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submit them by mail or delivery, submit them in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

#### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this study, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### Background and Purpose

On January 18, 2002, the Coast Guard published a notice in the **Federal Register** entitled "Port Access Routes Study; Along the Sea Coast and in the Approaches to the Cape Fear River and Beaufort Inlet, North Carolina" (67 FR 2616). The purpose of the study is to evaluate the need for vessel-routing or other vessel-traffic-management measures along the sea coast of North Carolina and in the approaches to the Cape Fear River and Beaufort Inlet.

The goal of the study is to help reduce the risk of marine casualties and increase the efficiency of management of vessel traffic in the study area. The recommendations of the study may lead to future rulemaking or to appropriate international agreements.

Dated: April 9, 2002.

**Joseph J. Angelo,**

*Director of Standards, Marine Safety, Security and Environmental Protection.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 51, 52, 261, 262, 264, 265, and 270

[FRL -7170-8]

RIN 2090-AA28

#### New Jersey Gold Track Program Under Project XL

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; Request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA) is today proposing to

modify the regulations under the Resource Conservation and Recovery Act (RCRA) and the Clean Air Act (CAA) to enable the implementation of the New Jersey Department of Environmental Protection (NJDEP) Gold Track Program (Gold Track), which has been developed under EPA's Project eXcellence and Leadership (Project XL) Program. Project XL is a national pilot program that allows state and local governments, businesses and federal facilities to develop with EPA innovative strategies to test better or more cost-effective ways of achieving environmental and public health protection. In exchange, EPA will issue regulatory, program, policy, or procedural flexibilities to conduct the pilot experiments.

In today's proposed rule, EPA is providing high performing companies in New Jersey with the regulatory flexibility to test environmental management strategies that produce increased, measurable results. NJDEP has expressed an interest in Project XL to test new pilot ideas with a select group of facilities that focus resources on activities NJDEP believes would provide progressively greater environmental benefits than are achievable through compliance with current regulatory requirements. This proposed rule is intended to provide the multimedia regulatory flexibility that will enable these test projects to move forward.

Under the proposed CAA rule modifications, participating Gold Track facilities would be able to obtain a Plantwide Applicability Limit (PAL) based on past actual emissions. As long as a Gold Track facility did not exceed the emission level identified in its PAL for a particular pollutant, it would be exempted from major New Source Review (NSR) for that pollutant. Also, this proposed rule encourages the development of Combined Heat and Power (CHP) technologies in New Jersey by allowing a CHP facility participating in Gold Track to obtain a PAL using its own past actual emissions plus the offset emissions derived from the shutting down or curtailment of boilers at the off-site facility.

Under today's proposed modifications under RCRA for Gold Track participants, secondary materials destined for recycling that would otherwise be considered solid wastes would be excluded from the definition of solid waste, provided certain conditions are met. Participating facilities would also be allowed up to 180 days (or 270 days as applicable) to accumulate hazardous waste without a

permit as long as specified conditions are met.

**DATES:** Public Comments: All public comments on the proposed rule must be received on or before May 16, 2002, unless a public hearing is requested, in which case comments must be received no later than 30 days following the hearing. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Eastern time) May 16, 2002, unless a public hearing is requested, in which case they must be received by 11:59 p.m. (Eastern time) on the date 30 days following the hearing.

**Public Hearing:** Commenters may request a public hearing by April 30, 2002, during the public comment period. Commenters requesting a public hearing should specify the basis for their request. If a hearing is requested based on a relevant issue, it will be held by May 7, 2002, during the last week of the public comment period. Requests for a public hearing should be submitted to the address below. If a public hearing is scheduled, the date, time, and location will be available through a **Federal Register** announcement or by contacting Mr. Stan Siegel at the U.S. EPA Region 2 office.

**ADDRESSES:** Comments: Written comments should be mailed to the RCRA Information Center Docket Clerk (5305W), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460. Please send an original and two copies of all comments, and refer to Docket Number F-2001-NJGP-FFFFF.

**Request for a Hearing:** Requests for a hearing should be mailed to the RCRA Information Center Docket Clerk (5305G), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460. Please send an original and two copies of all comments, and refer to Docket Number F-2001-NJGP-FFFFF. A copy should also be sent to Mr. Stan Siegel at the U.S. EPA Region 2 office. Mr. Siegel may be contacted at the following address: U.S. Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, NY 10007, (212) 637-3701.

**Viewing Project Materials:** A docket containing the proposed rule, Final Project Agreement, supporting materials, and public comments is available for public inspection and copying at the RCRA Information Center (RIC), located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The RIC is open from 9 am to 4 pm Monday through Friday, excluding Federal holidays. The public is encouraged to phone in

advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (703) 603-9230. Refer to RCRA docket number F-2001-NJGP-FFFFF. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page. Project materials are also available for review for today's action on the World Wide Web at <http://www.epa.gov/projectxl/>.

A duplicate copy of the docket is available for inspection and copying at the U.S. EPA Region 2 Library, 290 Broadway, 16th Floor, New York, NY 10007, during normal business hours. Persons wishing to view the duplicate docket at the New York location are encouraged to contact Mr. Siegel in advance, by telephoning (212) 637-3701.

**FOR FURTHER INFORMATION CONTACT:** Mr. Siegel, or Mr. David Beck, (919) 541-5421 or Mr. Chad Carbone, (202) 564-1017, U.S. EPA, Room 1027WT (1807), 1200 Pennsylvania Ave., NW, Washington, DC 20460. Further information on today's action may also be viewed on the World Wide Web at <http://www.epa.gov/projectxl/>. For additional information on the applicant process see supplementary information.

**SUPPLEMENTARY INFORMATION:** The Gold Track Program (Gold Track) is part of NJDEP's efforts to create a State-run tiered performance-based program. Currently, facilities may join NJDEP's Silver Track Program, which is a lower-level tier that provides recognition for commitments to a certain level of environmental enhancement. Gold Track expands upon these environmental commitments, and offers proportionally greater recognition, as well as actual federal regulatory flexibility to participating facilities. NJDEP is partnering with EPA in the Gold Track effort under the XL program, so as to be able to offer federal regulatory flexibility to Gold Track participants.

NJDEP will require that facilities participating in Gold Track commit to: community outreach; a demonstrated Environmental Management System; declining facility-wide air emissions caps based on past actual emissions; conversion of all non-de minimis air sources to State-of-the-Art controls over 15 years; procurement of advanced technology/alternative fuel vehicles; commitment to procure cleaner energy; greenhouse gas reductions of a minimum of 3.5% below 1990 baseline levels within five years of executing a Gold Track covenant with NJDEP; and enhanced pollution prevention.

Gold Track will be limited to nine participants who must pass a rigorous screening and application process. Upon acceptance into Gold Track, NJDEP will enter into a covenant agreement with each participating facility that will detail all aspects of Gold Track participation, monitoring, and reporting. Facility covenant terms and performance standards will be made enforceable through a combination of federal and state rule changes, as well as changes to individual facility permits.

The terms of the overall Gold Track XL project are contained in a Final Project Agreement (FPA) which was the subject of a Notice of Availability published in the **Federal Register** on December 20, 2000 (65 FR 79854) and which was signed by EPA and NJDEP on January 19, 2001. The Final Project Agreement (FPA) is available to the public at the EPA Docket in Washington, DC, in the U.S. EPA Region 2 Library, and on the World Wide Web at <http://www.epa.gov/projectxl/>.

The rules proposed for revision under the CAA are being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the state's procedures for amending its regulations. If the proposed revision is substantially changed in areas other than those identified in this document, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this document, EPA will publish a final rulemaking on the revisions. The state proposed rules cited in this proposed rulemaking can be obtained from the NJDEP by contacting Mr. Walter Brown (609-292-0716) at its Office of Legal Affairs, 401 E. State Street, Trenton, New Jersey. This is also available through the NJDEP Web site, [www.state.nj.us/dep/opppc](http://www.state.nj.us/dep/opppc). The proposed state rules can also be viewed as part of the docket for this proposed rule at the locations listed under **ADDRESSES** above. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by New Jersey and submitted formally to EPA for incorporation into the SIP.

#### Outline of Today's Proposed Rule

The information presented in this preamble is organized as follows:

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- (v) Contingency Plan and Emergency Procedures
- (vi) Personnel Training
- 6. Special Conditions for Gold Track Generators Accumulating Hazardous Waste for up to 180 (or 270) Days
- C. State Authority—Applicability of Rules in Authorized States
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  - C. Paperwork Reduction Act
  - D. Unfunded Mandates Reform Act
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  - G. Executive Order 13175: Consultation and Coordination With Tribal Governments
  - H. National Technology Transfer and Advancement Act
  - I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

## I. Authority

These regulations are proposed under the authority of sections 101(b)(1), 110, 161–169, 172–173, and 301(a)(1) of the Clean Air Act (CAA); and under the authority of sections 2002 and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6912 and 6922.

## II. Background

### A. What Is Project XL?

Project XL, which stands for “eXcellence and Leadership,” is a national pilot program that tests innovative ways of achieving better and more cost-effective public health and environmental protection through site-specific agreements with project sponsors. Project XL was announced on March 16, 1995 (see 60 FR 27282 (May 23, 1995) and 60 FR 55569 (November 1, 1995)). The intent of Project XL is to allow EPA, States, and regulated entities to experiment with pragmatic, potentially promising regulatory approaches, both to assess whether they provide superior environmental performance and other benefits at the specific facility affected, and also whether they should be considered for wider application. Today’s proposed regulation would enable implementation of Gold Track. These pilot efforts are crucial to EPA’s ability to test new strategies that reduce the regulatory burden and promote

economic growth while achieving better environmental and public health protection.

### B. What Is EPA Announcing?

On September 30, 1999, NJDEP submitted a proposal for a pilot project under the Project XL Program to EPA. The process for reviewing and accepting the pilot project included gathering input from industry representatives, non-governmental organizations, State and EPA officials, as well as providing opportunity for public participation. As discussed in more detail below, the proposal has advanced to the final steps of the Project XL process. In today’s proposed rule, EPA announces revisions to the national Air regulations at 40 CFR 51.165 and 52.1603 that will allow Gold Track to be implemented. However, NJDEP will need to revise its own regulations to authorize the pilot program, submit a SIP revision to EPA for approval and issue modified permits to participating companies before this rule can be implemented.

EPA is also proposing revisions to regulations for the management of hazardous waste including 40 CFR parts 261, 262, 264, 265, and 270 that would enable NJDEP to implement the portions of this project requiring RCRA regulatory changes. These changes to the RCRA regulations would not take effect in New Jersey until the changes are codified as state law.

### C. How Have Stakeholders Been Involved in This Project?

Gold Track is the culmination of joint public and private sector discussions conducted over the past several years. Starting in 1996, the New Jersey Chemical Industry Project (NJICIP) identified and evaluated opportunities to implement creative solutions for more efficient and effective environmental performance. The stakeholders participating in the NJICIP included representatives from the batch chemical industry, trade associations, community, academic and environmental groups, USEPA and the NJDEP. A subset of this group and additional experts and non-governmental organizations (NGOs) formed the Flexible Track Team, which developed the framework and many of the details which NJDEP adopted for the Silver and Gold Track Program. The establishment of Gold Track is the direct outgrowth of proposals identified by these stakeholders. NJDEP invited all stakeholders including environmental groups, NGOs, industry representatives, and other interested parties to participate in the development of Gold Track.

To further encourage input during the Gold Track Final Project Agreement (FPA) development process, NJDEP provided public notice of the meeting schedule for the February 15, March 2, and March 16, 2000 Gold Track stakeholder meetings. The announcement was published in the Star Ledger, the Courier Post, and the Asbury Park Press, on or about the 11th of February. NJDEP also posted a legal advertisement for the March 16, 2000 meeting in the March 6, 2000 New Jersey Register. Additional stakeholder meetings were completed by the end of June 2000. All Gold Track Stakeholder meeting schedules were posted on NJDEP’s Web site at <http://www.state.nj.us/dep/opppc/>.

Stakeholders will also have formal opportunities to comment on provisions of any state rules that may be proposed to implement the program. In addition, under the CAA, stakeholders will have formal opportunities to comment on any modified permits and other legal implementing mechanisms under the procedures established at 40 CFR 51.165 and 52.1603 and this rule. We invite interested stakeholders to submit comments on this proposed rule to the contacts listed in the **ADDRESSES** section above.

NJDEP will require that participants accepted into Gold Track conduct quarterly meetings with a local community outreach citizen advisory panel as part of their community outreach program. These meetings are envisioned as an extension of the State-level stakeholder process.

### D. What Are the Goals of Gold Track?

Gold Track is part of NJDEP’s efforts to create a State-run tiered performance-based program. Currently, facilities may join NJDEP’s Silver Track Program, which is a lower-level tier that provides recognition for commitments to a certain level of environmental enhancement. Gold Track expands upon these environmental commitments, and offers proportionally greater recognition, as well as federal regulatory flexibility to participating facilities. NJDEP is partnering with EPA in the Gold Track effort under the XL program, so as to be able to offer federal regulatory flexibility to Gold Track participants.

Gold Track, once implemented, would be the top performance tier of NJDEP’s Silver and Gold Program for Environmental Performance. New Jersey’s goal in creating this tiered system is to encourage environmentally progressive companies to commit to further reductions in emissions and to adopt environmentally sustainable practices beyond those currently

required by Federal or State law. In initiating the Gold Track Program, NJDEP is pursuing reductions in criteria and hazardous air pollutants, carbon dioxide and other greenhouse gases, encouraging enhanced hazardous waste management, promoting procurement of renewable energy, fostering facilities' use of environmental management systems, and increasing companies' accountability to and communication with the general public and local communities. In return for meeting the stringent entry requirements and environmental commitments of Gold Track, participating facilities will receive certain CAA and RCRA regulatory flexibilities which are described in greater detail in Sections III and IV below.

As part of the application process, facilities wishing to participate in Gold Track must certify that they are

currently in compliance with all environmental obligations and confirm participation in programs that promote responsible environmental practices, as defined further in the FPA. Gold Track applicants must demonstrate a "historically good environmental record," which means that an applicant must have no criminal or significant civil violations and must maintain up-to-date facility or institutional environmental plans. NJDEP will conduct a 5-year review of the enforcement history of each Gold Track applicant, in conjunction with the applicant's self-certification of compliance with all environmental regulations. The review will include any informal and formal enforcement actions taken against the applicant, patterns of recurring minor violations, ongoing investigations, and pending court actions. In addition, NJDEP will

coordinate with EPA to review the applicant's compliance status with federal laws and regulations using the EPA's Project XL compliance screening guidance (available on the EPA Web site, <http://www.epa.gov/ProjectXL>). Further details regarding the compliance screening of Gold Track applicants may be found in the Gold Track FPA.

Finally, it should be noted that EPA sees this project as an opportunity to gather information about recycling of some materials that might otherwise be classified as hazardous wastes and hazardous waste generator accumulation requirements (see Section IV).

Table 1 presents the commitments required and incentives provided to Gold Track participants.

TABLE 1.—NJDEP GOLD TRACK COMMITMENTS AND INCENTIVES

Commitments

- State of the Art Control of non de minimis sources phased in over 15 years.
- Community Outreach; Implement a community outreach policy, provide summary of facility operations, hold quarterly meetings with Citizens Advisory Panel, hold an annual public meeting.
- Environmental Management System (EMS): Demonstrate an established standard EMS, with third-party and self audit review component, or ISO14000 certification.
- Enhanced pollution prevention.
- Procurement of Advanced Technology/ Alternative Fuel Vehicles for company fleet.
- Procurement of cleaner energy where reasonable.
- Greenhouse gas reductions of a minimum of 3.5% below 1990 baseline levels by the year 2005.
- Declining air emissions caps and air quality modeling.
- Participation in the ozone action partnership, watershed partnership.
- Monitoring and tracking of 5 sustainable State indicators. (NJ Sustainability indicators may be found at <http://www.state.nj.us/dep/dsr/sustainable-state/>)

Incentives

- Recognition as a Gold Track facility.
- Single point of contact within NJDEP for permitting purposes.
- Expedited permitting.
- Electronic reporting for State-only measures.
- Research and Development flexibility (state-only).
- Facility-wide air pollution caps, with no preconstruction review for de minimis modifications if total cap levels are not exceeded.
- Special incentive offered for combined heat and power facilities. (see Section III for more details).
- Opportunities to apply for exemptions from the definition of solid waste for materials destined for recycling (see Section IV for more details)
- 180 days for generators to accumulate hazardous waste without having to obtain a RCRA permit. (see Section IV for more details)

*E. What Regulatory Changes Will Be Necessary to Implement this Project?*

Changes to existing regulations under both the Clean Air Act (CAA) and Resource Recovery and Conservation Act (RCRA) will be needed to implement some portions of Gold Track. Adoption of revisions through this proposed rulemaking does not signal EPA's willingness to adopt those revisions or amendments as a general matter. The scope of Gold Track will be limited to no more than nine carefully screened New Jersey facilities, that have achieved the status of Gold Track participants as determined by NJDEP (entrance criteria and screening

processes including performance commitments and demonstrations of environmental performance and compliance, are described in detail in the Gold Track FPA). Nothing in these regulatory changes shall be construed to allow violation or circumvention of provisions of the CAA and/or RCRA.

In order to implement the portion of the project that involves facility-wide air emissions caps under the CAA, EPA is proposing to create Gold Track-specific changes to the definition of "major modification" in 40 CFR 51.165 and corresponding changes to 40 CFR 52.1603. For the portion of the project that encourages the use of combined

heat and power (CHP), EPA is proposing Gold Track-specific changes to the definition of "building, structure, facility, or installation" in 40 CFR 51.165 and corresponding changes to 40 CFR 52.1603.

EPA is proposing to amend RCRA regulations found at 40 CFR 261.4 to authorize facilities to apply for an exemption from NJDEP from the definition of a solid waste for materials destined for recycling. In addition, EPA is proposing to amend 40 CFR 262.120 to allow generators to accumulate hazardous waste for up to 180 days (270 days in some cases) as opposed to 90

days without a RCRA permit subject to certain conditions. In addition, minor changes to Parts 264, 265 and 270 are being proposed as discussed below. Refer to Sections III and IV below for further details on these proposed CAA and RCRA rule revisions and amendments.

#### *F. Why Is EPA Considering Allowing Gold Track?*

The XL program is intended to allow EPA to experiment with untried, potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Pilot projects such as Gold Track allow EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. As part of this experimentation, EPA may try out approaches or legal interpretations that depart from or are even inconsistent with longstanding Agency practice, so long as those interpretations are within the broad range of discretion enjoyed by the Agency in interpreting statutes that it implements. EPA may also modify rules that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

EPA believes that adopting alternative policy approaches and interpretations, on a limited, project-specific basis and in connection with carefully selected pilot projects such as Gold Track, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (so long as the Agency acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing re-evaluation of environmental programs, is reflected in a variety of statutory provisions, such as sections 101(b) and 103 of the CAA and RCRA section 8001.

#### *G. What Are the Environmental Benefits Anticipated Through Gold Track?*

This XL project is expected to achieve superior environmental performance beyond that which is required under the current RCRA and CAA regulatory system by allowing NJDEP and companies participating in Gold Track to focus on priority environmental goals identified by NJDEP, EPA and other Gold Track stakeholders in exchange for regulatory flexibility. In general, this project is expected to produce additional benefits by:

- Reducing pollutant loadings to the environment beyond the reductions

currently achieved through the existing state and federal regulatory programs. (The amount of reduction in pollutant loading will be calculated from facility-specific environmental performance data and data related to environmental impacts, in order to allow EPA and NJDEP to quantify the environmental benefit derived from Gold Track), and

- Providing EPA and NJDEP with information on how the current regulatory programs might be better oriented towards the achievement of higher levels of environmental performance.

EPA's intent is to enable NJDEP to administer Gold Track in a way to best further those objectives. Some of the specific environmental benefits that will be realized through Gold Track include:

- *Environmental benefits from greater community involvement:* NJDEP will require Gold Track facilities to implement a community outreach program, provide community stakeholders with a summary of facility operations, hold quarterly meetings with a locally organized Citizens Advisory Panel, and to hold an annual public meeting for all interested stakeholders. Because these commitments to community outreach go beyond those required by current regulation, communities will have access to more information about the performance of local facilities. This public scrutiny will also provide an incentive for participating facilities to maintain a high level of environmental performance. All permits and significant modifications implementing the Gold Track provisions will be subject to public review and comment.

Research indicates that public disclosure is a powerful incentive for facilities to reduce their releases of pollutants into the environment. The Toxics Release Inventory (TRI) and the "33/50" Program are two examples of EPA programs that demonstrate this effect. EPA summarized much of this research in an assessment of the incentives created by public disclosure supporting regulations published August 4, 2000 (65 FR 48107). Further, because participation in Gold Track is entirely voluntary, EPA believes that facilities that make the choice to apply and to demonstrate their commitments to environmental improvements in the public spotlight will be imposing upon themselves an increased level of transparency and incentive to deliver this heightened level of performance.

- *Environmental benefits from participants using an EMS:* All Gold Track participants must, prior to acceptance into the program, demonstrate to NJDEP that they are

either ISO 14000 certified or have an established Environmental Management System (EMS) in place that has an independent third party and self audit review component. EMSs integrate environmental considerations into routine decision-making at facilities, establish work practices that consistently reduce environmental risks and releases, evaluate environmental performance, and set management priorities based on the environmental impacts of individual facilities. Because they organize and consolidate information on a facility's environmental obligations and potential weaknesses for management, EMSs often improve the facility's compliance record and reduce accidents. Many EMS frameworks address unregulated environmental impacts as well as regulated impacts. Thus, an EMS provides a facility with the ability to assess and mitigate impacts that are most significant for the facility or that pose the most risk to the ecosystem and the community surrounding the facility. An EMS helps enable a facility to take additional environmental mitigation actions that are highly effective and appropriate, potentially providing better environmental results than the existing regulatory structure alone.

EPA believes that EMSs hold the potential for improving the overall environmental performance of private and public entities. Gold Track will serve to further promote and encourage responsible environmental management by requiring all participants to develop, apply and maintain comprehensive EMSs as a condition of their acceptance into the program.

- *Environmental benefits from commitments to reduce greenhouse gases (GHGs), purchase of Alternative Fuel Vehicles, and procurement of cleaner energy:* NJDEP will require Gold Track facilities to commit to a variety of measures aimed at reducing overall air pollution loadings. These provisions are explained more fully in the Gold Track FPA (65 FR 79854).

- *Environmental benefits from facility-wide declining air emissions caps:* As explained in more detail in Section III., NJDEP will require each Gold Track facility to have a facility-wide declining actual emissions cap that will be lowered by 5% every five years. This Gold Track provision will provide net air quality improvements that would otherwise not be required under the current regulatory system.

- *Environmental benefits from an increase in the recycling and re-use of hazardous waste:* Increased levels of recycling and reuse of hazardous waste have a number of environmental and

health benefits including: (1) A decrease in reliance on limited natural resources; (2) a decrease in the energy necessary to produce the raw hazardous material; (3) a decrease in the potential for accidental spills or releases during handling and transportation of a hazardous waste; (4) an increase in production efficiency; and (5) the elimination of releases and emissions from the treatment and disposal of hazardous waste.

#### *H. What Are the Provisions for Enforcing the Terms of Gold Track?*

All XL Projects must include a legally enforceable mechanism to ensure accountability and superior environmental performance. Gold Track will be administered by the State, with individual voluntary covenant agreements drawn up between participating facilities and NJDEP, and attendant enforceable Gold Track permits and compliance plans. As described in the FPA, NJDEP and EPA may enforce the terms of permits, regulations, or other legal implementing mechanisms as provided under applicable law. NJDEP has indicated that its enforcement response would vary depending upon the actual performance of a participating Gold Track facility, as well as the severity of any violation. As stated in the FPA, a facility's participation in Gold Track is not relevant to any issue of law or fact in any legal proceeding for violations of environmental regulations.

If the Project is terminated, or the participation of a Gold Track facility is terminated, either because the Program term has ended or because of an early withdrawal or termination, the procedures set forth in the FPA will be followed, to ensure an orderly return to compliance with otherwise applicable regulations. Gold Track facilities are expected to anticipate and plan for all activities to return to compliance with applicable regulations in advance of the end of the Program term. In situations of early withdrawal or termination, interim compliance periods may be negotiated, but Gold Track facilities must plan to be in compliance with all applicable Federal, State and local requirements as soon as is practicable, but no later than six months from the date of termination or withdrawal.

#### *I. How Long Will This Project Last and When Will It Be Completed?*

The federal rulemaking for this project is proposed to remain in effect for eighteen years from the date that the federal final rulemaking becomes effective, unless it is terminated earlier by either EPA or NJDEP, or extended by both EPA and NJDEP (if the FPA and

final rule making is extended, EPA will seek comments and input of stakeholders and will publish a **Federal Register** notice). Either EPA or NJDEP may terminate its participation in this project at any time in accordance with the procedures set forth in the FPA. Those procedures require EPA to provide written notice to NJDEP at least 60 days before the termination. The proposed regulatory changes that enable the implementation of this XL project contain a sunset provision that will effectively terminate the regulations automatically after eighteen years, unless further action is taken to extend the XL project (or end it sooner). Covenants negotiated between NJDEP and participating facilities will have a maximum implementation length of fifteen years.

Should on-going evaluation during the course of the XL project indicate that the project is not successful, EPA and NJDEP will promulgate a rule to remove these regulations prior to the eighteen-year sunset provision. However, EPA may promulgate a rule to withdraw these regulations at any time, subject to the procedures agreed to in the FPA, for any reason including, but not limited to, a substantial failure on the part of NJDEP or Gold Track participants to comply with the terms and conditions of the FPA or if Gold Track becomes inconsistent with future statutory requirements.

#### *J. Project Expectations*

Although the Gold Track FPA is not legally binding, and NJDEP, EPA or a participating facility may withdraw from Gold Track at any time, it is the desire of EPA and NJDEP that the Gold Track Program should remain in effect throughout the expected duration of eighteen years, and be implemented as fully as possible unless one of the following conditions below occurs:

(1) Failure of EPA and/or NJDEP to disclose material facts during the development of the FPA.

(2) Failure of Gold Track to provide superior environmental performance consistent with the provisions of the FPA.

(3) Enactment or promulgation of any environmental, health or safety law or regulation after execution of the FPA, which renders Gold Track legally, technically or economically impracticable.

#### *K. Gold Track Implementation Procedures*

The FPA sets out detailed implementation procedures that the State has agreed to incorporate into its regulations. EPA is not incorporating

these procedures into federal rules under RCRA or the CAA because it will not be the implementing agency for this project. Rather, it is authorizing New Jersey to review applications, select participating facilities, and otherwise carry out the program. EPA, however, is relying on many of these implementation procedures as part of the basis for its finding that the Gold Track Program will continue to protect human health and the environment while relaxing certain existing regulatory requirements. Some of the most important State implementation requirements are:

(1) An entity who wishes to participate in Gold Track will be required to submit a Gold Track application to NJDEP. Once a complete application is received, NJDEP will determine if the application satisfies the eligibility criteria outlined below. NJDEP will review all plans, permits, registrations, approvals and any other documents that the applicant is required to have and maintain by State and federal environmental statutes, rules and regulations to determine if they are up to date, accurate and approved. NJDEP will select the nine best eligible candidates.

If NJDEP determines that a Gold Track application is incomplete, NJDEP will issue a Notice of Deficiency (NOD) identifying the incomplete items and advising what is needed to complete the Gold Track application. Facilities will have 30 days after receiving a Notice of Deficiency to submit missing items. If the application remains incomplete after thirty days, the application will be rejected, and the applicant would be required to wait six months before reapplying.

(2) In order to participate in Gold Track, an applicant must demonstrate that it complies with the following criteria:

(i) The applicant has no significant violations or non-minor violations, as designated in EPA and NJDEP regulatory requirements. Any significant or non-minor violation in any media within five consecutive years of applying to Gold Track shall result in an automatic exclusion from Gold Track;

(ii) The applicant has submitted any plan required by statute, regulation or permit to NJDEP or EPA as required, in a timely manner (i.e., a Discharge Prevention, Control and Countermeasures Plan under N.J.A.C. 7:1E; or an Operations and Maintenance Plan as required by a solid waste facility permit);

(iii) The applicant has complied with any executed site remediation Memorandum of Understanding or other

directive issued by or executed with NJDEP for the performance of any regulated activity;

(iv) The applicant has no ongoing State or federal environmental investigations or pending court actions; and,

(v) The applicant has no State or federal criminal violations.

(3) In determining an applicant's eligibility to participate in Gold Track, NJDEP will:

(i) Review on a case-by-case basis any minor violations committed by the Gold Track applicant during the five-year period preceding the filing of its application. In conducting this review NJDEP will consider:

- The number and type of minor violations committed by the applicant;
- Whether those violations were entitled to a grace period under N.J.S.A. 13:1D-125 *et seq.*;
- Whether the violations occurred at a source that had a continuous emissions monitor installed; and, if so, whether the violations have occurred more recently with decreasing frequency (*i.e.*, there is a downward trend in the frequency of the occurrence of these violations); and;
- The corrective steps, if any, that the applicant has taken to avoid future violations; and
- The size and scope of the facility.

(ii) Consider the conduct of the applicant in responding to violations. In cases where the applicant has entered into an Administrative Consent Order (ACO), NJDEP, at a minimum, expects there to be compliance with all milestones, terms and conditions that are contained in the ACO. An entity that is accepted into Gold Track will continue to have a duty to comply with the milestones, terms and conditions of a valid ACO, if applicable.

(4) To be eligible to participate in the Gold Track Program, an applicant will show that it:

(i) Has implemented an Environmental Management System (EMS) which consists of the following minimum components:

- An environmental policy with commitment from top management;
- A commitment to continuous environmental improvement;
- Community outreach/communication with components set forth below;
- Monitoring and measurement;
- Self audit; and;
- An independent third party audit.

(ii) Has implemented a Community Outreach Program, which shall consist of the following minimum components:

- A written policy that articulates a commitment to two-way, open

communication with employees and the community;

• A "Plain English" summary of what the facility does (operations), the environmental impacts of these operations, and how the facility maintains compliance with all applicable environmental laws;

• Establishment of a Community Outreach Advisory Panel (COPAC), with a minimum of quarterly meetings conducted each calendar year;

• Clearly articulated objectives and goals for interacting with the community;

• Distribution of an annual report to the COPAC on the facility's environmental performance;

• Conduct an annual public meeting where changes in facility operations and environmental compliance issues are discussed; and;

• A process to continually evaluate the effectiveness and relevancy of the community outreach program.

(5) Once NJDEP approves an application for a facility to enter Gold Track, and prior to the participating entity being granted regulatory flexibility, NJDEP and the participating entity will develop a Gold Track Covenant, which will have a term of 15 consecutive years and will become effective upon execution by both the participating entity's responsible official and the Commissioner, or duly authorized representative of the NJDEP. EPA is allowing the New Jersey Gold Track rule to be in effect for a time period totaling eighteen years. NJDEP will have a period of three years from the date of final rule promulgation to get the Gold Track Program up and running and an additional 15 years in which to implement covenants with Gold Track facilities under the rule.

(6) When the NJDEP modifies the Gold Track facilities' permits to incorporate the proposed flexibility, it must include a provision that requires the facilities to return to compliance with current regulatory requirements at the expiration or termination of the FPA, including an interim compliance period as described in Section XI. of the FPA.

Gold Track facilities that are RCRA hazardous waste generators would also need to return to compliance with current generator requirements at the expiration or termination of the project.

At the end of the interim compliance period, the Gold Track facility shall comply with all applicable requirements and regulations that exist at the time of program termination. The interim compliance period cannot extend beyond six months from the date of withdrawal or termination.

Additional details are available in the FPA. EPA is also proposing to codify these requirements under its RCRA regulations.

#### *L. Early Termination/Withdrawal Procedures for EPA or NJDEP*

EPA and NJDEP agree that the following procedures will be used to withdraw from or terminate their participation in Gold Track before expiration of the Gold Track term.

(1) If EPA and/or NJDEP want to terminate or withdraw from Gold Track, EPA and/or NJDEP will provide written notice to the other party at least sixty (60) days before the withdrawal or termination and comply with the procedures identified in Section IX of the FPA.

(2) The procedures described in Section IX of the FPA apply only to the decision to withdraw or terminate participation in Gold Track by EPA or NJDEP. Procedures to be used in modifying or rescinding any regulations, permits or other legal implementing mechanisms will be governed by applicable law.

### **III. Summary of Proposed Rule Changes Under the Clean Air Act**

#### *A. Summary of Regulatory Requirements for Gold Track*

Implementation of Gold Track requires limited federal regulatory changes. NJDEP plans to offer participants certain types of regulatory flexibility at the State level. Specifically, NJDEP will not require Gold Track facilities to obtain air pollution control pre-construction approvals for any new or modified equipment, that is in compliance with all applicable requirements, provided that the potential to emit (after control) for each of the specified pollutants is below New Jersey's State-of-the-Art (SOTA) threshold levels for criteria pollutants and hazardous air pollutants (HAPS), and the new or modified equipment is the same as that already covered under an approved Gold Track Compliance Plan. New Jersey's SOTA threshold level is 5 tons per year for all criteria pollutants with the exception of lead. The SOTA threshold for lead is 20 pounds per year pursuant to N.J.A.C. 7:27-8, Appendix 1. Individual SOTA thresholds, contained at N.J.A.C. 7:27-22 have been set for HAPs, and are mostly less than 5 tons/year. Any new or modified equipment with a potential to emit (after control) between the SOTA threshold level and EPA's "significant emission levels" for criteria pollutants would not (except as described below at 2) undergo pre-



construction approval if the new equipment installs SOTA as defined in a New Jersey SOTA manual, and the new or modified equipment is the same as that already covered under an approved Gold Track Compliance Plan. The following notification provisions will be in effect for new and modified equipment with a PTE below significant emission levels:

(1) Gold Track participants would be required to notify the NJDEP within 120 days of the installation or modification of equipment considered to be an insignificant source. For Gold Track facilities NJDEP will define "Gold Track Insignificant Source" to be equipment with air emissions below the New Jersey SOTA de minimis levels, (*i.e.*, less than 5 tons per year for most criteria pollutants, and less than 20 pounds per year for lead).

(2) For the installation or modification of equipment with a potential to emit between the SOTA de minimis levels and EPA significant levels, for example between 5 and 25 tons per year for VOCs and NO<sub>x</sub>, New Jersey will not use the quarterly reporting procedure for Gold Track facilities. NJDEP will use the 7-day advance notice procedure referenced in section 502 (b) (10) of the Clean Air Act (if no allowable emissions would be exceeded ) or the minor modification procedure referenced in N.J.A.C. 727-22.23 (if an allowable emissions would be exceeded).

Any new equipment that exceeded EPA's "significant emission levels" for criteria pollutants would have to install BACT.

Gold Track facilities would be required to obtain plantwide applicability limits (PALs), referred to as emissions caps in the FPA. The PALs or emissions caps would establish a ceiling for actual emissions of specified pollutants in tons per year as described in the proposed New Jersey State rule. In general, a Gold Track facility would have PALs for the air pollutants regulated under major New Source Review (NSR) that it emitted.

The PALs would last for 15 years. As long as a Gold Track facility did not exceed the emission levels identified in its PAL for a particular pollutant, it would be exempted from major NSR for that pollutant (which includes both the prevention of significant deterioration (PSD) and nonattainment NSR Programs).

If a major expansion would require a higher facility-wide emission cap, the major preconstruction permit process (major New Source Review) would be used.

Today's rule also encourages the use and expansion of Combined Heat and

Power (CHP) technologies in New Jersey. The CHP incentive of the NJ Gold Track Program would encourage facilities to shut down their boilers and receive their electricity, heating and/or cooling from an off-site CHP facility. In exchange for providing this energy to off-site facilities, the CHP facility would be allowed to obtain a PAL using its own past actual emissions plus the past actual emission reductions derived from the shutting down or curtailment of boilers at the off-site facilities.

#### *B. Prevention of Significant Deterioration of Air Quality (PSD) Regulations*

Because this proposed rule modifies certain requirements of the PSD Program applicable in New Jersey for sources participating in Gold Track, a brief description of the PSD requirements may be useful. The PSD and major nonattainment NSR Programs are preconstruction review and permitting programs applicable to new or modified major stationary sources of air pollutants. Major nonattainment NSR is discussed in the following section.

In attainment areas [*i.e.*, areas meeting the National Ambient Air Quality Standards ("NAAQS")] and unclassifiable areas, the requirements for the PSD Program found in part C of Title I of the CAA apply for the attainment pollutants. The PSD provisions are a combination of air quality planning and air pollution control technology program requirements. Each State Implementation Plan (SIP) is required to contain a preconstruction review program for the construction and modification of major stationary sources of air pollution to assure that the NAAQS are achieved and maintained; to protect areas with existing clean air; to protect Air Quality Related Values (AQRVs) (including visibility) in national parks and other natural areas of concern; to assure appropriate emission controls are applied; to ensure opportunities for economic development consistent with the preservation of clean air resources; and to ensure that any decision to increase air pollution is made only after full public consideration of all the consequences of such a decision. See sections 101(b)(1), 110(a)(2)(C) and 160 of the CAA. For purposes of major NSR permitting, New Jersey is in an area that meets the NAAQS for all criteria pollutants except for ozone (statewide), carbon monoxide (CO) (northeast portion of the state), and sulfur dioxide (portions of Warren County). Therefore, in New Jersey the PSD Program under

part C of Title I of the CAA applies to those criteria air pollutants for which the area is in attainment or unclassifiable. As discussed below in C., the major nonattainment NSR Program under part D of Title I of the CAA applies to certain areas in New Jersey.

Because the SIP for the State of New Jersey did not include the PSD requirements of sections 160-165 of the CAA, EPA promulgated a PSD Program for the State by incorporating by reference the provisions of 40 CFR 52.21(b) through (w) into the state plan for the State of New Jersey (*see* 40 CFR 52.1603). In addition, EPA delegated authority to the NJDEP as the PSD permitting authority in New Jersey. This delegation of the PSD Program will continue in New Jersey for sources needing major NSR permits. For Gold Track sources the NJDEP will draft, accept public comment on, and issue Gold Track permits, subject to EPA review and the procedural requirements in 40 CFR 52.21 and 40 CFR part 124.

#### *C. Major Nonattainment NSR*

Because New Jersey is in the Northeast Ozone Transport Region the nonattainment NSR requirements apply across the entire state for VOCs and NO<sub>x</sub>, which are precursors to the formation of ozone. In addition, some parts of New Jersey are in nonattainment for carbon monoxide (CO) or for sulfur dioxide (SO<sub>2</sub>). Some Gold Track facilities may emit, or have the potential to emit, air pollutants of nonattainment concern in major amounts and are otherwise subject to the major nonattainment NSR provisions of Part D of Title I of the CAA. The State of New Jersey has rules implementing the Part D requirements that include both technology and emissions offset requirements. EPA has partially approved this portion of the New Jersey SIP. The State of New Jersey plans to submit a revised SIP that will contain Gold Track-specific changes to its major nonattainment NSR rules. In anticipation of this SIP submittal, this proposed rule contains Gold Track-specific changes to the general requirements in 40 CFR 51.165.

#### *D. Proposed Regulatory Changes*

##### *1. Changes to the Definition of "Major Modification"*

To implement today's rule, we are proposing Gold Track-specific changes to the definition of "major modification" found in 40 CFR 51.165 (a)(1)(v)(A) and corresponding changes to 40 CFR 52.1603, which sets forth the PSD requirements for New Jersey. These changes would allow a Gold Track

facility to be exempted from major nonattainment NSR/PSD for new and modified sources as long as the facility's PAL for the pollutant in question was not exceeded.

## 2. Duration of Plantwide Applicability Limits (PALs)

The proposed duration of the PALs will be 15 years. Absent this rule, currently applicable NSR requirements could limit the effectiveness of Gold Track PALs to 5 years. In order to implement Gold Track, we are proposing to modify the NSR requirements for Gold Track facilities to ensure that the PAL may remain effective for 15 years. For Gold Track, alterations to existing emissions units or the addition of new emissions units would not significantly increase net emissions above the actual emissions baseline used in setting the PAL provided the stationary source continues to meet its PAL emissions limit. Therefore, such alterations or additions would not trigger major NSR. Nothing in these regulatory changes shall be construed to allow violation or circumvention of provisions of the Clean Air Act.

Under present regulations, a source that adds or modifies a unit that would result in a significant emissions increase may "net" that particular change out of review if the new emission increase plus the sum of all other contemporaneous creditable increases and decreases at the source is less than significant. The current regulatory requirement regarding contemporaneity derives from the interpretation of the CAA's provisions governing modifications set forth in *Alabama Power Co. v. Costle*, 636 F.2d 323 (DC Cir. 1979). Among other things, the court interpreted the statute as allowing emissions increases to be offset by decreases at the same source, but stated that, "any offset changes claimed by industry must be substantially contemporaneous." Id. At 402. The court explained that EPA retains discretion to define "substantially contemporaneous." Thereafter, EPA codified contemporaneity as a regulatory requirement. See 45 FR 52676, 52700-52702 (August 7, 1980).

Absent the changes proposed today, the Federal PSD requirements in 40 CFR 52.21(b)(3)(ii)(a) limit the period within which the changes may be considered contemporaneous to 5 years. States implementing a PSD Program or nonattainment NSR Program under an EPA-approved SIP may define a reasonable contemporaneous period. Without deciding whether the contemporaneity principle applies to

PALs, EPA is proposing a 15-year contemporaneous period for sources in Gold Track that corresponds to the 15-year duration of the NJ Gold Track covenant. EPA recognizes that Gold Track facilities would make important commitments which would result in superior environmental performance as described in the Final Project Agreement Air Addenda. In addition, all other currently applicable requirements would continue to apply to a Gold Track facility, including, but not limited to: Reasonably Available Control Technology (RACT), Maximum Achievable Control Technology (MACT), State-of-the-Art (SOTA), Best Available Control Technology (BACT), Lowest Achievable Emission Rate (LAER) and New Source Performance Standards (NSPS). Under these circumstances EPA believes that a 15-year contemporaneous period for the Gold Track PALs is appropriate.

## 3. Changes to the Definition of "Building, Structure, Facility, and Installation" for Combined Heat and Power (CHP) Facilities

In order to encourage greater energy efficiency and reduced levels of air pollution, the State of New Jersey is promoting the expansion of the Combined Heat and Power (CHP) industry in their state. In the emerging energy market under utility deregulation, owners/operators and developers of CHP projects seek to minimize their financial risk in order to employ CHP technology successfully. To do this they are finding it desirable to locate CHP facilities at the same sites as existing industrial or commercial users of steam and electricity. An existing user facility, such as a chemical manufacturing plant, becomes the customer, or "host," of the CHP facility and provides a steady stream of revenue. The existing user, which formerly managed its own steam production operations to support its main line of business, can then divest itself of the day-to-day business of heat and power production and obtain long-term access to favorably priced steam and electricity.

Typically, a CHP project developer, a separately-owned and operated entity from the host facility's owner/operator, purchases the existing steam (and sometimes electricity)-producing equipment from the host facility (generally boilers and turbines) and then retires it and replaces it with CHP technology, or upgrades it to incorporate CHP technology. The new, separately owned and operated CHP facility then contracts with the host facility to provide that facility's steam and some or

all of its electricity. Once the CHP facility can access the local utility grid, it can sell excess electricity to the grid. In addition, the same CHP facility may enter similar contracts with other nearby, but not necessarily contiguously located, customers of steam and/or electricity, either at the inception of the CHP project or over time.

Under Gold Track, CHP facilities which supply electricity and heating and/or cooling could obtain an emissions cap or PAL based on the facility's actual emissions, plus the avoided actual emissions at the off-site buildings being supplied with heat and/or cooling, provided that the avoided emission reductions are not claimed by the owner or operator of the off-site buildings. There would have to be a contractual agreement between the CHP facility and the off-site CHP user which stated that the emission reductions from heating/cooling energy equipment shutdown or curtailment at the CHP energy user are to be credited to the CHP facility, rather than the CHP energy user. When used for the CHP facility emission cap, the off-site emission reductions could not be used for other purposes, including but not limited to, emission offsets, netting, or discrete emission reduction credits. The cap additive from off-site facility emission reductions would have to be the lesser of actual emissions before the supply of heat/cooling by the CHP facility or SOTA emissions for the amount of energy supplied by the CHP facility. The cap additive would have to be based on off-site actual emission reductions during the same 5-year timeframe, used to determine baseline actual emissions. Third party independent verifications of the reductions would be required. The resultant cap would be subject to the same air quality modeling requirements as the caps at other Gold Track facilities. Addition of new units at the CHP facility would be subject to the same flexibilities if below de minimis, and the same permitting, SOTA, and BACT requirements if above de minimis, as other Gold Track facilities. Enforceable operating restrictions would be required on the off-site equipment being replaced or curtailed by the CHP facility.

The Gold Track CHP proposal reflects the interests and concerns which the EPA has regarding the development and expansion of CHP sources. The EPA recognizes the potential for reducing fuel consumption and air pollution as a result of CHP technologies, and we are actively seeking to promote CHP as an alternative to conventional ways of supplying industrial, commercial, and institutional users with heat and power. EPA encourages the greater use of CHP

because typically it: (1) Generates energy efficient power; (2) is an additional source of power; (3) decreases the need for transmission over distances; and (4) provides clean energy.

As summarized in section III.D.2, Gold Track facilities would voluntarily make several important commitments which would result in superior environmental performance. Under these circumstances, and because we are seeking to encourage the greater use of CHP, EPA believes the flexibility outlined above for Gold Track CHP facilities is appropriate. EPA is proposing to implement the Gold Track CHP incentive through Gold Track-specific changes to the definition of "building, structure, facility, and installation" in 40 CFR 51.165(a)(1)(i) and corresponding changes to 40 CFR 52.1603.

#### IV. Summary of the Proposed Rule Conditions Under the Resource Conservation and Recovery Act

Today's proposal would modify 40 CFR 261.4(a), 262, 264.1, 265.1 and 270.1 to provide NJDEP with the regulatory flexibility needed to implement the RCRA-specific portions of Gold Track. The proposed RCRA modifications described below are expected to promote greater levels of recycling, provide EPA with information about generator accumulation times, and provide valuable incentives for companies to participate in Gold Track while maintaining rigorous standards of environmental protection.

Incentives play a crucial role in maximizing the environmental benefits of any voluntary program such as Gold Track. Facilities must perceive a benefit to themselves that is at least equal to their perceived costs of participation in a voluntary program, including administrative burdens associated with participation as well as any costs incurred in meeting the substantive requirements of the program.

The incentives relating to hazardous waste management that would be provided under the Gold Track Program include (a) allowing Gold Track facilities to apply to NJDEP for an exclusion from the definition of solid waste for some types of materials destined for recycling, and (b) allowing up to 180 days (270 days, if applicable) for hazardous waste generators to accumulate hazardous waste without having to obtain a RCRA permit. These regulatory flexibilities should provide incentives for companies to participate in the Gold Track Program while maintaining necessary environmental protections.

EPA and NJDEP have agreed upon a combination of environmental protections including requiring prospective participants to pass a rigorous screening process during which NJDEP, in consultation with EPA, would screen candidates based on several factors including past compliance history, current commitment to environmental improvement, and the legitimacy of future recycling activities. Facilities would be required to also meet specific conditions to minimize the possibility that their activities would threaten human health and the environment as a result of this program.

#### A. Exclusion From the Definition of Solid Waste for Materials Destined for Recycling

##### 1. Purpose and Context of Proposed Rule

Section 3002 of the Resource Conservation and Recovery Act (RCRA) directs EPA to promulgate standards for generators of hazardous waste as necessary to protect human health and the environment. Similarly, Section 3004 of RCRA directs EPA to promulgate standards for facilities that treat, store or dispose of hazardous wastes. Section 1003 of RCRA establishes a national objective of "minimizing the generation of hazardous waste and the land disposal of hazardous waste by encouraging process substitutions, materials recovery, properly conducted recycling and reuse, and treatment."

The primary intent of the current RCRA regulatory structure governing hazardous waste recycling is to ensure that such recycling practices are done safely including ensuring that waste materials are managed protectively prior to recycling and that the resulting products are legitimate products and do not contain potentially harmful "toxics along for the ride." Industry has asserted that certain RCRA hazardous waste recycling regulations can in some cases discourage generators from exploring recycling options for their wastes. Today's proposed rule is intended to remove many of these regulatory requirements in order to promote recycling of hazardous and solid waste for Gold Track participants. Moreover, the regulations would impose conditions on the management of hazardous waste that would minimize the likelihood that the activities of participating facilities would threaten human health and the environment as a result of this program. Specifically, today's proposed rule is responsive to the desire to direct suitable

wastestreams towards recycling and reuse by allowing Gold Track facilities to apply to NJDEP for conditional exclusion from the definition of solid waste for some types of materials destined for recycling that would otherwise be considered listed or characteristic hazardous wastes. NJDEP will consider applications for exclusions from the definition of solid waste on a case-by-case basis, and will conduct a waste stream specific evaluation to ensure that only legitimate recycling of materials (as opposed to sham recycling) takes place. EPA requests comments on these proposed conditional exclusions.

##### 2. Rationale for Allowing an Exclusion From the Definition of Solid Waste

Today's proposal would allow NJDEP, with some exceptions, to grant case-by-case exclusions from the definition of solid waste for hazardous secondary materials generated at Gold Track facilities that are destined for some types of recycling and that, absent the exclusion, would be considered hazardous wastes. Under this proposed rulemaking, these materials would no longer be considered wastes. A number of RCRA regulatory requirements that can make recycling less attractive would no longer apply, including:

- *Permits.* According to current regulations, companies generating hazardous wastes that can be recycled would typically need a RCRA permit if they store the wastes for greater than 90 days prior to recycling. In addition, if hazardous wastes are shipped to off-site facilities for reclamation or recycling, those receiving facilities must also have RCRA permits if they store or treat the wastes prior to recycling. This can have important implications for these companies. Obtaining a RCRA permit can be costly and time consuming. In addition, a RCRA permit carries with it other obligations, such as the requirement for facility-wide corrective action, which can incur further substantial costs. Thus, many companies have a strong incentive to avoid recycling hazardous wastes if they must store wastes for greater than 90 days prior to recycling. As a result, some hazardous wastes are sent to treatment or disposal facilities, rather than being beneficially recycled. Under today's proposal, excluded wastes from Gold Track facilities could be stored by recyclers for an extended period of time without triggering the need for a RCRA permit. EPA expects this flexibility to enhance recycling opportunities for Gold Track participants.

- *Transportation, reporting and recordkeeping.* Hazardous wastes

destined for recycling are generally subject to the RCRA "cradle to grave" reporting and recordkeeping requirements. Under this system, generators of such wastes must:

- Manifest off-site shipments of hazardous wastes (§§ 262.20–262.23);
- Submit exception reports for any shipments that have not been reported received (§ 262.42);
- Maintain copies of manifests, exception reports, biennial reports and any data used to make hazardous waste determinations, for at least three years (§ 262.40); and
- Submit a biennial report describing all hazardous wastes generated and the facilities to which they were shipped every other year if they generate large quantities of hazardous wastes. (§ 262.41)

Under this proposed rule, excluded secondary materials being transported to a recycler would not be subject to the manifest and related recordkeeping requirements. The Gold Track facility will keep records on the amounts of excluded material sent to the recycler and returned to the facility.

### 3. Applicability of the Exclusion From the Definition of Solid Waste

Today's proposed rule would allow Gold Track participants to petition NJDEP to exclude materials that are recycled from the definition of solid waste if they are managed according to certain conditions. This flexibility would only be offered to Gold Track participants. If finalized, materials generated by Gold Track participants that are currently regulated as solid and hazardous wastes prior to reclamation (*i.e.* spent solvents) would no longer be regulated as solid and hazardous wastes if they are recycled according to the conditions discussed below. Excluded materials shipped to off-site recycling facilities would also be excluded from regulation as a solid waste.

Not all types of recycling practices would be eligible for the exclusion under this proposed rule. Today's proposal identifies four specific recycling scenarios that EPA believes merit full regulation under current hazardous waste regulations, and which therefore will not be eligible for relaxed regulatory controls under the Gold Track Program:

- Wastes burned for energy recovery [§ 261.2(c)(1)];
- Wastes used in a manner constituting disposal [§ 261.2(c)(2)];
- Recycling of materials that are inherently waste-like [§ 261.2(d)] (F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, F028,

and secondary materials fed to a halogen acid furnace);

- Secondary materials that are stored on the land, in containment buildings, or on drip pads.

EPA and NJDEP believe that limiting the scope of this rulemaking in this way is sensible and appropriate due to the experimental nature of Gold Track and the reduced level of regulation that will be afforded to participating facilities.

It should be noted that the conditional exclusion proposed today would be an exclusion only from the RCRA Subtitle C regulations, and not from the emergency, remediation and information-gathering sections of the RCRA statute (sections 3004(u), 3007, 3008(h), 3013, and 7003). This restates the principle codified for other excluded secondary materials—that the exclusion is only from RCRA regulatory provisions, and not from these statutory authorities. See section 261.1(b). EPA is repeating that principle here in the interests of clarity, not to reopen the issue. The legal basis for the distinction of the Agency's authority under these provisions is that they use the broader statutory definition of solid waste (and hazardous waste as well) and so need not (and should not) be read as being limited by the regulatory definition. *See*, for example, 50 FR 627; January 4, 1985.

EPA is also proposing that the requirements for speculative accumulation of hazardous wastes not apply to Gold Track participants. The speculative accumulation provisions generally apply to secondary materials that are not solid wastes when recycled. Under RCRA regulations, certain recyclable materials are not considered solid wastes if they are recycled in a timely manner. However, if these materials are accumulated on-site for too long, they become a solid waste pursuant to the speculative accumulation provisions of 40 CFR 261.1(c)(8) and 261.2(c)(4).

The provision serves as a safety net, preventing recyclable materials that are not otherwise regulated under RCRA from being stored indefinitely and potentially causing environmental damage. EPA subjects persons who "accumulate speculatively" (*i.e.*, persons who fail to recycle a sufficient percentage of a recyclable material during the calendar year or fail to demonstrate that a feasible means of recycling exists) to immediate regulation as hazardous waste generators or storage facilities. (50 FR 614, 650; January 4, 1985).

As an alternative safety net, today's proposal, would require Gold Track participants to report on their recycling activities including (1) amount of

excluded material generated during each twelve month period after the exclusion takes effect, (2) the amount of excluded material recycled during the same twelve-month period, (3) how the excluded material was recycled, (4) any significant changes in the excluded material wastestream, (5) the recycling processes used, and (6) the location of any off-site recycler. Also, a participant would be required to obtain approval from the State Director prior to any significant changes in the waste stream or the recycling process. In addition to providing data on whether this incentive increases recycling, these reports would directly alert the State to any overly lengthy accumulation practices that may occur and would allow the State to assess whether environmental damage could occur from such storage. EPA believes that this approach provides a suitable alternative to the speculative accumulation requirements for hazardous waste under RCRA.

### 4. Criteria for Obtaining a Solid Waste Exclusion From NJDEP

Gold Track facilities wishing to take advantage of this flexibility would be required to submit an application identifying each waste stream to be excluded from the definition of a solid waste to NJDEP. Included in the application package must be a detailed description of the waste stream and its composition, a full description of the recycling to be conducted and the sites where storage and recycling would occur, along with a comparison of the proposed recycling strategy to the recycling guidelines set forth in the EPA policy memo entitled: "Criteria for Evaluating Whether a Waste is Being Recycled". This document can be obtained either by clicking on the following Web site: <http://yosemite.epa.gov/OSW/rcra.nsf/Documents/BFB132AA4BB3D1D3852565DA006F0447>, or through EPA's Faxback service by dialing 202–651–2060 on your fax machine and entering code # 11426.

This application process will ensure that the regulatory flexibility for recycling that is provided to Gold Track facilities will not compromise human health and the environment. NJDEP will carefully analyze each application to ensure that sham recycling or any other harmful activity will not occur. The determination of whether sham recycling is being proposed rests on a number of factors including: the similarity of the secondary material to an analogous raw material or product, the degree of processing the secondary material must undergo to produce a

finished product, the value of the secondary material, the market for the end product, handling and management practices for the secondary material, and the need for toxic constituents in the recycling process. These factors are laid out in the EPA guidance document described above. Each application will be evaluated and considered in the context of these factors.

#### 5. Protection of Human Health and the Environment

As discussed below, waste destined for recycling must be stored in accordance with the performance standards of 40 CFR part 265, subparts I and J for containers and tanks, respectively, and 40 CFR section 264.175 that requires secondary containment for containers holding free liquid. The Air Emission requirements under subparts AA, BB and CC are included in subparts I and J of 40 CFR part 265 and are applicable. The additional condition that materials excluded from the definition of solid waste may only be stored in tanks or containers that meet stringent design and operating standards also helps to ensure that materials are managed safely prior to recycling.

Materials sent offsite for recycling will be excluded from regulation provided that the generator complies with all applicable conditions. If the offsite recycler manages the material in any of the activities listed in subsection 3 above that are not eligible for the exclusion, the material ceases to be excluded.

With regards to excluded materials sent to an offsite recycler, the Gold Track facility would be required to:

- Designate the off-site facility that will be receiving excluded material;
- Keep facility recycling records that track the amount of excluded material sent to the off-site recycler and returned to the Gold Track participant and make these records available upon facility inspection; and
- Include the recycling information listed above in the Gold Track participant's annual report.

#### 6. Summary of Applicable Management Standards for Excluded Solid Waste

Hazardous secondary materials excluded from RCRA regulation under today's proposed rule would be subject to certain conditions. Failure by Gold Track participants managing materials under this exclusion to meet any of these conditions could result in revocation of the exclusion and/or subsequent enforcement action.

#### (i) Types of Hazardous Waste Not Eligible for Exclusion Under Gold Track

This exclusion would not apply to materials that are burned for energy recovery, used in a manner constituting disposal, or for materials that are inherently waste-like as defined in 40 CFR 261.2(c)(1), (c)(2) and 261.2(d).

#### (ii) Requirements for Confirmation From NJDEP Prior to Exclusion

Under this proposal, Gold Track facilities wishing to take advantage of this flexibility would be required to submit a petition to NJDEP to be excluded from the definition of a solid waste. This petition must include a detailed description of the waste stream and its composition, a description of the recycling to be conducted and the sites where storage and recycling would occur, and a comparison of the recycling proposed to the EPA guidance discussed above in section IV.A.4.

NJDEP will make a site specific determination that the material will be legitimately recycled to recover material values based on EPA guidance and the information provided, and will respond to each petition before this exclusion would be applicable.

#### (iii) Notification of Changes in Operation

EPA is proposing that Gold Track participants would be required to inform NJDEP of any changes to the wastestream, (e.g., as a result of a change in the production process or inputs) changes in the recycling process to be used, and changes in the recycling location.

Gold Track participants would be required to receive approval from NJDEP to continue exercising this flexibility if the changes described above occur.

#### (iv) Storage of Excluded Materials Destined for Recycling

Under this proposal, Gold Track generators would be required to manage materials in tanks or containers and comply with the management standards for hazardous waste storage units, as specified in 40 CFR part 265, subparts I and J, and the secondary containment standards (or alternative) for containers with free liquids as described at § 264.175. Secondary containment provides an added level of safety by ensuring that if the tank or container leaks, the release is captured by an impermeable base or second exterior tank wall. This condition applies to excluded materials stored at a Gold Track facility. Gold Track facilities would also be required to comply with any other substantive regulatory

requirement that would normally be applicable to the containers or tanks.

This exclusion would not be extended to materials that are stored on the land (e.g., in outdoor piles), in containment buildings, or on drip pads. In this respect, storage of excluded materials under today's rule would be subject to more stringent container management standards than if they were managed as hazardous wastes and is consistent with the Project XL goal of superior environmental performance.

#### (v) Labeling Storage Containers

Today's proposal would also require generators managing materials under this conditional exclusion to use a label to identify the contents of containers in which materials to be recycled are stored and indicate the date the material was originally placed into the container. Gold Track participants would not be required to comply with labeling and marking requirements at § 262.34(a)(2) and (a)(3) as a condition for this exclusion.

#### (vi) Monitoring and Record Keeping

EPA is also proposing that generators maintain records for each container or tank used to store material exempted from the definition of solid waste, and that participants label the contents as stated above. This information will be used to track trends and environmental performance, and is expected to be used for the annual report.

#### (vii) Annual Report

Each participant shall submit an annual report to the State of New Jersey that shall specify:

- The amount of exempt material in inventory at the facility at the time the flexibility specified at N.J.A.C. 7:2733.21(a)9 is granted to the facility;
- The amount of exempt material generated during the past twelve months;
- The amount of exempt material recycled during the same twelve-month period;
- A description of how the exempt material was recycled; and
- Any changes in the original wastestream, recycling processes used or the location of recycling sites.

#### B. 180-day Accumulation Period for Hazardous Wastes Generated by Gold Track Participants

##### 1. Purpose and Context of Proposed Rule

Today's proposed rule would allow large quantity hazardous waste generators (generators of 1000 kilograms or greater of non-acutely hazardous waste or more than 1 kilogram of acute

hazardous waste) that have been accepted into the Gold Track Program to accumulate their hazardous wastes on-site for up to 180 days without having to obtain a RCRA permit.

Participating large quantity generators would also be allowed to accumulate their hazardous waste on-site for up to 270 days if they must transport the waste, or offer the waste for transport, a distance of 200 miles or more. The current requirements under 40 CFR part 262 for large quantity generators (LQGs) limit the amount of time hazardous waste can be accumulated on-site without a RCRA permit. Under 40 CFR 262.34, LQGs may accumulate any quantity of hazardous waste on-site for up to 90 days without having to obtain a RCRA permit.

EPA requests comments regarding its proposal to provide participating Gold Track generators 180 days (or 270, if applicable) to accumulate their hazardous waste on-site without a RCRA permit. Today's proposed rule would not make any changes to the existing conditions for the 90-day accumulation period for generators under the current regulations, and EPA is not requesting comment on 40 CFR 262.34.

## 2. Rationale for Allowing Gold Track Facilities 180 Days (or 270 Days) To Accumulate Waste

Today's proposed rule is designed to assist EPA in learning more about appropriate hazardous waste generator accumulation times that may optimize the ability of generators to carry out activities incidental to the generation of hazardous waste. EPA intends that this project will yield information regarding typical and appropriate generator activities—such as accumulating hazardous waste prior to sending it off-site for waste management—and the time periods appropriate for carrying out such activities. EPA believes that additional accumulation time may allow generators to accumulate enough waste to make transportation to a waste management facility more cost-effective and efficient. EPA also believes that additional accumulation time may reduce the movement and handling of hazardous waste and also reduce the amount of air pollution created and transportation related safety concerns through more frequent truck trips.

Given the strict screening requirements of the Gold Track Program, only facilities of very high environmental caliber would be allowed to take advantage of the additional accumulation time flexibility, thus EPA believes this limited flexibility should

not result in any additional risk to public health or the environment.

In order to evaluate the potential effects of additional accumulation time, EPA and NJDEP would be able to request specific information from participating facilities (including hazardous waste manifests, operating and recycling records, inspection logs for the container/tank areas, waste generation rates, etc.), and hold informational meetings with facility staff as may be necessary to track progress and measure performance of longer accumulation time limits.

The 180 days (or 270 days, if applicable) accumulation time limit was also cited as a very desirable flexibility by industry stakeholders during the Gold Track Final Project Agreement negotiation process. This flexibility is seen as an incentive that rewards Gold Track facilities for undertaking the economically costly commitments (*see* Table 1 in Section II.D.) that are required for Gold Track participation.

## 3. Protective of Human Health and the Environment

The provisions of today's proposed rule would ensure that on-site accumulation of hazardous waste for up to 180 days (270 days, if applicable) is protective of human health and the environment. As mentioned previously, the strict screening requirements of the Gold Track Program ensure that only facilities of very high environmental caliber will be allowed to take advantage of the additional accumulation time flexibility, thus EPA believes this limited flexibility should not result in any additional risk to public health or the environment.

In addition, all the conditions that apply to 90-day accumulation of any hazardous waste will apply to the 180 day (or 270 day, if applicable) accumulation of hazardous waste by participating Gold Track generators (*See* Section IV.B.4. below). The requirements include that hazardous waste must be stored in accordance with the performance standards of 40 CFR parts 265, subparts I and J for containers and tanks, respectively. Gold Track participants would also be required to manage materials in accordance with the secondary containment standards (or alternative) for containers with free liquids as described at § 264.175. Secondary containment provides an added level of safety by ensuring that if the tank or container leaks, the release is captured by an impermeable base or second exterior tank wall. In addition, the Air Emission requirements under subparts AA, BB and CC are included in subparts I and J of 40 CFR part 265.

## 4. Additional Accumulation Time for Transport Over 200 Miles

Under today's proposed rule, participating Gold Track generators would have up to 270 days to accumulate their hazardous waste on-site without a RCRA permit or interim status if the generator must transport the waste, or offer the waste for transport, a distance of 200 miles or more. The generator would still be required to comply with all other conditions for accumulating hazardous waste under Gold Track, including the more stringent accumulation requirements noted above.

EPA believes that additional accumulation time under circumstances where a generator must send its hazardous waste a distance of 200 miles or more may be necessary and appropriate to allow sufficient time to accumulate enough waste to make long-distance transport more cost-effective and efficient. EPA also believes that the additional accumulation time may reduce the movement and handling of hazardous waste and also reduce the amount of air pollution created and transportation related safety concerns through more frequent truck trips.

As part of the Gold Track covenant agreement between the Gold Track participant and the NJDEP, a generator in the Gold Track Program would need to identify and keep inventory records for wastes to be shipped to an off-site facility that is located more than 200 miles away.

## 5. Summary of Applicable Management Standards

Under today's proposed rule, the same, or more stringent standards applicable to 90-day on-site accumulation of hazardous waste under 40 CFR 262.34, other than the length of time that large quantity generators hazardous waste can accumulate that waste on-site without a RCRA permit, would apply to 180-day (or 270-day, as applicable) accumulation of hazardous waste. These include technical standards for units used to accumulate hazardous wastes, recordkeeping standards to document the length of time hazardous wastes are accumulated on-site, preparedness and emergency response procedures, and personnel training. EPA is not proposing to change any of these existing standards as they would apply to generators participating in Gold Track.

The Agency would like to note, however, that the longer additional accumulation time may impact each participating generator's implementation of some of these

provisions. For example, in order to be in compliance with proposed 40 CFR 262.120 (which incorporates the existing general site operation provisions), generators accumulating hazardous waste on-site under the terms of today's proposal may need to consider whether their current general site operation procedures (e.g., personnel training, contingency planning) should be modified in light of having more hazardous waste on-site than they would under the 90-day limit. The existing management standards as they would apply to Gold Track generators of hazardous waste under this proposed rule are summarized below. EPA requests comments on these standards only as they would apply to participating Gold Track generators accumulating their hazardous waste for 180 or 270 days.

(i) *Accumulation Units*: A large quantity generator would only be able to accumulate hazardous waste on-site for up to 180 days (or 270 days, if applicable) in tanks or containers which comply with the unit-specific technical standards of 40 CFR part 265 for containers (subpart I) and tanks (subpart J). These unit-specific standards would include provisions for the design, installation and general condition of each unit. The requirements governing each type of unit would also include standards for ensuring the compatibility of the waste and the unit and special requirements for ignitable, reactive or incompatible wastes. In addition, there would be provisions for performing inspections to monitor for leaks and deterioration of the unit and for proper response to and containment of releases. For example, the container holding hazardous waste would be required to be closed except when adding or removing waste and the container could not be handled in a manner that may cause it to rupture or leak. Participating Gold Track generators that comply with the applicable regulatory provisions would be able to treat and/or recycle the waste in the accumulation unit without a RCRA permit during the 180-day (or 270-day, if applicable) accumulation period. (See, e.g., 51 FR 10168, March 24, 1986).

(ii) *Measures to Ensure Wastes are not Accumulated for More Than 180 (or 270) Days*: Participating Gold Track generators operating under the terms of today's proposed rule would also be required to comply with provisions which help ensure that the length of time the wastes remain on-site in certain accumulation units would not exceed 180 days (270 days, if applicable) from the date the waste is generated. For those accumulating waste in containers,

the date upon which each period of accumulation begins would be required to be clearly marked and visible for inspection on each container.

(iii) *Labeling and Marking Accumulation Units*: Participating Gold Track generators operating under the terms of today's proposed rule would be required to clearly label or mark each tank or container used to accumulate hazardous waste with the words "Hazardous Waste".

(iv) *Preparedness and Prevention*: Participating Gold Track generators who accumulate waste on-site under the terms of today's proposed rule for up to 180 days (or 270 days, as applicable) would be required to comply with subpart C of part 265 which contains standards for facility preparedness and prevention. Participating generators would be required to maintain their facilities in a manner that minimizes the possibility of fire, explosion, or any unplanned release of hazardous waste or hazardous waste constituents to the environment.

Participating generators would also be required to ensure that their facilities are equipped with emergency devices, such as an internal communications or alarm system, a telephone or other device capable of summoning emergency assistance, and appropriate fire control equipment, unless none of the wastes handled at the generation site requires a particular kind of equipment. Equipment would be required to be tested and maintained, as necessary, to assure its proper functioning.

All persons involved in hazardous waste handling operations would be required to have immediate access to either an internal or external alarm or communications equipment, unless such a device is not required.

Additionally, under the terms of today's proposed rule, participating generators would be required to maintain sufficient aisle space to allow for the unobstructed movement of personnel and equipment to any area of the facility operations in an emergency, unless aisle space is not needed for any of these purposes. Participating generators would also be required to attempt to make arrangements with police, fire departments, state emergency response teams, and hospitals, as appropriate, to familiarize these officials with the layout of the generator's site and the properties of each type of waste handled at the site in preparation for the potential need for the services of these organizations. If state or local authorities decline to enter into such arrangements, the owner or operator would be required to document the refusal.

(v) *Contingency Plan and Emergency Procedures*: Participating generators who accumulate hazardous waste on-site for up to 180 days (or 270 days, as applicable) under the terms of today's proposed rule would be required to comply with the contingency plan and emergency procedures provisions of 40 CFR part 265, subpart D. The contingency plan would be required to include, where necessary, a description of the generator's planned response to emergencies at the facility, any arrangements with local and state agencies to provide emergency response support, a list of the generator's emergency response coordinators, a list of the generator's emergency equipment, and an evacuation plan. Requirements for distributing and amending the contingency plan would also be specified. In addition, a facility emergency coordinator would be required to either be present, or on call, whenever the facility is in operation.

Provisions for emergency procedures would include immediate notification of employees and local, state, and Federal authorities of any imminent or actual emergencies; measures to preclude the spread of fires and explosions to other wastes; proper management of residues; rehabilitation of emergency equipment and notification of authorities before operations are resumed; and recordkeeping and reporting to NJDEP or EPA on the nature and consequences of any incident that requires implementing the contingency plan.

(vi) *Personnel Training*: As proposed in today's rule, generators participating in Gold Track who accumulate hazardous waste on-site for up to 180 days (or 270 days, as applicable) would be subject to the provisions for personnel training in 40 CFR 265.16. These requirements are designed to ensure that personnel are adequately prepared to manage hazardous waste and respond to any emergencies that are likely to arise.

Personnel training could be in the form of on-the-job or classroom training, but would have to be performed by an instructor who is trained in hazardous waste management procedures. Personnel training would have to be performed within six months of initial employment and must be renewed annually. A participating generator would also be required to maintain records in accordance with 40 CFR 265.16(d) to document completion of the training requirements for employees.

#### 6. Special Conditions for Gold Track Generators Accumulating Hazardous Waste For Up to 180 (or 270) Days

In addition to complying with the management standards currently applicable to 90-day accumulation of hazardous waste (described above), Gold Track generators would also have to comply with several conditions unique to this XL project in order to accumulate their hazardous waste for up to 180 (or 270) days.

Gold Track generators would be required to make information (such as manifests, costs, environmental releases) available to NJDEP as may be necessary to track the progress and measure the impact of longer accumulation times. If requested, Gold Track generators would also be required to participate in informational meetings with NJDEP. Collecting this information from the Gold Track generators would ensure that NJDEP and EPA would have data that provides a basis for evaluating the impacts of longer accumulation time, including whether it may optimize the ability of the generators to carry out activities incidental to the generation of hazardous waste. In addition, Gold Track generators would be required to notify NJDEP, in writing, of their intent to accumulate hazardous waste for up to 180 (or 270) days. This notification would assist NJDEP and EPA in the tracking and information gathering activities associated with this flexibility.

Additionally, as previously mentioned, participating Gold Track generators accumulating their hazardous waste up to 180 days (270 days if applicable) in containers would be required to comply with § 264.175, which does not currently apply to generators accumulating hazardous waste. Section 264.175 imposes "secondary containment" requirements on containers holding hazardous waste. Compliance with § 264.175 would provide an added level of protection against releases to the environment by ensuring that any leaks from the containers storing the waste would be contained in the accumulation area.

#### C. State Authority—Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize a qualified State to administer and enforce a hazardous waste program within the State in lieu of the federal program, and to issue and enforce permits in the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, a State continues to have enforcement responsibilities under its law to pursue

violations of its hazardous waste program. EPA continues to have independent authority under RCRA sections 3007, 3008, 3013, and 7003.

After authorization, Federal rules written under RCRA provisions that predate the Hazardous and Solid Waste Amendments of 1984 (HSWA), no longer apply in the authorized state. The legal obligations imposed pursuant to RCRA provisions predating HSWA do not take legal effect in an authorized state until the state adopts the provisions under state law.

In contrast, under sections 3004 and 3006(g) of RCRA, new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time they take effect in non-authorized States. EPA is directed to carry out HSWA requirements and prohibitions in authorized States until the State is granted authorization to do so.

Today's proposed rule is not promulgated under HSWA authorities. Consequently, the final rule will not amend the authorized program for the State of New Jersey upon promulgation, and EPA will not implement the rule. The authorized RCRA Program will change when EPA approves New Jersey's application for a revision to its RCRA Program.

For the proposed Gold Track Rule, EPA encourages NJDEP to expeditiously adopt Gold Track regulations and begin program implementation. To revise the federally-authorized RCRA Program, NJDEP would need to seek formal authorization for the Gold Track Rule after program implementation.

It is EPA's understanding that New Jersey intends to develop appropriate legal mechanisms to implement today's rule and that it will be seeking RCRA authorization for the program. At the same time, EPA expects that the state will begin implementing its program as soon as it is allowable under state law, while the RCRA authorization process proceeds. To ensure prompt implementation of the project, EPA encourages the state to take this approach.

### V. Additional Information

#### A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this proposed rule will be significantly less than \$100 million and will not meet any of the other criteria specified in the Executive Order, it has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review.

#### B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the



regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Moreover, the proposed rule will not impose any requirements on small entities. Gold Track is a voluntary program that offers sources flexibility in complying with regulatory requirements. We expect applications only from firms which have determined that the benefits of their participation will outweigh the costs. We have therefore concluded that today's proposed rule will relieve regulatory burden for any small entities that choose to participate in this voluntary program. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

#### C. Paperwork Reduction Act

This proposed rule will only apply to a maximum of nine facilities, and therefore requires no information collection activities subject to the Paperwork Reduction Act. Therefore, no information collection request (ICR) will be submitted to OMB for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

#### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205

allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Given that participation in Gold Track is purely voluntary, the proposed Gold Track rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, because this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments, it is not subject to UMRA section 203.

#### E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant," as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The portions of this proposal that would amend the current CAA regulations are not subject to Executive Order 13045 because the EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that

the analysis required under section 5-501 of the Order has the potential to influence the regulation. These portions of this proposal are not subject to Executive Order 13045 because they are based in part on technology performance and in part implement previously promulgated health or safety based standards, the National Ambient Air Quality Standards (NAAQS). In addition, they are not subject to Executive Order 13045 because they are not economically significant as defined by Executive Order 12866.

The portions of this proposal that would amend the current RCRA regulations are not subject to Executive Order 13045 because they are not economically significant regulatory actions as defined by Executive Order 12866, and the Agency does not have reason to believe the environmental health risks or safety risks addressed by these actions would present a disproportionate risk to children.

The proposal to provide participating Gold Track generators with up to 180 (or 270) days accumulation time includes a condition that such generators follow the current waste management standards for large quantity generators accumulating hazardous waste on-site without a RCRA permit. Similarly, the proposal to allow waste generators to obtain variances from the definition of solid waste contains several conditions. These provisions are discussed in detail in Section IV of this preamble. EPA believes that these provisions are protective of human health and the environment and minimize the likelihood of exposure to hazardous waste held in accumulation units. For this reason, EPA believes that the proposed 180 (or 270) day accumulation time and the proposed solid waste variances would not result in increased exposures to children.

#### F. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The portions of this proposal that would amend the current RCRA regulations do not have federalism

implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. These portions of the proposed rule are less stringent than the existing federal RCRA Program, and RCRA authorized states are only required to modify their programs when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. Similarly, the portions of this proposal that would amend the current CAA regulations do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. They provide facilities that receive regulatory flexibility from their state with similar flexibility under federal law. Thus, the requirements of Section 6 of this Executive Order do not apply to this proposal. Although section 6 of the Order does not apply to this rule, EPA consulted extensively with State officials, as noted throughout today's proposed rule and in particular in section II.C., above.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

#### *G. Executive Order 13175: Consultation and Coordination With Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship

between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This proposed rule affects only private entities. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

#### *H. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standard. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

#### *I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

#### **List of Subjects**

##### *40 CFR Part 51*

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

##### *40 CFR Part 52*

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

##### *40 CFR Part 261*

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

##### *40 CFR Part 262*

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

##### *40 CFR Part 264*

Environmental protection, Air pollution control, Hazardous waste insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

##### *40 CFR Part 265*

Environmental protection, Air pollution control, Hazardous waste insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

##### *40 CFR Part 270*

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: March 28, 2002.

**Christine Todd Whitman,**  
*Administrator.*

For the reasons set forth in the preamble chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

#### **PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS**

1. The authority citation for part 51 continues to read as follows:

**Authority:** 42 U.S.C. 7401-7671q.

2. Section 51.165 is amended:
  - a. By adding a new sentence to the end of paragraph (a)(1)(ii).
  - b. By adding a new paragraph (a)(1)(v)(C)(10).

The additions read as follows:

#### **§ 51.165 Permit requirements.**

(a) \* \* \*

(i) \* \* \*

(ii) \* \* \* Until [DATE EIGHTEEN YEARS FROM THE DATE THAT THE FEDERAL FINAL RULEMAKING BECOMES EFFECTIVE], this definition does not apply to combined heat and power (CHP) facilities in the State of New Jersey that are participants in the New Jersey Gold Track Program set forth in Subchapter 2 of the N.J.A.C 7:1M.

\* \* \* \* \*

(v) \* \* \*

(C) \* \* \*

(10) Until [DATE EIGHTEEN YEARS FROM THE DATE THAT THE FEDERAL FINAL RULEMAKING BECOMES EFFECTIVE], changes (including the addition of new emissions units or changes to existing emissions units) at stationary sources in the State of New Jersey that are participants in the New Jersey Gold Track Program set forth in Subchapter 2 of the N.J.A.C 7:1M, provided the stationary source emits within the annual emissions limitations (caps) established under the New Jersey Gold Track Program.

\* \* \* \* \*

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et. seq.*

3. Section 52.1603 is amended by:

a. Adding text to the end of paragraph (b).

b. Adding paragraphs (c) and (d).  
The additions read as follows:

### § 52.1603 Significant deterioration of air quality.

\* \* \* \* \*

(b) \* \* \* except as provided in paragraphs (c) and (d) of this section.

(c) Until [DATE EIGHTEEN YEARS FROM THE DATE THAT THE FEDERAL FINAL RULEMAKING BECOMES EFFECTIVE], for stationary sources in the State of New Jersey that are participants in the New Jersey Gold Track Program set forth in Subchapter 2 of the N.J.A.C 7:1M:

(1) Changes (including the addition of new emissions units or changes to existing emissions units) at a stationary source are not physical changes or changes in the method of operation and therefore are not major modifications as otherwise defined in 40 CFR 52.21(b)(2), provided the stationary source emits within the annual emissions limitations (caps) established under the New Jersey Gold Track Program.

(2) “The date on which the annual emissions limitation (cap) established

under the New Jersey Gold Track Program became effective, not to exceed 15 years before construction on the particular change commences; and” applies instead of 40 CFR 52.21 (b) (3) (ii) (a).

(d) Until [DATE EIGHTEEN YEARS FROM THE DATE THAT THE FEDERAL FINAL RULEMAKING BECOMES EFFECTIVE], 40 CFR 52.21 (b) (6) does not apply to combined heat and power (CHP) facilities in the State of New Jersey that are participants in the New Jersey Gold Track Program set forth in Subchapter 33 of the N.J.A.C. For such CHP facilities, “building, structure, facility, or installation” includes both the CHP facility itself and heating/cooling equipment at the facility to which the CHP facility supplies electricity and heating/cooling (“the CHP energy user”), provided that there is a contractual agreement between the CHP facility and the CHP energy user which states that the emissions reductions from shutting down or curtailing the heating/cooling equipment at the CHP energy user are to be credited to the CHP facility, rather than the CHP energy user.

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

2. Section 261.4 is amended by adding paragraph (a)(20) to read as follows:

### § 261.4 Exclusions.

(a) \* \* \*

(20) Secondary materials (*i.e.*, sludges, by products, and spent materials as defined in § 261.1) that are reclaimed and/or reused are excluded from the definition of solid waste for facilities participating in the New Jersey Gold Track Program with a signed and approved covenant with NJDEP provided that:

(i) The secondary material is not destined to be burned for energy recovery or used in a manner constituting disposal as described in § 261.2(c)(1) and § 261.2(c)(2);

(ii) The secondary material is not inherently waste-like as described in § 261.2(d);

(iii) The generator in the Gold Track Program applies to the Director, as appropriate, supplying the following information: the types and composition of material(s) to be recycled; a description of the recycling to be conducted; and its assessment, including supporting information that

the material will be legitimately recycled and the locations where storage and recycling will occur;

(iv) The Director makes a site specific determination that the material will be legitimately recycled to recover material values;

(v) The generator in the Gold Track Program informs and receives approval from the Director regarding the waste streams, recycling process and location identified in paragraph (a)(2)(iii) of this section;

(vi) Any on-site accumulation or storage of the secondary material prior to recycling takes place only in tanks and containers as defined in 40 CFR 260.10. Accumulation and storage in containers must comply with the requirements of subpart I of 40 CFR part 265 and secondary containment requirements found in 40 CFR 264.175. Accumulation and storage in tanks must comply with the requirements of 40 CFR part 265, subpart J. No restrictions on speculative accumulation as defined in §§ 261.1 and 261.2(c)(4) apply;

(vii) Containers and tanks at the generator’s facility used to accumulate or store materials subject to this exclusion are labeled to properly identify the contents and the date the material was originally placed into the container, and records are kept for each container and tank indicating the contents and date the material was placed in the tank or container;

(viii) The generator of the excluded materials submits an annual report documenting recycling activities that shall specify:

(A) The amount of excluded material in inventory at the facility at the time the flexibility specified at N.J.A.C. 7:2733 is granted to the facility;

(B) The amount of excluded material generated during each twelve month period after the exclusion takes effect;

(C) The amount of excluded material recycled during the same twelve-month period;

(D) A description of how the excluded material was recycled; and

(E) Any significant changes in the excluded material wastestream, the recycling processes used, and the location of recycling sites.

(ix) If a participating entity withdraws from the Gold Track Program prior to the expiration of its exclusion, or if NJDEP terminates an entity’s participation prior to such expiration, the entity must return to compliance with all otherwise applicable hazardous waste regulations as soon as practicable but no later than six months after the date of withdrawal or termination.

(x) This section will expire eighteen years after the federal rulemaking

becomes effective; or earlier, if either New Jersey or EPA terminates the program and EPA promulgates a rule removing these provisions from the Code of Federal Regulations.

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**PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE**

1. The authority citation for part 262 continues to read as follows:

**Authority:** 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

2. Part 262 is amended by adding subpart K consisting of § 262.120 to read as follows:

**Subpart K—New Jersey Gold Track Program XL Project**

**§ 262.120 Standards applicable to generators of hazardous waste participating in the New Jersey gold track program.**

(a) A generator participating in Gold Track with a signed and approved covenant agreement with NJDEP and who generates greater than 1000 kilograms of hazardous waste per calendar month or 1 kilogram of acute hazardous waste as listed in 40 CFR 261.31, 261.32, and 261.33(e.), may accumulate that hazardous waste onsite for more than 90 days, but not more than 180 days without a permit or without having interim status provided that:

(1) The waste is placed:

(i) In containers and the generator complies with the applicable requirements of subpart I, of 40 CFR part 265; and 40 CFR 264.175; and/or

(ii) In tanks, and the generator complies with applicable requirements in subparts J, of 40 CFR part 265 except §§ 265.197(c) and 265.200;

(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words “hazardous waste”;

(4) The generator complies with the requirements for owners or operators in Subparts C and D in 40 CFR part 265, with § 265.16, and with 40 CFR 268.7(a)(5). In addition, such a generator is exempt from all the requirements in subparts G and H of 40 CFR part 265, except for §§ 265.111 and 265.114;

(5) The generator notifies the Director in writing of its intent to accumulate its hazardous waste in accordance with this section; and

(6) The generator makes information (such as manifest, costs, environmental

releases) available to the Director and, if requested, participates in informational meetings with the Director as may be necessary to track progress and measure the impact of longer accumulation time limits.

(b) A generator participating in Gold Track and who generates greater than 1000 kilograms of hazardous waste or 1 kilogram of acute hazardous waste as listed in 40 CFR 261.31, 261.32, and 261.33(e.) per calendar month and who must transport this waste, or offer this waste for transportation over a distance of 200 miles or more may accumulate that hazardous waste onsite for more than 90 days, but not more than 270 days without a permit or without having interim status if the generator complies with the requirements of paragraphs (a)(1) through (a)(6) of this section.

(c) A generator accumulating hazardous waste in accordance with paragraphs (a) and (b) of this section who accumulates that hazardous waste onsite for more than 180 days (or for more than 270 days if the generator must transport this waste or offer the waste for transportation over a distance of 200 miles or more), is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264 and 265 and the permit requirements of 40 CFR part 270 unless the generator has been granted an extension to the 180 day (or 270 days if applicable) limit. An extension of up to 30 days may be granted at the discretion of the Director on a case-by-case basis. Such 30 day extensions may be granted by the Director if hazardous waste must remain onsite for longer than 180 days (or 270 if applicable) due to unforeseen, temporary, and uncontrollable circumstances.

(d) If a participating entity withdraws from the Gold Track Program prior to the expiration of its exclusion, or if the Director terminates an entity’s participation prior to such expiration, the entity must return to compliance with all otherwise applicable hazardous waste regulations no later than six months after the date of withdrawal or termination.

**PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES**

1. The authority citation for part 264 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. Section 264.1 is amended by adding paragraph (g)(13) to read as follows:

**§ 264.1 Purpose, scope and applicability.**

\* \* \* \* \*

(g) \* \* \*

(13) A generator participating in the Gold Track Program with a signed and approved covenant agreement with NJDEP storing or accumulating hazardous waste in accordance with 40 CFR 262.120.

\* \* \* \* \*

**PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES**

1. The authority citation for part 265 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937 unless otherwise noted.

2. Section 265.1 is amended by adding paragraph (c)(16) to read as follows:

**§ 265.1 Purpose, scope, and applicability.**

\* \* \* \* \*

(c) \* \* \*

(16) A generator participating in the Gold Track Project with a signed and approved covenant agreement with NJDEP storing or accumulating hazardous waste in accordance with 40 CFR 262.120.

\* \* \* \* \*

**PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM**

1. The authority citation for part 270 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.1 is amended by adding paragraph (c)(2)(x) to read as follows:

**§ 270.1 Purpose and scope of these regulations.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(x) A generator participating in the Gold Track Project with a signed and approved covenant agreement with NJDEP storing or accumulating hazardous waste in accordance with 40 CFR 262.120.

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