NEup-00004

American Council on Education

General Counsel

AUG 2 0 1999

August 26, 1999

RCRA Information Center Docket Clerk (5305G)
U. S. Environmental Protection Agency
401 M Street, S.W.
Washington, DC 20460

Re: RCRA Docket No. F-1999-NEUP-FFFFF
Project XL Site-Specific Rulemaking for University Laboratories
Proposed Rule (64 *Fed. Reg.* 40696 (July 27, 1999))

Dear Sir/Madam:

On behalf of the higher education associations listed below representing over 2,000 colleges, universities, and associations in higher education, I am pleased to submit these comments on the U. S. Environmental Protection Agency's ("EPA") proposed rule entitled *"Project XL Site-Specific Rulemaking for University Laboratories at the University of Massachusetts Boston, Boston, MA; the Boston College, Chestnut Hill, MA; and the University of Vermont, Burlington, VT; Proposed Rule"* (the "Project XL Proposal"). 64 *Fed. Reg.* 40696 (July 27, 1999).

The higher education community supports the underlying goals of the Resource Conservation and Recovery Act (RCRA), and along with its members is committed to the safe handling and disposal of hazardous waste from our campuses. Our support is generated not only by our desire to ensure a safe environment, but also in our special capacity as the instructors of future scientists and other professionals.

We also support the Laboratory XL Project proposed by Region I and commend the Region for this positive step. However, we remain concerned that despite a congressional directive and requests of the American Council on Education and others over many years, the Agency has not established a regulatory program that adequately addresses the management of hazardous waste at educational institutions. This concern has recently been highlighted as several recent EPA enforcement actions against academic institutions involve alleged violations of the most problematic RCRA regulations.

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Higher education institutions generate a wide variety of the wastes, which have been defined as hazardous waste by EPA. Those wastes are generated in small quantities in numerous research laboratories, are heterogenous in nature, and frequently change in composition over time. Because of the small quantity and heterogeneity of the wastes involved, educational institutions should be regulated quite differently than EPA regulates traditional industrial manufacturers pursuant to its current hazardous waste regulations. Congress recognized this need in Section 221(f) of the Hazardous and Solid Waste Amendments of the 1984 ("HSWA"), where it instructed EPA to study and separately address the unique aspects of hazardous waste management at educational institutions.

We are pleased that in announcing the Laboratory XL Proposal, at least EPA Region I has recognized the need to differentiate the higher education community. More appropriate and flexible requirements will allow for enhanced environmental performance. The Proposal is entirely consistent with the mandate set forth in Section 221(f) of HSWA; with several relatively minor modifications, it should be implemented on an expedited basis.

I. EPA Should Modify Certain of the Proposed Requirements to Avoid Limiting the Project's Effectiveness.

The higher education community supports the cooperative development, as envisioned by the Proposal, of more flexible and more efficient systems of managing hazardous chemicals in educational institution laboratories. At the same time, as a more appropriate regulatory vehicle, it will provide environmental benefits greater than those allowed by the existing regulatory regime. For example, all hazardous chemicals (and not just hazardous wastes) will be managed in a uniform manner, both in individual laboratories and at a centralized location; all personnel who handle hazardous chemicals will have received integrated hazardous waste and occupational safety training; and all laboratories at the educational institution will meet certain minimum performance criteria.

We are concerned, however, that the intended regulatory flexibility and environmental benefit will be limited by several of the requirements that EPA has attached to the Environmental Management Plan ("EMP") that each

university must develop. In particular, we believe that one of these requirements -- that an EMP include a pollution prevention plan – could have the unforeseen result of adversely impacting the type and quality of research that is performed in an educational setting. We support the goal of minimizing the production of all wastes, including hazardous wastes, at educational research laboratories. However, the manner in which that goal is pursued must be balanced with an equally important goal served by educational research laboratories – namely, the conduct of innovative research which frequently leads to the development of drugs and products which improve the quality of human life. Generic "pollution prevention" principles should not be applied to automatically prevent the use of the chemicals that are essential to that research, or to require the use of less-effective chemical "substitutes." Rather, each university must be free to individually develop methods to ensure that hazardous chemical use and hazardous waste generation are appropriately minimized.

Similarly, we are concerned that EPA is proposing that each institution's EMP must include a system for conducting an annual survey of hazardous chemicals of concern. Although not required by RCRA or OSHA, many of our member institutions conduct surveys similar to those now proposed by EPA. However, those surveys are primarily "risk" driven -- that is, they focus on those chemicals and laboratory activities that the institution has determined present a significant risk. Other chemicals and laboratory activities are addressed through the institution's best management practices. We believe this framework has been shown to be effective, and that EPA's review of an institution's EMP should not result in its replacement with standardized, prescriptive design requirements.

II. The Laboratory XL Proposal Does Not Fulfill Section 221(f)'s Mandate and Should Not Become the *De Facto* Standard for Educational Institutions.

In response to the direction provided in Section 221(f) of HSWA, in April 1989 EPA issued its *"Report to Congress: Management of Hazardous Wastes from Educational Institutions"* (the "Report"). In the Report, the Agency identified numerous issues which were unique to the identification, management, and treatment of hazardous wastes generated in an educational laboratory setting. The Agency also recognized that the current RCRA regulatory framework inadequately addressed those issues. Thus, significantly broader regulatory

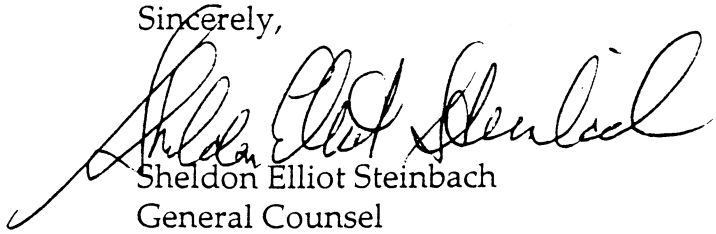
reforms to the RCRA program than those offered by the Laboratory XL Proposal are necessary.

Specifically, we are concerned that EPA's Proposal does not directly address a key issue for laboratories at educational institutions -- namely, the "point" at which a hazardous waste is generated for purposes of RCRA compliance. Our member institutions believe this point should be the centralized location at the institution where a final determination is made to reuse or dispose of a particular chemical. It is unfortunate that the Agency did not adopt this regulatory change for educational institutions following its 1989 Report. This is especially so given the obvious environmental benefit, such as allowing an institution to use or reuse many chemicals which RCRA otherwise requires to be discarded.

There are numerous other areas where reform is required. Although a complete discussion is beyond the scope of these comments, by way of example, such areas include: allowing trained chemists to "treat in containers" the small quantities of hazardous wastes that are produced in a research laboratory setting; and, not categorizing an educational institution which generates small quantities of several different acutely hazardous wastes as a "large quantity generator" under RCRA (with all the attendant regulatory requirements).

We appreciate this opportunity to comment on this important proposal and is hopeful that it will be finalized and implemented on an expedited basis. We also look forward to working with the Agency to more broadly accomplish the required revisions to the current RCRA program for all of its member educational institutions.

Sincerely,



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The following associations join in this response:

American Council on Education
American Association of State Colleges and Universities
Association of American Universities
Council on Government Relations
National Association of State Universities and Land-Grant Colleges