



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

April 19, 2000

Mr. H. Thomas Kornegay
Executive Director
Port of Houston Authority
P.O. Box 2562
111 East Loop N.
Houston, TX 77252-2562

Dear Mr. Kornegay:

The United States Environmental Protection Agency (EPA) has carefully reviewed and considered the Port of Houston Authority's (PHA) XL Proposal. We are pleased to inform you that EPA is prepared to work with PHA to develop a Final Project Agreement (FPA). The FPA will detail the expectations of EPA, PHA, Texas Natural Resource Conservation Commission (TNRCC) and stakeholders for the implementation of your innovative tenant inspection and compliance program. The FPA also will detail the demonstration of new innovative technologies for off-road vehicles to establish baseline data demonstrating reductions for the pending Texas State Implementation Plan for meeting the Houston Attainment Plan. Once FPA negotiations are complete, the FPA, signed by EPA, PHA, and TNRCC, will set forth the parties' agreement and a detailed description of all components of this XL project. The FPA will describe the mechanism(s) that will be used to make this agreement legally enforceable.

Project XL was created to test innovative environmental management strategies for the 21st century and, through this process, foster excellence and leadership in environmental protection. The December 22, 1999, proposal and PHA's early cooperation in proposal development show potential to accomplish these goals.

Throughout the proposal development phase of the XL process, the components of this pilot tenant inspection and compliance program have been refined and clarified. Since there have been numerous discussions among our respective staffs since the proposal was submitted, this letter will clarify EPA's and TNRCC's expectations to ensure a complete understanding of the project's components.

The EPA expects that the following items will be negotiated as part of the FPA:

1. The PHA, EPA, and other interested stakeholders will negotiate the parameters of a legal implementation mechanism, which will be referenced in the FPA, and which will set out the means by which the regulatory flexibility requested for the project can be achieved. The regulatory flexibility for this project will most likely be implemented through the development of an Environmental Response Policy in which the regulatory agencies will clearly outline and agree to exercise their prosecutorial discretion in a manner favorable to the PHA. The Agencies would look first to the tenants for remediation of violations for which tenants and PHA in its capacity as an owner are simultaneously potentially liable, in exchange for PHA undertaking the commitments outlined in the PHA's XL proposal.
2. The PHA shall provide EPA with additional information regarding the tenants participating in the XL project. The tenants should be consulted as stakeholders in the XL process, and their input may be sought with regard to the terms of the Environmental Response Policy and other terms of the FPA.
3. The FPA will incorporate the PHA Emissions Reduction Strategy projects into the project as Superior Environmental Performance.
4. During the FPA development process, EPA, PHA, and other stakeholders will develop the components of the Auditing Protocol which will be utilized during the project to ensure that its transferability to other ports or transportation industries is taken into account. Stakeholders will also identify the baseline standards by which the success of the project in meeting its expressed goals will be evaluated. Additionally, the FPA will specify the mechanisms by which the project and its associated compliance assistance products will be "marketed" to other similar facilities.

The EPA has assembled a team to work with PHA, TNRCC, and other stakeholders on development of the project. That team will be led by John DuPree of EPA Headquarters at (202) 260-4468 and Adele D. Cardenas, P.E. of EPA Region VI at (214)-665-7210. They will be contacting you shortly to commence FPA negotiations.

Sincerely Yours,

Original Signed by
Gregg A. Cooke

Gregg A. Cooke
Regional Administrator