefits associated with the flexibility considered in MSD's proposal (e.g., pollution prevention measures, and other environmental improvements). The final phase of the project will be the new pretreatment program implementation and evaluation. MSD's strategy for SEP will provide the basis for:

- a premise for prioritizing resources according to environmental benefits;
- a more holistic understanding of the environmental stressors on the watershed;
- opportunities for expanded and meaningful pollution prevention;
- potential opportunities to partner with industry to focus on water quality improvements;
- permanent flow monitoring in the sewer collection system which will enhance planning and operations; and

- stream sampling information which MSD can use to determine WWTP impact to the stream.

2) **Cost Savings and Paperwork Reduction** – While MSD may see a short term increase in costs (collection system monitoring, receiving stream monitoring, administration and stakeholder interaction) during the initiation of this project, the following cost savings and reinvestments are expected over the long-term:

Cost Savings/Paperwork Reduction	Reinvestments
Less permitting	Additional monitoring
Fewer inspections	Source identification
Less data entry	Special investigations
Less time spent on compliance issues	Pollution prevention
Reductions in monitoring, sampling, and reporting for selected users	Watershed based improvements
	Outreach, technical assistance and education

3) **Stakeholder Involvement** – MSD has developed a stakeholder strategy which will be developed into a stakeholder involvement plan for attachment to the FPA. MSD plans to use existing and new mechanisms to involve stakeholders and citizens in building a bridge between the pretreatment program and watershed management programs under this XL project. MSD has conducted a series of meetings with key stakeholders and two formal meetings with all stakeholders invited. MSD plans to invite stakeholder participation in the XL project through the use of meetings, special interest meetings, special education and outreach sessions involving specific groups and site visits.

4) **Monitoring, Reporting, and Evaluation** – In order to ensure the transparency of the project's results, the quantity and quality of data reported must be sufficient to assure the public and the government agencies that you are complying with the project's requirements and are meeting the project's goals. Your draft FPA should describe how you intend to collect this data and make it available to the public.

Project XL agreements must include enforceable mechanisms in order to ensure proper accountability. The draft FPA should contain clear information on enforceable commitments and explain the different commitments of the signatories. There are three levels of commitments that sponsors can make:

a) Enforceable Commitments - you are legally bound to meet this commitment.

b) Voluntary Commitments - not legally enforceable, but you can be held accountable through other means, such as termination of the project.

c) Corporate Aspirations - this category exists to encourage you to aim as high as possible in your project and should be clearly distinguished from accountable commitments. You will not be held accountable to these commitments through government action or citizen enforcement.

MSD will make some enforceable commitments, voluntary commitments, and some aspirations regarding this XL project. EPA expects these commitments and aspirations to be further defined and added to upon the completion of the data collection and analysis phase of the FPA development.

MSD's project is based upon extensive data collection and analysis. MSD SEP strategy will incorporate measures of environmental outcomes and results along with specific project milestones. The performance measures will be based on pollutant loadings, programmatic activities, environmental projects, and assessment checks. MSD commits to submitting semi-annual reports describing the progress of the project, presenting papers regarding the project at conferences, and posting results on the Internet.

5) **Shifting of Risk Burdens** – Your project must protect worker health and safety and ensure that no population is subjected to unjust or disproportionate environmental impacts. Based on the information we have reviewed to date, we expect that MSD's project will have no negative environmental impacts and no adverse shifts in loadings across media. Environmental benefits will be evenly distributed across the community and watershed. MSD's current pretreatment program requirements to protect worker health and safety will remain in place.

6) **Innovation/Multi-Media Pollution Prevention** – The integration of the pretreatment program with other environmental monitoring and management programs will allow more efficient use of resources while providing SEP. MSD will test several of the 18 results-oriented measures for assessing performance of Pretreatment Programs developed by a special AMSA committee in 1994, under a cooperative agreement grant with EPA. MSD will reinvest cost-savings into pollution prevention activities, including outreach, education, and technical assistance, first within the pretreatment program, then in other watershed based programs.

7) **Transferability** – Other municipalities will be able to draw valuable lessons from MSD's experience, as it relates to implementing a performance-based program in individual facilities, and ultimately across a multi-plant, multi-watershed sewer district. MSD's XL project confronts the operational, data collection and analysis, and environmental challenges posed by a regulatory structure that compartmentalizes programs that in practice would benefit from a more holistic

approach and will attempt to build links between the pretreatment program and the rest of the system. Almost every sewer agency confronts this same challenge and will benefit from MSD's exploration and investigation of viable technical solutions and management approaches.

8) **Feasibility** – MSD can demonstrate that this project is financially, technically, and administratively feasible. MSD's Executive Director has made a commitment to ensure that sufficient resources are made available for the appropriately qualified staff, along with the labor and non-labor expenses to implement this project. This project will not involve any unproven techniques or environmental concepts.

The current MSD XL proposal defers any request for Agency consideration of regulatory flexibility until the completion of data collection activities scheduled during the first phase of their project. As a result, the current MSD proposal does not provide enough information for the XL team to analyze what the sponsor might be requesting/offering by way of regulatory flexibility or superior environmental performance. However, the proposal, and supplemental information provided to EPA, does set forth the following regulatory areas as potentially requiring regulatory flexibility in the next phases of the project: Significant Noncompliance; monitoring and inspections; reporting; and definition of Significant Industrial User. EPA looks forward to working with MSD to develop and articulate more specifically the environmental benefits associated with MSD's proposal.

It is important that industrial users participating in a project aimed at promoting excellence, and who are also receiving regulatory flexibility offered by the project, be appropriate partners. EPA will develop a screening process with MSD during FPA negotiations that looks at the compliance status of the user in order to make an informed judgment regarding the likelihood of the participant's ability to achieve superior environmental results in Project XL, as well as the appropriateness of providing the participant with any regulatory flexibility sought. The evaluation criteria will be based upon and consistent with the published Agency guidance, "Guidance for Compliance Screening for Project XL."

In light of the current proposal's suggested approach, the EPA project team recommends that the MSD XL project be structured as a phased project. This approach would work as follows: 1) EPA selects the current proposal with the understanding that negotiation of a FPA will occur in phases; 2) the first phase will result in a "Phase I Project Agreement" addressing all aspects of the project *except* the proposed SEP to be achieved and the regulatory flexibility to be requested (the Phase I Agreement would include boilerplate language, project duration, amendments, dispute resolution, screening criteria and to the degree possible the initial framework of the environmental baseline); and, 3) the FPA will be negotiated upon receipt of sufficient data for the team to evaluate the proposed superior environmental performance and associated regulatory flexibility.

The difference between the FPA and the Phase 1 Agreement would only be those areas that we were unable to complete in the Phase 1 Agreement. While we have successfully used this approach before, we should note that there are two areas of uncertainty in using this approach to FPA development. The first is that as a result of stakeholder involvement in the FPA, changes may be necessary to items negotiated in the first phase. The second is that after reviewing the data, if MSD and EPA decide that there is either no need for regulatory flexibility, or there is not the potential for SEP, the project may not be viable for either party. While we of course hope this would not occur, in the latter case the project would end without an FPA.

We hope this discussion of the process of negotiating an XL Project Agreement is helpful in clarifying up front the need for this future analysis and the underlying risk that portions of the requested flexibility may not be incorporated into the FPA. Please also keep in mind that under the Agency's guidance for the XL program (in particular, the "Guidance for Compliance Screening for Project XL"), because MSD is currently subject to an enforcement order to address Clean Water Act violations, we will need to ensure that any project commitments are not integrally related with any requirement under the order (i.e., the XL project does not address Clean Water Act violations). Finally, upon the completion of data gathering activities, and consistent with other XL pretreatment projects, EPA will work with MSD to develop and articulate more specifically the environmental benefits associated with MSD's proposal (e.g., pollution prevention measures or other environmental improvements).

Again, thank you for your participation in the XL Program and I look forward to working with you and your team to develop the project agreement for this project. Please feel free to call Ms. Melinda Greene, Region 4 Pretreatment Coordinator, at 404-562-9771, with any questions or comments you may have.

Sincerely,

A. Stanley Meiburg
Deputy Regional Administrator

cc: Sandy Gruzesky, KY Natural Resources & Environmental
Protection Cabinet, Division of Water