May 26, 2000

Mr. John H. Thorne
Capitolink, LLC
Legislative and Regulatory Services
1156 15th Street, N.W., Suite 400
Washington DC 20005

RE: Recommendation Regarding the United Egg Producers (UEP)/Project XL Proposal

Dear Mr. Thorne:

Thank you for your Project XL proposal that involves developing and implementing: a general permit, an audit program, and an education program for the egg producing industry. The Environmental Protection Agency (EPA) has carefully reviewed your Proposal. The purpose of this letter is to formally select your Proposal, based on the description below, and to invite you to work with EPA staff and other stakeholders to develop a draft Final Project Agreement (FPA). The FPA will detail the responsibilities and expectations of EPA and the United Egg Producers, as parties to this project.

Project XL was established to test innovative strategies and, through this process, encourage excellence and leadership in environmental stewardship. I believe that your proposal shows the potential to accomplish these goals. Specifically, this Proposal offers a number of potential benefits:

- UEP voluntary acceptance of a general permit that will help achieve the goals of the national animal feeding operations (AFO) strategy in a timely way for this portion of the AFO/CAFO sector.

- the potential to develop an industry-wide environmental management systems (EMS) program, including independent third party audits, that will help to achieve superior environmental performance and assure continuing compliance,

- the potential to incorporate public input into the general permit,

- the potential to have public access to EMS and audit information once the facility

is covered under the general permit, and

- the potential to influence other segments of the AFO/CAFO industry on innovative ways to address other issues such as odors from farms.

UEP will be responsible for ensuring that a broad range of stakeholders, including representatives from environmental groups, are involved in and ultimately agree on all elements of this project, including language contained in the Final Project Agreement (FPA). It is EPA's expectation that the following items, at a minimum, will be among those included in the FPA negotiations:

1. Stakeholder Involvement. Public involvement is an integral component to the XL process. As such, it is important to have the public involved not only in the development of the model permit and environmental management system (EMS)/audit program, but also in the ongoing process of evaluating this project under XL through audit information and other progress reports.

   EPA believes the proposed stakeholders need to be expanded to include state environmental agencies, environmental groups, and selected communities near UEP members. Communities could be selected from different regions of the country or where different types of operations exist. Such a broad ranging nation-wide project will need robust stakeholder solicitation and participation to avoid being challenged.

2. Environmental Management Systems /Third Party Audits. For a facility to be eligible for coverage under a general permit, it would need to successfully complete an audit conducted by an independent third party confirming compliance and that an acceptable EMS was in place. The audit would not only give EPA, the State, and the public assurances that the facility was in compliance, but also that the facility was implementing an EMS that will address all significant environmental impacts and achieve superior environmental performance.

   Once the facility has successfully completed the audit they would issue a notice to the local community announcing their intention to be covered under the general permit, make information about the audit results available, and provide an opportunity for local community members to provide comments. When submitting a notice of intent to be covered under the general permit, the facility would provide a copy of any written comments and indicate how these and any other comments were addressed. Once a facility was accepted for coverage under the general permit, ongoing audits would take place and the results of these audits would be available to the public.

EPA will work with UEP and others in an advisory capacity to establish the EMS program, including the 3rd party auditing component, but the primary responsibility for this will rest with UEP. States and other stakeholders will need to be involved in this process as well.

3. Feasibility/Resources/Evaluation. The Proposal will require a significant resource commitment from UEP to develop and implement this program and to obtain consensus of participating States and other key stakeholders. As indicated, EPA will work with UEP in an advisory capacity to help you develop the industry-wide EMS program, including the auditing component. To make this program viable, UEP will need to develop guidance, technical/educational materials, and other operating standards and protocols for use by participating facilities. EPA will take the lead, working with UEP and other stakeholders, to develop the model general permit. An overall evaluation plan will be needed for the entire project, including the adequacy of the EMS/audit program and the general permit to help protect water quality standards. This could result in modifications to the general permit at a future date. Finally, general permits may not be appropriate for certain impaired water bodies. However, this determination would need to be made on a case-by-case basis by individual States or EPA.

4. State Participation. UEP will be responsible for recruiting States to participate in this program. EPA would endorse the general permit and, working with ASIWPCA, would be willing to write a letter to the States, encouraging them to participate, and communicate positively with UEP members and others about the project, but final decisions on whether to cover a facility under a general permit will rest with the delegated states. We are aware that some states have efforts underway to develop their own general permits and programs. It is not our intention to undermine these efforts in any way. We will work with our Regional offices to encourage them to support the program in those states where NPDES permitting authority has not been delegated.

EPA has assembled a team to work with UEP and other stakeholders to develop the FPA. This team will be coordinated by Jim Horne from the Office of Wastewater Management (202) 260-5802. Jim will be contacting you shortly to begin discussions about the FPA. Kitty Miller (202) 260-3722 will work with Jim and continue to be responsible for ensuring that all procedural requirements of XL are met. Our Water Permits Division, with assistance from the Regions, will take the lead for developing the model general permit. Additionally, we are able to offer UEP limited contractor assistance to identify and convene appropriate stakeholders for this project, as necessary.

I know from our discussions that you are highly committed to the type of bold and

responsible experimentation that will make our environmental protection system better for all. I thank you for your participation in the XL Program and I look forward with great interest to the development and implementation of your project.

Sincerely,

J. Charles Fox
Assistant Administrator
Office of Water

cc: EPA UEP XL Team, RAC members