

US EPA ARCHIVE DOCUMENT

Office of the Commissioner  
P. O. Box 402  
Trenton, New Jersey 08625-0402

September 30, 1999

The Honorable William Muszynski  
Deputy Administrator  
U.S. Environmental Protection Agency  
Region II, 290 Broadway  
New York, New York 10007-1866

Dear Deputy Administrator Muszynski:

The New Jersey Department of Environmental Protection (NJDEP) is pleased to submit to you the attached state Project XL Proposal for its Gold Track Program for Environmental Excellence.

Gold Track is one of the NJDEP's premiere reinvention initiatives, and receiving state Project XL status is crucial to the success of this program. I am confident Gold Track will prove to be an excellent model to be replicated by other states to achieve improved public health and environmental protection.

As you know, the basic tenet of Gold Track is to demonstrate that superior environmental performance can be achieved through an incentive-based approach that will test new ways of providing operational flexibility without sacrificing the high level of environmental protection the NJDEP has always maintained.

I feel that Gold Track dovetails nicely with the intent of Project XL, and we are looking forward to working with USEPA in fashioning the type of program that we can all look upon proudly.

We are submitting the proposal electronically to meet USEPA's end of year fiscal deadline. A hard copy will follow. Please do not hesitate to call me should you have any questions about our submittal.

Sincerely,

Mark O. Smith

Deputy Commissioner

**New Jersey Department of Environmental Protection  
Gold Track Program for Environmental Excellence  
State XL Proposal**

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**Introduction**

New Jersey is the fifth smallest state in the nation with 7,419 square miles of land area. On its borders are Delaware to the south, Pennsylvania to the west, New York to the north and the Atlantic Ocean to the east. The state is home to the Pinelands National Reserve, a unique ecosystem of over 1 million acres containing the internationally recognized "pygmy pine forests." The state currently has over 900,000 acres of publicly owned open space, more than 2,000 species of native plants and at least 800 species of native wildlife including such rare animals as the Pine Barrens tree frog, which is seldom found outside of New Jersey. New Jersey also boasts approximately 6,670 river and border river miles, 1,871 square miles of freshwater and coastal wetlands, bays, estuaries, freshwater lakes and ponds, as

well as 127 miles of Atlantic Ocean coastline. New Jersey's farms produce over 80 varieties of fruits, vegetables and other commodities annually.

New Jersey faces numerous environmental management challenges related to its industrial history, the nature of its economy, the paradox of its high population density and sprawling land development patterns, and its many legal/political subdivisions. With a population of 8 million in 1998, the state had an estimated population density of 1,077 people per square mile, making it the most densely populated state in the nation. Based on an estimated average growth rate of 0.5% per year, it is projected that, by the year 2010, New Jersey's population will reach 8,583,550.

New Jersey has a rich industrial history that lives on today. New Jersey ranks 10<sup>th</sup> nationally in the manufacture of durable and nondurable goods and is 14<sup>th</sup> in exports by state of origin. There are approximately 700 manufacturing industries in such diverse fields as pharmaceuticals, agricultural fertilizers, solvents, cleaners and paints at work in New Jersey. In addition, five major petroleum refineries produce gasoline, motor oil, asphalt and lubricants in New Jersey. Construction, transportation, utilities, wholesale and retail trade, finance, insurance, real estate, agriculture and the military services are all major employers within New Jersey and all create potential stresses to the state's air, water and natural resources.

While traditional programs have made giant strides on improving environmental quality, the major focus of these programs lies on managing air, water and hazardous wastes at the end-of-the-pipe only. To move away from this line of thinking and to encourage pollution prevention in New Jersey, the New Jersey Pollution Prevention Act was enacted in 1991, the result of a combined effort by the Legislature, the Governor, industry, environmental groups, and NJDEP. This Act encourages the identification and implementation of techniques that minimize the need to use and generate hazardous

substances in industrial activity. The Act directs the focus of government programs away from end-of-the-pipe clean-up methods that deal with waste after generation toward pollution prevention as the best method for achieving environmental goals.

To address these issues, the Act envisioned a system that emphasized pollution prevention over pollution control, and highlighted the notion that an in-depth materials accounting of the use and release of hazardous substances was needed to, AIdentify the points at which, and the procedures by which, pollution can be prevented; that pollution prevention can be achieved through a more efficient and rational use of hazardous substances, or through the use of less hazardous substances, or processes less prone to produce pollution; and that a soundly planned pollution prevention program can be implemented without adversely affecting the State=s economic health or the livelihood of those employed by industries that use and discharge hazardous substances.@

The Act established the New Jersey pollution prevention planning process and the first ever concept of incorporating pollution prevention planning and implementation into the permitting process with the introduction of the Facility-wide Permitting Pilot Project. The Act defines a Facility-wide Permit (FWP) to be a single permit incorporating a facility=s air, water and hazardous waste permits and the appropriate provisions of a Pollution Prevention Plan.

In developing the program, the New Jersey Department of Environmental Protection set five goals for the pilot FWP program:

1. To use the permitting process to maximize a facility=s opportunities for pollution prevention based on a sound Pollution Prevention Plan developed by the facility itself;
2. To provide facilities with additional operational flexibility;

3. To streamline permitting and compliance requirements;
4. To identify any statutory and regulatory barriers to pollution prevention;
5. To improve overall environmental quality through reductions in multi-media pollution.

In order to achieve these goals, the Department structured the project to be voluntary and incentive-based, to help foster a cooperative spirit with the participating facilities. Some of the incentives offered included permitting flexibility when altering facility operations; a willingness to explore additional regulatory flexibility; a single point of contact within the Department; one application covering all air, water and hazardous waste permitting and positive public recognition.

While still in progress, the FWP program has proven to be a valuable undertaking in assisting the Department in making the critical shift from a single media based "one size fits all" regulatory approach, to a multi-media approach that links a companies verifiable environmental performance to a corresponding level of regulatory oversight and flexibility identifying previously unpermitted or incorrectly permitted releases, identifying cross-media transfers, and incorporating pollution prevention into the permitting process.

In 1996, the Department began working with the USEPA and stakeholders representing the batch chemical industry, public interest groups and community representatives to develop an alternative environmental management system for this industrial sector, which was called the New Jersey Chemical Industry Project (NJCIP). This project, similar to the FWP project, was designed to acknowledge superior environmental performers (leaders) with incentives such as reduced regulatory oversight and increased operational flexibility. One goal of the project was to encourage other facilities (followers) to recognize the benefits afforded to/realized by the performers, and in turn, strive to improve their facility's environmental performance. For those facilities having difficulty complying with their environmental

obligations (laggards), this project provided the opportunity for increased compliance assistance. An essential component of the NJCIP project was the requirement that participating facilities establish a dialogue with host communities to foster greater public awareness and access to information regarding their regulatory and compliance status; thereby promoting greater trust and cooperation between the facilities and the surrounding communities.

The concept of ranking facilities as leaders, followers or laggards, with concomitant monitoring, accountability and ultimately regulatory flexibility will have the additional benefit of allowing the Department to concentrate resources on those facilities that have difficulty in meeting their environmental obligations. Regardless of ranking, there will be provisions to ensure that while the procedures for ensuring compliance under Gold Track may vary from other regulated entities, they will provide an equivalent, if not greater level of protection for human health and the environment. This delineation further allows the Department to commit more resources to place-based environmental solutions, whereby staff can work to identify the causes of the problem where problems exist, and ultimately, the holistic solutions to those problems.

The NJCIP project initially designed a two tiered system geared towards the batch chemical industry; the Silver Track and Gold Track. The Silver Track Program is designed to provide a moderate level of operational flexibility that does not require changes in the regulated structure to those facilities that can demonstrate a consistent level of acceptable compliance, and a commitment to going beyond standard regulatory compliance in exchange for operational flexibility. While the very nature of this program dictates that facilities have good environmental performance records, provisions are made to accept those with less than stellar environmental performance, providing they are willing to achieve a pre-determined baseline performance standard. During the stakeholder process, the notion of Silver



Track II was formed, whereby Ade minimus thresholds of emissions would be established. Facilities emitting less than these threshold values would not be required to obtain certain air pollution control pre-construction approvals from the Department. Suitable monitoring, record keeping and reporting requirements will be established, and, facilities must agree in a covenant with the Department to declining CO2 emission caps over time. The Silver Track Program is currently in place; a guidance document, published in September, 1999, has been developed and is attached as an appendix to this application.

The Gold Track Program is envisioned as an enhancement of Silver Track, where the participating facility's environmental performance expectations will be greater, and proportional regulatory flexibility will be sought. In the spirit of Project XL, the Department will be working very closely with the stakeholder group to design innovative ways to achieve superior environmental performance while maintaining a cost-effective high level of public health and environmental protection. Gold Track will seek to test the concept of providing varying degrees of regulatory flexibility based on the level of environmental commitment made by that facility.

The Department is seeking to act as the sponsor of this XL Project, which will enable it to include regulatory flexibility as an incentive under the Gold Track Program. NJDEP is seeking to obtain "State-wide XL status", versus the historical "site-specific" XL designation, whereby the Department would be responsible for oversight of the participating facilities and empowered to administer via the XL mechanism and to the extent possible, all of the innovations contained in the Gold Track Program. The Department believes it has a proven track record of being in the forefront of new environmental initiatives that strive to attain and maintain superior environmental performance.

The NJDEP's FWP Program is but one example of an environmentally innovative program.

The Department has many such innovative initiatives underway, including:

1. A comprehensive mandatory recycling program, which since 1997, has achieved it's goal of recycling 60% of its total waste stream due to cooperative governmental business efforts.
2. A first of its kind state program to monitor and regulate toxic synthetic organic contaminants in public water supplies
3. A leadership role in the development of the National Environmental Performance Partnership System (NEPPS). NEPPS is an environmental management partnership with the federal government that sets long-term goals for improving New Jersey's air, land and water, and develops environmental indicators to measure environmental quality and progress. New Jersey was one of the primary architects of NEPPS, as well as one of the first six states to participate in the program.
4. Extensive use of the Geographic Information System (GIS), a computerized mapping system, as a decision making tool
5. A grants and loans program assigned to accomplish the dual goals of hazardous site remediation and economic vitality
6. Issuance of the first comprehensive facility-wide permit in the nation that covers an industrial facility's releases to air, water and waste
7. One of the most effective state environmental research and technical support programs in the country (according to the National Governor's Association) that has continued to meet NJDEP's critical information needs and offer innovative solutions to New Jersey's environmental challenges.

8. GreenStart, a voluntary compliance assistance program, which provides on-site help to small business and municipalities in complying with requirements of the Department's air, water, waste and release prevention programs.
9. One-Stop Permitting and Compliance Process, Office of Innovative Technology and Market Development, and the Pollution Prevention Planning Program.
10. A draft Environmental Equity policy.

**Primary Contact**

The primary Department contact for this project is:

Jeanne Mroczko, Director  
New Jersey Department of Environmental Protection  
Office of Pollution Prevention and Permit Coordination  
401 East State Street, 3<sup>rd</sup> Floor East Wing  
P.O. Box 423  
Trenton, NJ 08625-0423  
Phone: (609) 292-3600  
Fax: (609) 777-1330  
Jmroczko@dep.state.nj.us

### **Project Description**

The Gold Track Program for Environmental Excellence is the mechanism by which the Department will acknowledge the efforts of companies that demonstrate the highest level of environmental performance. Some of the anticipated superior environmental performance requirements that will be discussed during the stakeholder process are: 1) commitment to declining facility-wide emission/discharge caps 2) advanced pollution prevention, source reduction, recycling, water and energy conservation 3) comprehensive facility monitoring and consolidated reporting and 4) enhanced community outreach.

Measuring superior environmental performance and results will be a major aspect of Gold Track; however, it is envisioned that there will be a migration away from prior approvals toward more back-end monitoring, record keeping and reporting framework. Along with traditional environmental measurement techniques such as emission monitors, engineering calculations, equipment and control device operational parameter monitoring, there will be a greater emphasis on production efficiency measurements and improvements. In the spirit of pollution prevention, the Department believes and will discuss with the Regulatory Reinvention Stakeholders, that efficiency improvement (i.e. source reduction), accomplished through in-depth process-level materials accounting should be a major factor in measuring environmental performance.

As an incentive for participation, enhanced operational flexibility, possibly to the point of eliminating the need for most preconstruction permit reviews, would be explored as a component of Gold Track. It is anticipated that this would afford a high level of flexibility to industry to make rapid process changes to remain competitive in today's volatile global markets.

It is apparent that much of the focus of this project will be in giving the Department the authority and the impetus to push for pollution prevention initiatives. Subsequent rule changes could affect all media (air, water, waste) permitting programs or other approval-type authorities (DPCC, TCPA).

NJDEP will negotiate a Project XL Final Project Agreement (FPA), upfront with USEPA, which will outline the process and criteria for admission into and administration of the Gold Track Program. Specific regulatory flexibilities and rule making will be negotiated separately as legally enforceable and binding addenda to the FPA. This will include any rulemakings or other regulatory amendments.

### **Project XL Criteria**

#### **Superior Environmental Performance**

Reinventing environmental protection is more than fine-tuning the current regulatory system. It involves looking to the future and exploring and testing different approaches to environmental regulation that can help maximize resources to achieve enhanced environmental performance. To a large degree, these approaches will stem from technology advancements, the need for operational flexibility and from a desire by many regulated facilities to move "beyond compliance" and achieve truly superior environmental performance. In the Gold Track Program, facilities will enter into a covenant with the department to a declining CO<sub>2</sub> cap (or equivalent) of reductions equal to or greater than 3.5% over 1990 levels by 2005, if they did not previously apply for the intermediate level tier of Silver Track II. In addition to agreeing to a declining CO<sub>2</sub> cap, Gold Track facilities will also commit to declining caps on signature pollutants. The Gold Track Program represents New Jersey's attempt to frame a new regulatory approach that strives to acknowledge and reward those facilities that achieve and maintain a high level of environmental performance. A stakeholder group, which is an outgrowth of the NJCIP Project, is working now to establish the basic framework of the Gold Track Program, utilizing the Department's "Proposal for Implementation: State of New Jersey's Flexible

Track Regulatory Program", dated April 27, 1999 document as guidance. This document outlines the following baseline tenets that will be used to evaluate the achievement of superior environmental performance with the Stakeholder group:

1. A commitment to conduct an audit of its operations and submit a certification stating that it is currently and for five years previously, in compliance with all federal and state regulations, and must also verify the lack of past or present criminal violations, prior to acceptance into the program.
2. A commitment to the establishment of an environmental management system (EMS)
3. A commitment to enhanced pollution prevention and/or source reduction in the form of in-depth materials accounting
4. A commitment to enhanced recycling, water balance analysis, energy conservation, process change, or other substantive facility modifications which enhance environmental protection with reasonable milestone status reporting and program implementation deadlines
5. A commitment to declining caps on signature pollutants (CO<sub>2</sub>, NO<sub>x</sub>, VOCs), and certain hazardous air pollutants such as mercury
6. A commitment to the establishment of comprehensive facility monitoring and consolidated targeted environmental tracking and reporting

### **Flexibility and Other Benefits**

The list of incentives for the Gold Track Program is still a work in progress, to be finalized through future stakeholder meetings. However, much of the foundation for this program has already been discussed through the Silver and Silver II Track process. Since Gold Track is a step above Silver Track, the incentives for the Silver Track will be amplified and enhanced in the Gold Track program (Silver Track Guidance Document is attached). In addition, Gold Track participants will be afforded additional benefits, including increasing flexibility in the regulatory process,

characterized by fewer "front loaded" approvals for various business decisions. The following is a partial list of proposed incentives for the Gold Track.

### ***Recognition***

Gold Track participants will have earned an enhanced corporate image, which will improve their relations with the community and regulatory agencies. Upon obtaining Gold Track certification, participants will be presented with a special Department seal in recognition of the participant's commitment to advanced environmental protection and continuous performance improvement. In addition to the seal, a list of all Gold Track participants will be published annually by the Department and posted on the Department's Internet Home Page. Finally, the Department will institute an annual awards program for outstanding achievements in environmental protection, with a separate category for Silver and Gold Track participants.

### ***Single Point of Contact***

The review of all future single media and multi-media permit applications and renewals of Gold Track participants will be coordinated by a single point of contact within the Department. The Department's Office of Pollution Prevention and Permit Coordination will coordinate all multi-media applications, while single media applications will be handled by the predominant individual media program, to ensure timely submittals and reviews of applications, and effective information exchange. The Department will also commit to the assignment of a single case manager to oversee multiple, ongoing site remediation projects ongoing for the same participant.

### ***Expedited Permit Processing***

A permitting schedule that reflects the critical path of sequential permitting activities will be offered to Gold Track participants. Mutually agreed upon application submission and review schedules will be developed jointly, through detailed pre-application



discussions, chaired and coordinated by a single contact from the Department. This coordinated permitting process will benefit participants by reducing uncertainty and enhancing their ability to get new products to market more quickly. The cost saving associated with expedited permitting decisions could serve as a major incentive for a company to participate for Gold Track.

### ***Consolidated Reporting***

As the Department's multi-media computer systems come on line, Gold Track participants will have the opportunity to submit a more consolidated, multi-media report on their operations. Participants who qualify for Gold Track will be among those who will participate in the Department's efforts to eliminate duplicative reporting requirements, and will enjoy consolidated information submission, to the extent possible, under the Department's ambitious computer/information technology system implementation schedule detailed in another section of this guidance document. The potential reduction in administrative burden will be realized by both the companies and the NJDEP.

### ***Research, Development and Demonstration (RD&D) Project Flexibility***

Gold Track participants will be allowed to conduct RD&D projects for a term of up to one year with an expedited review process. The Department will review a demonstration protocol within 30 days of submission of a complete application for an RD&D approval; approval letters will be issued for qualifying RD&D projects. This process will allow participants additional regulatory flexibility for pilot projects featuring advanced and/or innovative technology.

### ***ASmart® Permits***

When applying for new permits or permit modifications, Gold Track participants will be able to consult with the Department to identify desired operational flexibility both now and in the future. This will encourage the establishment of a corporate environmental

vision for the future, which will ultimately result in permits that cover a range of operating scenarios and more effectively address future needs. Gold Track participants will have the opportunity to work closely with a permit writer and compliance and enforcement staff to discuss specific needs and agreement on the concepts proposed in a permit application.

The Department is developing a special process to provide technical assistance to Gold Track participants in developing Asmart permit@applications.

### **Stakeholder Involvement**

The Silver and Gold Track Program is the culmination of joint public and private sector discussions conducted over the past several years. It is one of the major elements of the NJCIP, which is led jointly by the United States Environmental Protection Agency (EPA) and the Department. With its start in 1996, the NJCIP Project focused on opportunities to implement creative solutions for more efficient and effective environmental performance. The stakeholders for this group included representatives from the batch chemical industry, trade associations, community and public interest groups, USEPA and the NJDEP. This group, along with companies in the Department's Facility-Wide Permitting Pilot Program, joined together to form the Regulatory Reinvention Stakeholders. The establishment of the Silver and Gold Track Program is the direct outgrowth of proposals identified by these stakeholders. There are three tiers for stakeholder involvement depending upon their level of participation. These include: direct stakeholders, commentators, and trackers; a structure that closely mirrors Project XL's own recommended stakeholder tiering system.

Due to internal resource commitments, public interest environmental groups have not participated extensively to date in the stakeholder process. However, the Department will continue to notify these groups regarding future stakeholder meetings to encourage their participation in this

process. So far, three stakeholder meetings have taken place with eight more scheduled between now and December 1999 to design the requirements and incentives for the Silver Track II and Gold Track Program. In addition, the Department will make every effort to allow the environmental community the opportunity to review the Gold Track Program before implementation. Attached as an appendix is the list of all stakeholders that have participated or plan to participate in the development of the Gold Track Program

### **Innovation or Pollution Prevention**

The Gold Track Program's aim is to foster the migration away from traditional command and control approaches to environmental regulation, and toward more pollution prevention/source reduction-based approaches. Some of the pollution prevention strategies and practices that will be stressed include: substituting a less or non-hazardous substance for a hazardous substance used in a production process; changing the design of a product; changing the equipment or the process of making a product; improving the operation and maintenance of existing production processes, recycling hazardous substances within a production process and improved operation and maintenance. In addition, the Gold Track Program will include a commitment to declining caps on signature pollutants (CO<sub>2</sub>, NO<sub>x</sub>, VOCs), and certain hazardous air pollutants such as mercury. Any additional pollution prevention and innovative technology requirements for the Gold Track Program will be discussed during future Stakeholder meetings.

### **Transferability**

The ultimate goal of the Silver and Gold Track is to move away from front-end, micro-managed approvals and toward back-end monitoring where environmental performance can be monitored and verified. This goal can be achieved with basic concepts that can be adopted, modified and implemented by other interested states.

- 1) Use incentives and voluntary partnerships more widely to encourage better environmental performance.
- 2) Promote the use of environmental management systems
- 3) Develop a "performance track" to motivate and reward top environmental performance
- 4) Support a network of public and private organizations that provide assistance on environmental compliance
- 5) Deliver compliance assistance information for new, "economically significant" rules when and where needed
- 6) Combine compliance assistance, incentives, monitoring, and enforcement in order to implement environmental laws more strategically
- 7) Develop more flexible air permitting policies for protecting the environment
- 8) Expedite the review and issuance of NPDES (water discharge) permits
- 9) Build leadership capacity in communities to participate in local environmental problem-solving
- 10) Provide "smart growth" support to state, tribes, and communities to help them find local solutions to livability issues.

NJDEP will document and share all appropriate findings with USEPA and other state regulators. NJDEP, in the spirit of Project XL, will encourage other states to observe and/or adapt the Gold Track process, in an effort to foster wide-spread statewide improvements in environmental protection.

### *Feasibility*

The Department's mission statement, Strategic Plan and participation in the National Environmental Performance Partnership System (NEPPS) all align to commit the Department to assisting the residents of New Jersey in preserving, restoring, sustaining, protecting and enhancing the environment to ensure the integration of high environmental quality, public health and economic vitality. Toward that end, the Department has implemented a results-based environmental management system that utilizes long-term goals and indicators to measure environmental progress.

The Department's Strategic Plan embraces strategies to revitalize NJ's cities, preserve open space, enhance personal responsibility and improve the environment. Six broad goals help to define NJDEP's objectives and focus resources to achieve our mission. These six strategic goals include: Clean Air, Clean and Plentiful Water, Safe and Healthy Communities, Healthy Ecosystems, Abundant Open Space, and Open and Effective Government. The Department is committed to achieving these goals by encouraging innovation and compliance, by assuring that pollution is prevented in the most efficient and practicable ways possible, and by assuring that the best technology is planned and applied. In the Gold Track Program, the Department is affirming its dedication to a higher quality of life for New Jersey residents and its partnership with similarly committed public and private entities.

It is anticipated that the development of the Gold Track Program will be a well-attended process. The Gold Track process clearly enhances and furthers the six categories discussed above.

In the past, the NJCIP and FWP programs, of which this process is being built upon was closely watched by industry and environmental groups.

### *Evaluation, Monitoring and Accountability*

Gold Track is available to those facilities/entities who have demonstrated a consistently acceptable, sustained history of compliance, agree to develop and implement Operation and Environmental Compliance (OEC) and Community Outreach plans, and are willing to go beyond the standard regulatory requirements.

To apply for Gold Track, a participant must certify current compliance with all environmental obligations and confirm participation in programs that promote responsible environmental practices. The certification submitted to the Department will affirm that all participants meet certain base criteria, similar to the standard self-certification required by general permits. Once the Department receives an application package, a historical review of the participant's compliance record will be initiated. Acceptance into Gold Track will depend on the demonstration of consistently acceptable compliance with all State and Federal regulatory programs. Remaining in Gold Track will be a function of the continued success in meeting and exceeding mandated responsibilities to the environment and the community.

It is not clear at this time what regulatory flexibility is going to be needed, nor is it clear which facilities and types of reductions will be proposed. Therefore, the NJDEP proposes to negotiate on a case by case scenario individual flexibilities, reductions and tracking requirements. These negotiations will be done with input from USEPA and the volunteer companies. Once an agreement is made, NJDEP will be solely responsible for monitoring the progress of the participating companies. However, NJDEP realizes that it has the responsibility of keeping USEPA apprised of the progress of the program. Therefore, appropriate environmental performance measures or indicators will be developed for each participating company. Some examples of possible indicators include trends reporting on emission reductions and/or pollution prevention initiatives; cost-saving analysis; and energy conservation. The frequency of reporting will vary depending on the level of regulatory flexibility provided.

### *Eligibility*

Applicants must demonstrate good environmental performance. To meet this standard, an

applicant must have a good environmental record which will include (a) no criminal violations (b) up-to-date facility or institutional environmental plans (c) have in place or agree to develop and implement within one year of acceptance into the program, an Operations Environmental Compliance (OEC) Plan and a strong Community Outreach component.

### ***Good Environmental Record***

1. Present Compliance

To determine present compliance the Department will review its existing records in conjunction with the certification submitted in the application package.

2. Historic Compliance - 5 Year Review

The Department will conduct a 5-year review of the enforcement history of the applicant. The Department will review the lists of permits and environmental plans submitted with the application in conjunction with Department records, including, but not limited to: Discharge Monitoring Reports (DMRs), Compliance Evaluation Reports, Air Emission Reports and Land Use Investigation Reports. The review will also include informal and formal enforcement actions taken against the entity, ongoing investigations, and pending court actions.

The applicant must have no significant violations or non-minor violations as defined in EPA regulatory requirements, New Jersey Fast Track law, and New Jersey statutes and regulations. For entities with New Jersey Pollutant Discharge Elimination System (NJPDES) permits, the applicant within the last 3 years cannot have been a Significant Non-complier, as defined in the New Jersey Water Pollution Control Act, with their NJPDES Stormwater Permit, if applicable, and the required Stormwater Pollution Prevention Plan (SPPP).

The Department will take into consideration any affirmative defenses granted as well as the conduct of the entity in responding to violations. The Department will

also consider whether the entity entered into an Administrative Consent Order (ACO) and is in compliance with milestones therein. The existence of minor violations does not necessarily preclude eligibility in Gold Track. The Department will consider the size and scope of the facility, as well as extenuating circumstances and mitigation efforts taken by the applicant regarding certain minor violations.

3. Criminal Violations

The Department will review the application and certification and coordinate with the Division of Criminal Justice. The State Division of Criminal Justice will coordinate with the Federal Department of Justice.

Criminal Violations are listed as a separate category from Historic Compliance since a criminal violation is an automatic dismissal for consideration into the Gold Track Program.

4. Environmental Plans/Requirements

The Department will review its records in conjunction with the plans listed in the application package. In addition, the Department will specifically consider the following where applicable:

- **Pollution Prevention:** Covered entities must have a Pollution Prevention (P2) plan in place, with schedules for implementation of definitive non-product output (NPO) and/or use reduction goals. P2 plans that have an NPO/use reduction goal of zero for targeted processes must demonstrate to the Department that they have utilized all feasible pollution prevention measures for those covered processes and cannot reduce their NPO beyond current levels.
- **Stormwater Pollution Prevention Plan (SPPP):** Covered entities must have SPP plans on-site and be implementing all aspects of the plan as well as any specified upgrades.



- **Community Right to Know (CRTK):** Covered employer must have an up-to-date survey on file with the Department, appropriate police and fire departments, and with the Local Emergency Planning Committee (LEPC).
- **Toxic Catastrophe Prevention Act (TCPA):** Covered entities must have an approved risk management program.
- **Discharge Prevention, Containment and Countermeasures (DPCC), Discharge Cleanup and Removal Plan (DCR):** Covered entities must have an approved DPCC/DCR plan on site and on file with the Department.
- **Solid Waste:** Covered entities and transporters must have in place specified approvals and/or permits to operate for their particular waste types. In addition, please certify that materials collected are consistent with local recycling laws/ordinances and the applicable county Solid Waste Management Plan (SWMP).
- **Hazardous Waste:** Hazardous waste must be properly managed in accordance with all applicable regulations. In addition, associated paperwork such as manifests, contingency plans and personnel training must be up to date.
- **Underground Storage Tanks (USTs):** All USTs must be in compliance with the upgrade/replacement requirements or be properly closed. All USTs must be monitored for leaks. In addition, when rules are promulgated, financial responsibility requirements must be met and all associated record keeping must be up to date.
- **Site Remediation:** All entities subject to site remediation actions must be in compliance with all applicable requirements of any ACOs or comparable oversight documents.
- **Operations and Environmental Compliance (OEC) Plan:**

Participants must also have in place or agree to develop and implement, within one year of being accepted into Gold Track, an OEC plan. Attachment C contains specific guidance on the required elements of an acceptable OEC plan.

- **Community Outreach Plan:** Participants must also have in place or agree to develop and implement, within one year of being accepted into Gold Track, a Community Outreach plan, specific requirements as well as suggested components of an acceptable Community Outreach plan are detailed in Attachment D.

### *Monitoring*

A covenant will be the instrument used to memorialize the environmental commitments between the Department and all entities participating in Gold Track. This covenant will detail the development of the environmental goals and milestones that are mutually agreed upon by the Department and the entity. It also documents the specific measures to be used to track progress and measure performance in meeting these goals and milestones. Failure to meet the basic requirements of entry into Gold Track and/or failing to meet the agreed upon goals in the covenant may result in termination of the facilities Gold Track status.

The initial term of the covenant governing environmental performance will be two years, with the possibility of increasing the term to five years after the initial agreements governing environmental performance have been adequately evaluated.

The covenant will include specific agreements whereby an entity must commit at a minimum to the following:

- Electronic submittal of all permit applications and renewals, as feasible, using the Department's available information technology;
- The development of an initial Operations and Environmental Compliance (OEC) plan, to be implemented within one year of entering a Gold Track covenant;
- The development of a Community Outreach plan, to be implemented

within one year of entering a Gold Track covenant.

### ***Electronic Submittal***

A major component of the Gold Track Program is the streamlining of the permitting process by migrating to electronic submittals of permit and permit modification applications, as well as monitoring and reporting data. Toward this end, the Department is developing the New Jersey Environmental Management System (NJEMS), a Department-wide computer database which will link the individual media program databases into one holistic system. A completely integrated Department database for all programs is expected to be functional by January, 2001. The Department will be using Electronic Data Input (EDI) software such as RADIUS and Internet applications, to facilitate the electronic submittal of permit applications and reports. RADIUS, an Internet application that enables applicants to submit Air Quality general permit applications via the World Wide Web, is anticipated to be fully functional by the Winter of 1999.

The next areas for electronic reporting will be DMRs, CRTK reports, and additional general permits from other permitting programs.

While it is expected that entities will use these electronic processes to help streamline our operations and reduce their reporting burden, the Department recognizes that the universe of regulated facilities is very diverse - from large corporations with information technology and environmental units, to AMom and Pop@-type operations. The Department is committed to developing flexible solutions which can be easily utilized by the broad spectrum of entities in New Jersey.

### ***Operations and Environmental Compliance Plan***

An (OEC) plan, similar to an Environmental Management System (EMS), is a business system or process used to assess environmental management through the measurement and evaluation of an entity's environmental performance. An OEC plan promotes the integration of environmental management and business functions, provides for continual improvement, and supports verification to comply with environmental requirements and agreed upon reductions in emissions/discharges. ISO 14001 certification will be considered the equivalent of having an OEC plan for the purpose of applying to Silver and Gold Track. In lieu of ISO 14001 or other environmental management system certification, like the Chemical Manufacturers Association's Responsible Care Program, an OEC plan must be developed and implemented within one year of entering the Silver and Gold Track Program. For the purposes of Gold Track participation, the OEC must contain the following elements and a summary of the OEC must be made available to the public.

#### ***Operations Summary***

Written in terms understandable to the surrounding community, this section identifies major operations or processes and their key environmental requirements, including a listing of applicable state and federal statutes and rules. Inclusion of detailed regulatory provisions is not required, but a brief discussion of how the facility complies with major requirements is appropriate. Plans and anticipated schedules for reductions in discharges, emissions, and waste generation are briefly described.

## *Accountability*

### **Management Responsibilities**

With respect to the OEC plan summary, senior management provides clear direction for internal and external communication, document review, revision and approval, and operational control. Management ensures that procedures are in place to identify major new requirements associated with the environmental impacts of its operations, products, and services, and that these are addressed in the OEC plan summary in a timely and appropriate manner. Management routinely considers continued environmental improvements and reflects their plans for improvements in the OEC summary.

### **Environmental Policy**

Top management must make a long-term commitment to go beyond standard environmental compliance by having the entity's environmental policy include actions to address the management of environmental, health and safety concerns generally, and to incorporate these concerns into their planning and decision making. The following elements should be considered when developing an environmental policy:

1. Pollution prevention
2. Operating and process safety
3. Community awareness
4. Crisis readiness
5. Product stewardship
6. Proactive interaction with government
7. Resource conservation
8. Employee health and safety

## **Personnel Training**

Staff training needs should be identified in order to provide employees with a full understanding of the environmental requirements of the entity at which they work. Staff roles should be clearly defined. The implementation timeframes for training should also be clearly established.

## **Emergency Preparedness and Response**

This section should outline procedures for assessing the potential for accidents and describe the measures undertaken to prevent emergencies. Also include plans for responding to emergencies should they arise, and the measures taken to avoid a re-occurrence.

## **Monitoring and Measuring**

The procedures used to measure and report environmental impacts identified in the OEC summary should be adequately described and documented, including procedures used to identify, correct and eliminate the re-occurrence of instances of non-compliance.

## **Shifting of Risk Burden**

The Department believes that there will not be any shifting of risk burden impacts under the Gold Track Program. While this will be more fully examined as the specific regulatory flexibilities sought become more defined, using materials accounting as the basics for determining

environmental performance is that this approach can be done on a process level and looks at total releases from a particular operation, which can be an excellent tool to identify cross-media shifts. Additionally, since the focus of Gold Track is the reduction of emissions, discharges and releases, the Department is confident that there will be no shifting of risk burden under Gold Track.

### **Enforcement & Compliance Profile**

The enforcement and compliance status of all facilities participating in the Silver and Gold Track will be a three-step process. The first step includes a review of historical data to determine if the facility has maintained a compliance history satisfactory to the Department. This would include a review of all air, water and waste enforcement files. Discussions with the enforcement & compliance programs may also be necessary. The Department will also review the Gold Track application and certification and coordinate with the Division of Criminal Justice to determine if any criminal activity is associated with the facility.

The second step is to evaluate the status of the facility. This review will entail the review of existing permits, plans and approvals.

The third and most important step is the monitoring and tracking aspect. The proposed goals of the facilities in question need to be monitored and tracked on a regular basis. This duty under Project XL has been the job of the USEPA in the past. However, since the Department is offering the Gold Track status to NJ facilities, it would be beneficial if the Department also oversaw the implementation and tracking of the Gold Track initiatives at the affected facilities. The specific reporting requirements will be negotiated between the Department and USEPA. Regular compliance and assistance inspections will still take place to ensure that all rules and regulations are still being met. Major violations or

repeated minor violations would be grounds for dismissal of a company from Gold track. NJDEP understands that the USEPA has the ultimate authority and has the right to terminate the Project XL status if they determine the program is not meeting the criteria and procedures as negotiated.

### **Schedule Information**

A very progressive schedule has been created to ensure that the Gold Track Program is designed and implemented according to schedule. The proposed meetings with stakeholders are as follows:

November 10, 1999	1st Meeting with Gold Track Stakeholders
November 23, 1999	2nd Meeting with Gold Track Stakeholders
December 8, 1999	3rd Meeting with Gold Track Stakeholders
December 21, 1999	4th Meeting with Gold Track Stakeholders
January 30, 2000	Gold Track Guidance Review
February 28, 2000	Finalize Gold Track Guidance
March 30, 2000	Facilities Volunteer for Gold Track

The Department believes that seeking stakeholder input early and often in the development process is a critical component of getting buy-in from all necessary parties. Therefore, the FWP companies and the NJCIP candidates have been informed of this schedule, and it is anticipated that the meetings will be well attended. In addition, the Department has invited USEPA and environmental groups to attend the meetings.



