

US EPA ARCHIVE DOCUMENT

**PROJECT XL RCRA-SPECIFIC ADDENDUM
FOR THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION
GOLD TRACK PROGRAM FOR ENVIRONMENTAL PERFORMANCE**

I. Purpose of the Addendum

This RCRA-Specific Addendum to the Gold Track Project XL Final Project Agreement (Agreement) is a joint statement of the plans, intentions and commitments of the United States Environmental Protection Agency (USEPA) and the New Jersey Department of Environmental Protection (NJDEP) to carry out the RCRA-specific phase of Gold Track.

This Addendum does not create legal rights or obligations and is not an enforceable contract or a regulatory action such as a permit or a rule. This applies to both the substantive and the procedural provisions of this Addendum. While the parties to the Addendum fully intend to follow these procedures, they are not legally obligated to do so. Any commitment described in this Addendum as enforceable will be so implemented and become effective through a legal implementing mechanism such as a rule and/or a permit.

II. Commitments

1. Container and tank accumulation areas at the generating facility for hazardous waste and materials destined for recycling that would otherwise be classified as hazardous wastes must be managed in accordance with the requirements of 40 CFR 264 Subpart I for containers and 40 CFR 264 Subpart J for tanks.
2. Containers used to manage materials exempted under Flexibility #1 below must be labeled to properly identify the contents and indicate the date the material was originally placed into the container. Companies must also comply with any other substantive regulatory requirement that would normally be applicable to the containers or tanks. Records must be maintained for each container or tank used to manage these materials, and must indicate the contents as well as the date the material was originally placed in that container or tank.

III. Regulatory Flexibility

1. An exemption from the definition of solid waste for materials that would otherwise be listed or characteristic hazardous wastes may be obtained from the Department for materials destined for recycling. The Department must make a waste stream specific evaluation to ensure that only legitimate recycling of materials takes place and not sham recycling. This exemption may not be utilized for inherently waste-like materials as described in 40 CFR 261.2(d) or for materials used in a manner constituting disposal, used to produce products that are applied to the land, burned for energy recovery, used to produce a fuel, or contained in fuels. Materials eligible for this exemption may not be stored on the land at any time prior to recycling; in addition, at the generating facility,

eligible materials may be stored only in tanks and containers meeting Part 264 standards as described above. The Department will evaluate each request for exemption by using the EPA guidance [Criteria for Evaluating Whether a Waste Is Being Recycled](#).⁶ In order for a facility to take advantage of this regulatory flexibility, the facility as part of the covenant agreement process must apply for this exemption. The facility must:

- Provide a detailed description of the waste stream and its composition
- Describe the recycling to be conducted and the sites where storage and recycling would occur, and
- Compare the recycling proposed with the EPA guidance.

The Department may grant a waste stream specific exemption only if it determines that legitimate recycling is being proposed based upon evaluation of the above criteria. The Department must be informed of any changes in the wastestream, recycling processes used, or recycling location, and must approve the continued applicability of this flexibility.

The covenant agreement will also include the submission of an annual report by each facility that is granted this flexibility. The annual report will specify:

- The amount of exempt material in inventory at the facility at the time the flexibility 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.

This flexibility is provided to encourage recycling of materials that must be otherwise managed as hazardous waste. Exempting these materials from hazardous waste management requirements may encourage recycling and/or make recycling more economically attractive.

2. The accumulation time limit for generators that accumulate hazardous waste in containers and tanks would be increased from its current limit of 90 days to 180 days (or 270 days if shipping greater than 200 miles). Secondary containment for containers is not required under existing regulations for hazardous waste generators; however, since Gold Track facilities are required to manage container accumulation areas in accordance with the standards of RCRA permitted storage area requirements, specifically 40 CFR 264 Subparts I, the result is that under Gold Track, secondary containment requirements would apply to accumulation containers.

The additional accumulation time provided by this flexibility will reduce the number of hazardous waste shipments traveling over public roads because generators can aggregate hazardous wastes they generate over 180 days instead of 90 days. Accident potential, fuel consumption, and truck emissions may also decline. Gold Track facilities that intend to implement this regulatory flexibility must notify the Department prior to implementation. At the request of NJDEP and USEPA, Gold Track facilities that use this regulatory flexibility agree to make information available (e.g., manifests), and if necessary participate in information meetings with NJDEP and USEPA staff or their representatives, as may be necessary to track progress and measure performance of extended accumulation time limits at their facilities.

3. Gold Track facilities have the option of selecting Clean Air Act (CAA) recordkeeping and monitoring requirements over RCRA recordkeeping and monitoring requirements for equipment subject to regulation under both the CAA and Subparts AA, BB or CC of 40 CFR 264 or 265 of RCRA. This flexibility will allow for consistency between RCRA and CAA for equipment subject to both regulatory programs, as provided by:

- Subpart AA - 40 CFR 264/265.1030(e),
- Subpart BB - 40 CFR 264/265.1064(m),
- Subpart CC - 40 CFR 264/265.1080(b)(7), and
- Subpart CC - 40 CFR 264/265.1089(j)(1)&(2).

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