Silver Track II / Gold Track Stakeholder Meeting
April 27, 2000

Attendees – See attached.

Handouts –

- DRAFT Project XL Final Agreement (4/27/00), DRAFT Project XL Air-Specific Addendum (4/27/00)

- Gold Track Facility Proposal for an Emission Cap, May 16, 1995 Potential to Emit for MACT Standards – Guidance on Timing Issues (Memo from John Seitz, EPA Director to the regions)

- March 23, 2000 Applicability of the May 16, 1995 memo for Subpart T Sources who become non-major after the compliance date of the standard (memo from William T. Harnett, Acting EPA director to John Courcier EPA Region 1 Air Permit Program Manager)

- Waste Management Update

- List of Announcements

- DRAFT Recordkeeping and Reporting Concept from DEP: Basic Ingredients

Announcements

- 120 Day Letter – The Department will be distributing the letter to Deputy Regional Administrator Muzinski from Mark Smith on 120 Day and MACT recordkeeping relief.

- Number of Gold Track Participants – Commissioner Shinn suggested that this be limited to around 10

- Gold Track Base Requirements- The Gold Track base requirements will be condition precedent to program entry NOT as contingency measures if the emissions cap is exceeded. The Department will review flexibility on Energy Procurement Aspects.

- Silver Track – The acceptance letters for the first Silver Track Candidates that has passed the admission criteria will be sent soon. Lakehurst Naval Station, ITT, National Guard that have been accepted. The Department is currently reviewing the Ocean County Landfill application. A draft covenant for has been put together and will accompany the acceptance letters.

- Silver Track II- The solicitation of interest document will be shortly. Rulemaking will be concurrent with the initiation of this program. There were concerns expressed

that rulemaking will supercede the covenant and that there is uncertainty inherent in this process that would make it difficult to commit to it.

- Chief of Staff Transition – Gary Sondermeyer will be transitioning into the Chief of Staff job currently held by Mark Smith. This will occur on May 8th. Gary will continue to chair these discussions. He will also be retaining his Assistant Commissioner duties until a replacement is named.

- Deputy Commissioner Transition – Bob Tudor has been promoted to the Deputy Commissioner post responsible for overseeing the Land Use, Environmental Planning and Science, and Natural and Historic Resources programs. He will also continue to oversee his Assistant Commissioner duties until a replacement is named.

Gold Track Meetings - Air issues will be discussed at part of next week's meeting. Five meetings remain: 2 to discuss RCRA issues, 2 to discuss water issues, and 1 to wrap up the meetings.

Status of State Energy Procurement – This process is still ongoing. The objective is to have the State consider air quality in its energy procurement practices in much the same manner as recycling content was incorporated into State purchasing contracts. This may involve the disclosure of renewable energy sources and a set aside for renewable energy as a percentage of contracts.

Draft Recordkeeping and Reporting – The basic ingredients are as follows:

- Tailored Emissions Statement on Same Schedule as Currently Used
- Tailored Emissions Statement for Small Facilities (New Requirement for Participation)
- Greenhouse Gas Emissions Reductions: Outcome of use of Climate-Wise or Alternative Accounting System.
- Annual Covenant Report on Progress in Meeting Specified Goals (Simple Report Tied to Same Cycle as Annual Emissions Statement)
- Ongoing Requirement for Self Reporting of any Problems During the Year
- Five year Reassessment of Covenant: More Detailed Analysis of Compliance
- Generation of Quarterly Summary Reports of Community Outreach Meetings: Short and Simple Format (like meeting minutes)
- Annual Summary Report of Community Outreach Meeting: Same Cycle as Emissions Statement Report if Desirable
- Use of Covenant Document and Title V Operating Permit to Formally Set Forth the Schedule.

Some concerns were raised in regards to Climate-Wise given that there was only a brief demo given to the group and that some companies have not signed on to Climate-Wise. In particular, the level of detail from Climate-Wise or an alternate system is a concern. Would it be possible to do site-wide accounting where steam and electric usage are metered rather than account for each engine, etc.? The DEP responded that summary

reports are what they are looking for with this requirement. It was also pointed out that there is a difference between efficiency that relates more directly with green house gas (GHG) emission reduction and accounting. Industry feels that there needs to be a stronger linkage made between energy usage and GHG. They also felt that the rule should reference other ways of measuring this.

Alternative MACT reporting – EPA does not have this worked out yet.

There were concerns that the covenant and Title V permits should be distinct for enforcement purposes given that covenant submission could be held up by State requirements (i.e outreach, GHG etc.) One particular item of concern was having declining caps discussed in the permit especially for GHG's because there would be no"opt out" provision. However, criteria pollutant and HAP's need to be discussed in the permit since these are regulated by Title V.

Outreach – there was a discussion regarding what would be acceptable for compliance with the outreach provisions. It was suggested that meeting minutes be used (court stenographers are not necessary) because it would give the Department a better understanding of the quality of the outreach effort than just receiving the handouts and the agenda. The question was also raised as to what a 5-year assessment was as opposed to an annual assessment.

Cost Analysis – Is there some way of determining cost analysis? Does EPA have methodology? It was stated that this is not a strict cost analysis but rather a discussion of "why this program is important" and "what provides a company with the incentives to do this". **EPA** and **DEP** will look into this.

Compliance and Enforcement

Compliance Assistance Approach - It was suggested that a compliance assistance approach be taken to enforcement under Gold Track. This would entail a multi-media assessment visit after the covenant is signed and at reassessment.

Inspection Frequency – This is not public however, the following may be suggested:

> Mega Majors (i.e. DuPont Chambers Works, Mobil refinery, etc.) – once every three years with a document review.
>
> Majors – once every two years with a document review
>
> Synthetic Minors – once every 5 years with a document review

Currently penalties are gauged based on equipment type. This is designed to encourage equipment upgrades. Penalties are doubled for each violation. Clean slates are given every 5 years unless facilities are using CEM's or parametric monitoring in which case clean slates are given every quarter. Companies would like to see flexibility given in

assessing penalties. They would prefer that penalties be doubled for each violation by a piece of equipment rather than by each violation of a given subchapter.

Can you apply CMS to a single facility so that you don't have a facility multiplier for penalties?

It was suggested that the DPCC (no penalties for minor spills) or TCPA (follow-up with a schedule to correct minor things that need attention and are not repeat violations) models should be used with Gold Track. The approach should be more discussion based proactive, cooperative model. *This approach may not be possible given that the Legislature directs actions and there is not much flexibility with air emissions since they are not subject to the Grace Period Policy. In addition, minor violations are defined narrowly.*

If emission exceedances are something that the Department needs to show to the public that they are being controlled, can this be handled differently by Gold Track Companies since they are doing enhanced compliance? *The Department will look for appropriate circumstances (they can not get rid of penalties entirely) and will look at the Grace Period rule.*

It was also suggested that the Department look into the OSHA Star Program for insight into how they achieve compliance with less frequent inspections. **Alan** will provide the name of a contact at OSHA.

What will be the frequency of multi-media inspections? Will there be pre-notification since this requires a large effort at major facilities and has impacts on production? Will inspections be consolidated among DEP, EPA, and CEHA to the extent possible? **Cathy** will discuss this issue with her staff.

Concerns were raised that for large facilities, it is impossible to have 100% compliance with both major and minor items. (It was noted that it is possible to have compliance for major items.) Best practices for problem solving or established environmental management systems (EMS) should be considered. Why should companies self-report for minor items if there is an automatic penalty? Concerns were also raised that and EMS can bring out issues that are not required to be reported to the DEP. If this happens, what is DEP's expectation for involvement in these activities and would they receive automatic penalties for this? **Cathy** will discuss this with her staff.

<u>Eligibility Criteria</u>

The eligibility criteria are no significant high priority violations. For air this means no non-minor violations. For water, this is no significant non-compliance.

There needs to find a way to address those facilities that have CEM's versus those with five-year stack tests.

The Department will work with facilities to pre-determine eligibility. The Department will look for positive trends and will consider the size of the facility. There is reluctance to set "bright line" tests for numbers of violations.

Will DEP ask delegated authorities (CEHA) about violations?

Emissions Caps – Bill O'Sullivan provided some comments on the matrix submitted to the Department. The issues were not debated for lack of time. This document will be augmented with the DEP's position on these issues. Areas in which there is agreement and areas in which there is disagreement and/or gaps in understanding will be determined and sent out to participants. The next stakeholder meeting's discussion will be focused on these issues.

#1 – Cap Base – PSD set a precedent for using the last two years of data (unless two other years are more representative) for setting emissions caps.

#2 – Emission Cap – The PM10 significance level of 15 tons per year should be added. The caps for HAPs haven't been determined and the timing for setting these caps hasn't been determined either. It is possible that there may be triggers where the cap is set if the facility is over these levels. *Industry suggested that this be covenant-specific (i.e. a rural area versus and urban area with a risk assessment.)* SOTA de minimus requirements could be used as a trigger for setting a cap (i.e. no Cap if emissions are below de minimus levels.)

#3 – No NSR for New Equipment / Modifications below the Cap – The Department must use legislative de minimus requirements of less than 5 tons per year for exemptions from NSR. This is the upper limit that can be considered. This is only for criteria pollutants. NSR requirements will not be relaxed for HAPs.

#4 – Emission Cap relative to PTE – Current potential to emit (PTE) changes as equipment is upgraded to current RACT or MACT.

#5 (Old #6) – Adjust Cap – Cap increases should go through the NSR process since they may need modeling to address local impacts. More clarification is needed to show how the PTE declines by the application of SOTA.

#6 – When SOTA is applied - SOTA upgrades should be spread out over 15 years with 1/3 of upgrades happening during a given 5 year period. The game plan for deciding upgrade would happen at the signing of the covenant. This would take into account that SOTA may change over each 5-year period. Thus, SOTA may be redefined for equipment that is upgraded from one 5-year period to the next. This also assumes that there are no process changes.

#7 – Exclude recently upgraded equipment from a second application of SOTA – Once SOTA upgrades are performed, modifications to increase the PTE require NSR review. *Industry felt that this should be OK provided that the cap isn't exceeded.*

#8 – Upgrade to SOTA only once during the covenant- This should be clarified to state that SOTA upgrades are for all applicable pollutants. If there is an upgrade to SOTA and greater than 5 tons per year (greater than de minimus levels), then a review would be required.

#9 – Apply SOTA only to sources with significant emissions- There should be reporting thresholds for HAPS. *Industry wants a level playing field*.

#10 – Production increases and/or new facilities that result in a cap excedence – As per this morning's discussion, Green Energy and LEV can not be used as a contingency for increasing caps.

#11 – Recordkeeping requirements – More discussion is needed. In particular, the HAPs de minimus and risk modeling issues needs more discussion. In addition, the 7 day notice of a change if emissions are less than 5 tons per year (and an explanation of the changes) also needs to be resolved given that there are NJEMS modifications that would need to be made.

#12 – MACT known before Covenant – MACT is equivalent to SOTA for HAPs. Further clarification of "known at the start of the covenant period" is needed.

#13 – MACT adopted during covenant period before upgrade to SOTA, MACT is equivalent to SOTA.

#14 – MACT adopted during covenant period after upgrade to SOTA- EPA and DEP need more discussion on this item.

#15 – MACT counts as SOTA- MACT is not equivalent to SOTA for particulates.

#16 – HAP-only modeling – No comments on this item.

RCRA

More information is needed regarding where there are barriers that can be addressed and where additional flexibility can be achieved. Note: RCRA can refer to different media.

Leak Detection and Repair - There needs to be one system for leak detection and repair that provides for a single testing methodology and a consolidated report.

Waste Storage- The greater than 90-day storage rule applies only to metal finishers. There was some discussion of whether the "closed loop exemption" is a rule or a statue. It was pointed out that there are economic reasons why material that is properly controlled should be allowed on site more than 90 days (i.e. on-site recycling, accumulation of product that can be resold). Although there may be some interpretations that say that if something isn't considered a "waste", that the holding

times would not be in effect, there is concern that enforcement inspectors may not view this that way.

There was also some discussion of the Satellite Rule. More information is needed on this.

Could these issues be handed on a case-by-case basis in the covenant with broad language approved in the Gold Track discussion? If facilities do recycling, can they get credit for pollution prevention. *This is considered "out of process" recycling.*

If a waste is ignitable but not hazardous, can this be exempted from waste classification and disposed of as a fuel? *The Department will check on this to see if this is a statutory requirement.*

Industry will work on RCRA flexibilities and barriers. (They will also work on water issues, and DMR, RCRA Corrective Action, and POTW reporting.)

FPA and Covenant Legality

Clarification was requested on the legality of the FPA and a covenant. The FPA is an agreement between EPA and EPA and is not a legal document. The covenant is a non-binding legal agreement between DEP and a company, however, there is still on-going discussion regarding this within the Department.

Homework

EPA will continue to work on alternative MACT reporting.

EPA and Matt Polsky will look into whether there is any guidance on cost analysis.

DEP will review the Grace Period rule and determine where there are opportunities for flexibility in penalty actions.

Alan will provide the name of a contact at OSHA's Star Program.

DEP will determine how self-reporting and inspection frequency/consolidation will be handled.

DEP will provide more clarification on the scope of the records review for determining eligibility (will it include CEHA).

A list of common areas, areas of disagreement, and areas where there are gaps in information regarding emissions caps will be put together by the DEP and distributed prior to the next meeting.

Industry will put together a list of RCRA flexibilities and barriers, water issues, and reporting (DMR, RCRA Corrective Action, POTW, etc.) issues.

The Department will check on whether waste that is ignitable but not hazardous can be disposed of as a fuel. Is there a statutory requirement?

The DEP will continue to discuss covenant legality.

DEP will provide a copy of Mark Smith's 120 letter to EPA.

Russ will provide a copy of the "once in always in" policy letter written by John Seitz of EPA.

Meeting Schedule:

May 11th, May 25th, June 8th, June 22nd, June 29th

All meetings are in the multi-purpose room on the first floor of the Station Plaza building across from the Trenton Train Station and run from 9AM to 3PM.