

US EPA ARCHIVE DOCUMENT

Response to USEPA comments

## 1) SUPERIOR ENVIRONMENTAL PERFORMANCE

COMMENT: EPA questioned NJDEP's choice of highlighting CO<sub>2</sub>, NO<sub>x</sub>, VOCs and mercury in listing the environmental benefits of Gold Track, and whether additional pollutants would be targeted.

RESPONSE: These pollutants are the major pollutants of concern in New Jersey. We anticipate a collateral decline in other pollutant emissions that trend along with these major pollutants. The decreases in actual emissions will be tracked and reported with the annual emissions statement. However, we are not limiting Gold Track participation to reductions of only these pollutants.

COMMENT: EPA also requested that NJDEP be more specific as to what kinds of reductions would be required.

RESPONSE: The Department currently has a statewide goal of reducing GHG emissions 3.5% below 1990 levels by 2005. The reduction of GHGs is also the centerpiece of the NJDEP's Silver Track II Pilot Program. However, at this time we are only beginning our stakeholder discussion on Gold Track and therefore cannot be more specific on what kinds of reductions can be achieved for other pollutants. We envision that facilities may choose to target the appropriate pollutant(s) of concern at their facility. These specific reduction goals will be identified in the covenant, with appropriate milestones and measurements to track progress and will be beyond what is required by Federal and State agencies.

COMMENT: EPA questioned if setting up a timeframe per facility is more appropriate than a single calendar date goal.

RESPONSE: As stated above, the Department has a statewide goal of reducing GHG emissions 3.5% below 1990 levels by 2005. Individual facility goals and timeframes will be specified in the covenant.

COMMENT: EPA is concerned about the possible conflicts with Federal and State statutes in the proposal for exempting sources from new source review (NSR). Please elaborate on what types of sources may be exempted.

RESPONSE: At this time, NJDEP has formed the general concept of migrating away from prior approvals towards a more "back-end" recordkeeping, monitoring and reporting approach. However, this needs to be discussed internally and with the stakeholder group before we can provide further details.

Please be aware that facilities currently involved in the NJDEP's Facility-wide Permit (FWP) pilot program, are authorized under N.J.A.C. 7:27-8.27 to alter and/or install equipment and control apparatus without prior NSR approval. The exemption, which only applies to facilities with an approved FWP, allows modifications/installations that meet the following specific criteria: 1) there can be no increase in current permit allowables; 2) there can be no increase in any effluent concentrations; 3) there can be no increase in emissions per unit of output. Each FWP has a "special" process-level emission per unit of output allowable limit. This is one example of the types of operational flexibility that could be considered for Gold Track participants.

COMMENT: EPA questioned if the Department's proposed operational flexibilities will go beyond those already offered under the Title V program.

RESPONSE: The Department may seek additional flexibilities not included in the Title V and/or State operating permits program. Some of these flexibilities were discussed with you and documented by EPA's Katherine Tunis's office. As the gold track is further developed, we may seek additional flexibilities and will flag them for discussion with your offices.

COMMENT: EPA questioned why the Department chose to adopt an Operations and Compliance (OEC) Plan requirement instead of a more rigorous Environmental Management System (EMS). EPA also questioned when the OEC plan would be required.

RESPONSE: It is the Department's intent to have an OEC be equivalent to an EMS for Silver II and Gold, but not for Silver. The term, "EMS", is frequently associated with the ISO 14000 program. The Department did not want to limit participation to only those facilities that are ISO 14000 certified. The Department will clarify that an EMS and OEC are equivalent.

As stated in the proposal, an OEC plan is required to be in place within one year of acceptance into the program and is a pre-requisite for Gold Track eligibility.

## **2) LEGAL MECHANISM FOR IMPLEMENTATION OF FLEXIBILITY**

COMMENT: EPA stated that each agreement to grant federal flexibility would need to be captured in an appropriate enforceable instrument, which may include site-specific rules, permits, waivers, etc. This instrument must include a description of the commitments made by participants in exchange for flexibility.

RESPONSE: The Department is aware of the requirements for an enforceable instrument and wants to ensure that agreements are fully enforceable. The Department is seeking to avoid site-specific rule making or individual federal agreements by applying for Statewide XL status. It is anticipated that the proposed covenant and subsequent permit will serve as the Department's appropriate instrument for enforcement purposes. These enforceable documents will include a description of the commitments made by the participant as well as the flexibility offered by the Department.

COMMENT: EPA questioned how the Department would implement enforceability, such as using a facility-wide permit to codify a participant's pollution prevention strategies. In addition, has the NJDEP examined the legality of allowing federally granted flexibility using a covenant?

RESPONSE: The Department will discuss all aspects of enforceability with the stakeholder group, and is discussing this aspect of the program with its attorney general's office. We would not be opposed to the idea of codifying requirements in some sort of consolidated permit or state rule amendments as necessary to ensure enforceability. As for the legality of allowing federally granted flexibility using a covenant, the Department has made no such determination. It is the Department's opinion that it is the role of the USEPA to make this determination. Evaluation of the Virginia Merck XL Project may be a valuable case study in determining the answer to this question.

## **3) RESOURCE BURDENS/FEASIBILITY OF IMPLEMENTATION**

COMMENT: EPA questioned if the Department could issue these covenants in an umbrella-like fashion.

RESPONSE: Since this proposal differs from other XL projects in that the state would be the sponsor of the entire project, we would like to continue to explore the "umbrella" concept. One possibility is to set operational flexibility by industry sector. The Department intends to raise this issue in upcoming stakeholder discussions.

COMMENT: EPA questioned the use of a single point of contact for permitting, in lieu of the fact that the Department is having difficulties issuing the Title V permits in a timely manner.

RESPONSE: The Department currently offers a coordinated permitting service through the One-Stop Program. One-Stop is a total facility approach; a coordinated permitting and compliance assistance process. A permittee can turn to one point of contact within the Department to identify all permits required for a development or significant facility start-up or expansion project and maintain consistent contact throughout the process. The intent of having a single point of contact is to coordinate the permitting process to address issues such as incorporating pollution prevention, identifying cross-media shifts, analyzing facility-wide

risks, etc. The group responsible for coordination is separate from Title V permits writers; there should not be a negative impact on Title V.

**COMMENT:** EPA questioned the Department's capability to handle electronic submittals in light of recent difficulties with the Department's databases. Also, is it anticipated that the reporting requirements computer system?

**RESPONSE:** The Department is in the process of developing, independently of this proposal, the New Jersey Environmental Management System (NJEMS) computer-based permitting and reporting system. This system, when implemented, will include all air, water, and waste permitting, reporting, and enforcement functions for the Department, and would be capable of handling the electronic reporting requirements envisioned for Gold Track.

The Department is also examining the feasibility of a data integration project, which would ultimately consolidate the amount of reporting required of a facility, while enhancing the quality of the data submitted. A new system is not being specifically developed for Gold Track. The Gold Track data would be complementary to the existing data collection system.

#### Minor Comments

**COMMENT:** EPA questioned how many facilities would be eligible for Gold Track participation. EPA also questioned if smaller facilities would be included in the Gold Track program.

**RESPONSE:** The Department intends to initiate Gold Track as a pilot program. The number of participants is yet to be determined, however, the Department is aware of the need to keep the number of participants to a manageable level. The Department is making every effort to encourage a wide range of facilities (small, large, different sectors, public/private, etc.) to participate in the pilot program.

**COMMENT:** EPA questioned if the Department would be willing to accept some type of emissions trading scenario.

**RESPONSE:** While the Department does not want emissions trading to be the focus of the Gold Track program, an emission trading scenario would be evaluated and considered for incorporation into a covenant where appropriate.

**COMMENT:** EPA wanted more details regarding the RD&D project flexibility.

**RESPONSE:** Currently, the Department has specific RD&D procedures available to Solid Waste Facilities. Through Gold Track, the Department would commit to an accelerated approval process for RD&D applications.

**COMMENT:** EPA raised the issue of a federal supplementary screening before a participant can enter Gold Track.

**RESPONSE:** The Department fully intends to coordinate with the appropriate EPA programs regarding eligibility in Gold Track.

#### **Issues of Clarification**

**COMMENT:** EPA requested that the Department make it clear that the regulatory flexible track is one of four projects that is being developed through the Chemical Industry Project.

**RESPONSE:** The Department agrees and will clarify that this is one of four initiatives developed thorough the Chemical Industry Project. However, the Department has dovetailed many of its own initiatives into the development of the Silver and Gold Track program, notably the lessons learned from the FWP pilot project, the One-Stop process, and others.

COMMENT: EPA requested a more in-depth discussion of what materials accounting includes.

RESPONSE: The Department has a rigorous materials accounting system already established for those facilities covered under SARA 313. The required elements include the following:

INPUTS

Beginning Inventory  
Brought On-site  
Manufactured  
Recycled out-of-Process

OUTPUTS

Ending Inventory  
Shipped in/as Product  
Consumed  
Nonproduct Output

Nonproduct Output is then broken down into the following categories:

- Recycled out-of-Process
- Destroyed through on-site treatment
- Destroyed through on-site energy recovery
- Stack Air Emissions
- Fugitive Air Emissions
- Discharge to POTWs
- Discharge to Surface Water
- Discharge to Groundwaters
- On-site Land Disposal
- Other Off-site Transfers

For those facilities covered by SARA 313, this sort of analysis is required at the facility level. The in-depth materials accounting requires the facilities to perform this analysis at the *process* level. This assures a more in-depth knowledge of their processes and any potential pollution prevention opportunities.

COMMENT: EPA questioned why in discussing the procedures to ensure compliance under Gold Track, the Department used the phrase "equivalent, if not greater level of protection..."

RESPONSE: The Department agrees that the wording should be changed to encourage a greater commitment to environmental improvement.