



NEW JERSEY CHEMICAL INDUSTRY PROJECT

PROPOSED FRAMEWORK FOR A FLEXIBLE TRACK PROGRAM

Draft: May 7, 1997

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As a part of the New Jersey Chemical Industry Project Flexible Track Pilot, subgroup members (including representatives from state and federal regulatory agencies, industry, community/environmental groups and academic institutions) participated in a series of workshops and conference calls to develop a proposed framework for a flexible track program for batch chemical processors. Our discussions focused on the following three basic components of a flexible track program:

- The criteria for facility participation in a flexible track program;
- Incentives for facilities to participate in a flexible track program; and
- Community involvement in a flexible track program.

In this document, we present the outcome of the group's discussions of these components and combine them into a proposed framework for the program. In addition to presenting ideas raised during the our discussions, we have incorporated some concepts from other documents and efforts, including: (1) the Aspen Institute's Alternative Path document; (2) EPA's Metal Finishing Sector's Common Sense Initiative (Metal Finishing 2000); and (3) EPA's Environmental Leadership Program.

Objectives of the Flexible Track Program for Batch Chemical Processors

This project is an effort to address three primary concerns expressed by the Stakeholder group during the course of the New Jersey Chemical Industry Project. First, it responds to the ***lack of flexibility in the current system*** for firms to operate efficiently and implement improvements in environmental management. The current "one-size-fits-all" approach does not sufficiently account

for the characteristics of the batch chemical industry or for differences among firms in their compliance histories and their capacities for responsible environmental management. While the flexible track pilot project initially focuses on batch chemical operations because they are particularly vulnerable to the constraints imposed by this lack of flexibility, the long-term goal is to build a flexible track program that can be extended to other industry sectors.

Second, the flexible track project responds to the *lack of positive incentives for facilities to improve their environmental performance*. The current regulatory system includes negative incentives (e.g., punishing facilities for violating standards) yet lacks mechanisms for encouraging more effective environmental management.

Third, this project responds to the *lack of trust among regulators, facilities and communities*. This is a barrier to developing better working relationships and cooperative efforts among affected Stakeholders to achieve better environmental performance.

In developing this proposed framework for the flexible track program, we have attempted to meet the following objectives:

1. To provide incentives for batch chemical firms to achieve good environmental performance and to commit to maintaining and even continuously improving their performance.
2. To reduce the adverse environmental and quality of life impacts of batch chemical operations on surrounding communities and ecosystems.
3. To improve relationships among industry, communities and regulators with the ultimate goal of building the foundation for flexibility by increasing public and regulatory agency confidence in environmental management at batch chemical facilities.
4. To reduce the transaction costs and increase operational flexibility of batch chemical operations in order to achieve greater eco-efficiency.
5. To demonstrate how to design and implement an effective flexible track program that can be applied to other sectors and regions.

In the following chapters of this document, we present our proposed framework for a flexible track program. We begin by defining the structure of a flexible track program in Chapter 2. Next, we describe the qualifications for facility participation in the program in Chapter 3. This chapter also includes a discussion of the process of evaluating a facility's performance relative to these

qualifications. In Chapter 4, we describe the incentives for facilities to participate in a flexible track program. A clear understanding of these incentives is critical to achieving facility participation in the program. The final chapter of this document provides details on how to ensure effective community involvement in developing and implementing a flexible track program and identifies the potential impacts of the program from a community perspective. Effective community involvement is considered a critical aspect of a flexible track program.

The premise of this project is that different levels of environmental performance over time warrant different levels of regulatory oversight and control. Companies that have established their “creditworthiness” may earn additional flexibility in managing their environmental activities and are relieved of some of the reporting and other transaction costs of the current system. In return, companies commit to maintaining and improving their level of environmental performance over time and to providing information on their progress. The flexible track project is designed to provide incentives for companies to make these environmental commitments and to increase their capabilities to meet them. The public benefits through improved environmental management, more efficient use of government resources, reduced adverse environmental effects, increased potential for job retention through making companies more eco-efficient, and increased opportunity to get responses to specific environmental concerns or problems in the community.

Exhibit 2-1 presents a proposed framework for the program. The program will consist of two levels: an initial point of entry, the Silver Track, for facilities with a sustained pattern of compliance and an internal system to measure and maintain their environmental performance; and a Gold Track, for outstanding performers that have demonstrated their ability to perform in the Silver Track. To qualify for the Gold Track, facilities also must commit to exceeding environmental requirements or to maintaining their high level of performance and implementing one or more activities designed to further the goal of environmental protection, such as mentoring, product stewardship or continuous improvement in performance.

The proposed flexible track framework is also intended to provide incentives for facilities to improve their environmental performance. The benefits of participating in the flexible track program encourage companies to improve their compliance to a level that qualifies for entry into the Silver Track. The program should also create incentives for some facilities in the Silver Track to obtain additional operational flexibility by moving into the Gold Track.

By reducing routine oversight for flexible track facilities and granting them simplified permit requirements, this framework allows regulatory agencies to focus more of their resources on encouraging improved compliance among facilities that are having difficulty in meeting their

Exhibit 2-1

PROPOSED FRAMEWORK FOR FLEXIBLE TRACK PILOT PROGRAM

Category	Facility Qualifications	Benefits for Facilities	Benefits for Community
Gold Track	<ul style="list-style-type: none"> ● Proven record of performance in Silver Track. ● Actual performance is better than required (e.g., less emissions than allowed in permits) for a defined time period (e.g., one year). <p align="center">— OR —</p> <p>Commitment to maintain high level of environmental performance and implement additional activities to enhance environmental quality (e.g., continuous improvement, continuation of EMS, mentoring, product stewardship, increased energy/water efficiency, enhanced habitat conservation, additional monitoring related to environmental concerns of community).</p>	<ul style="list-style-type: none"> ● Site-specific agreement would specify benefits to be provided to the facility (e.g., increased permit flexibility, greater reductions in reporting, monitoring, and frequency of inspections beyond those available to Silver Track facilities, plus potential for additional flexibility in environmental management specifically suited to meet facility characteristics). 	<ul style="list-style-type: none"> ● Improved facility environmental performance. ● More effective allocation of government resources to address areas of greatest environmental concern. ● Increased potential for job retention and economic opportunity. ● Increased assurance of environmental safety.
Silver Track	<ul style="list-style-type: none"> ● Pattern of sustained compliance, any violations are rare and of little or no environmental significance. ● Implementation of internal systems to maintain environmental performance (e.g. EMS, community relations plan, performance measurement). ● Facilities will "apply" for admission to this track. 	<ul style="list-style-type: none"> ● Permit flexibility/simplification. ● Reduced routine oversight (e.g., requirements for reporting, monitoring and inspection frequency). ● Public recognition. 	<ul style="list-style-type: none"> ● Increased access to the regulatory process. ● Improved understanding of local environmental conditions.

environmental requirements. This includes those facilities that may be reasonably good compliers but need to improve in certain areas and facilities with documented significant and repetitive problems in compliance. These facilities could benefit from or may require compliance assistance and/or special enforcement scrutiny to help improve their compliance performance.

The principal measure for admission into the Silver Track is a pattern of "sustained compliance" over time.¹ The Gold Track gives companies an incentive to go beyond current performance expectations and an opportunity to demonstrate what comprises outstanding performance.

Companies decide whether or not to participate in the program. To participate, they apply for the Silver Track. The Gold Track is an option only for companies that first qualify for and perform according to their commitments under the Silver Track; however, facilities in the Silver Track are not required to move up to the Gold Track.

Those facilities not in the flexible track will continue to operate under the current regulatory system. We anticipate that these will include good environmental performers that could qualify but are not interested in participating in the program, as well as those facilities that are not qualified for the program because of deficiencies in their compliance records.

A final consideration in designing the framework was to avoid developing eligibility criteria that were too exclusionary and, therefore, limit the program's effectiveness by making it inaccessible to virtually all facilities. Thus, much of our discussion has been devoted to defining the facility qualifications for participation in the flexible track program. The next chapter of this document summarizes the initial proposal for these qualifications.

¹ This does not necessarily require 100% compliance (given the number and complexity of regulatory requirements).

Qualifications for Silver Track

Under the preliminary framework outlined above, facilities eligible for the Silver Track would be those that have demonstrated a pattern of "sustained compliance" and implemented a system to maintain this level of environmental performance. As a first cut, sustained environmental compliance could be defined simply as compliance with applicable environmental requirements. However, given the number and complexity of requirements, it is difficult for even the top performing facilities to attain 100 percent compliance. Thus, the framework suggests that a pattern of sustained compliance could include "minor" violations that are rare and of little or no environmental significance.¹

During the workshops and conference calls, the group identified a number of factors that may be relevant in evaluating whether a facility has demonstrated sustained compliance and qualifies for the Silver Track.

[The group has agreed to discuss the details of threshold levels or sets of criteria for determining eligibility for the Silver Track based on these factors in the next phase of the project.]

- **Has there been a period of sustained compliance?** Have there been any environmental violations at the facility over some determined threshold period?

¹ This definition is also relevant to the Gold Track, because to be eligible for this track, a facility must have a proven record of performance in the Silver Track.

- **To the extent that there have been any violations, consider the following:**

- ⇒ **Cause of violations --** Were the violations the result of unforeseen circumstances (e.g., lightning), or were they caused by willful or negligent actions of plant personnel?
- ⇒ **Response to violations --** Has there been self-disclosure of violations, and has the facility taken quick corrective action?
- ⇒ **Nature of violations --**
 - **Criminal vs. civil? --** Conviction of a criminal violation within the last five years will disqualify a facility from participating in the program. Even though individuals, not facilities, receive convictions, discussion participants felt that such a violation was indicative of a larger management problem at the facility and should disqualify it from the program for some set period of time. A civil conviction may also disqualify a facility, for either the same or a shorter period of time as a criminal conviction.
 - **Emission-related vs. procedural or paperwork? --** Emission-related violations will generally be judged more seriously than procedural or paperwork violations.²
 - **Context of violation within facility operations --** Does an emissions violation represent a relatively small or a significant excursion above allowable limits? Does the facility have repeat violations for the same unit or under the same regulation? Is the violation based on a small percentage of the total extent of compliance activities at the facility -- e.g., an exceedance in one sample out of 2,000; or failure to submit one of dozens of reports on time?
 - **Impact of violation --** Is there an actual or potential health or environmental impact? An actual impact could be related to an emission exceedance, while a potential impact could be related to failing to file an adequate risk management plan

² Emission-related violations refer to violations resulting from emissions or discharges to any media that exceed permitted amounts.

under Section 112(r) of the Clean Air Act. If there was an actual impact, did it extend off-site or was it confined on-site?

- **Has the facility historically been proactive in compliance?** A facility's record in complying with new requirements may be considered as a mitigating factor in determining its eligibility for a flexible track program.

Exhibit 3-1 presents a "straw man" set of criteria for sustained compliance. This example is intended as a starting point for future discussions of how these different factors could be combined into a set of eligibility criteria.

Exhibit 3-1	
SAMPLE CRITERIA FOR SUSTAINED COMPLIANCE	
<ul style="list-style-type: none">• No criminal or civil violations within the last five years.• No incidents resulting in off-site environmental or health impacts within the last three years.¹• Fewer than six <i>minor</i>² notices of violation (NOVs) within the last 12 months.³• Fewer than three <i>major</i>² NOVs within the last 12 months.³• Violations resulting from acts of nature and self-disclosed violations will be evaluated on a case-by-case basis.	
¹	This criterion is intended to differentiate between emissions-related and paperwork or procedural violations.
²	The degree of enforcement response or information from the NJ DEP Fast Track Program may help to define minor and major NOVs.
³	The number of NOVs should be set according to the scale of the facility's operations. If possible, it should reflect a specified percentage of the potential number of violations at a facility.

In addition to having an established record of sustained compliance, a facility must demonstrate the capability to sustain its good performance under the flexible regulatory framework afforded by the program. The existence of an effective internal audit system, such as an

Environmental Management System (EMS), is a requirement for facilities to enter the Silver Track. A strong corporate culture that includes a vision of excellence in environmental performance was also cited as a key factor in ensuring a company's continued record of good performance.

As regulatory oversight decreases for flexible track facilities, agencies will need to rely on public reporting by a facility and, to some extent, on a facility's own EMS to ensure that it continues its sustained compliance and meets appropriate performance measures. Accordingly, the EMS must generate information that can be reported to the public in an accessible manner and in easy-to-understand terms in order to provide verification of a facility's performance. This need for information can serve as the starting point for future group discussions of key elements that should be incorporated into a facility's internal audit system or EMS.

Qualifications for Gold Track

Under the proposed framework, a goal of the flexible track program is to encourage facilities to improve their environmental performance. As such, the framework includes a Gold Track for those facilities that have a proven record of performance in the Silver Track and are committed to exceeding requirements or implementing additional activities to enhance environmental quality while maintaining their high level of performance. Some options for defining activities that represent the level of performance that qualifies a facility for the Gold Track include:

- **Traditional quantitative measures of environmental emissions that are strictly linked to a specific facility's activities** -- For example, decreases in emissions to some specified level below regulatory limits (e.g., 10 percent below the limit). Where a facility's production has or is being significantly revised, upward or downward, the reduction could be made on a per unit of production basis.
- **Activities that move a company toward "sustainable industry" and enhance environmental quality** -- Examples of these activities include:
 - ⇒ Incorporating a structure for continuous improvements into facility goals and strategic planning.
 - ⇒ Working directly with suppliers or customers to reduce emissions in their operations.
 - ⇒ Mentoring of other facilities to assist them in coming into compliance or in implementing systems improvements to improve their performance.

- ⇒ Product stewardship and life-cycle analysis.
- ⇒ Increasing energy, water or materials efficiency in production processes.
- ⇒ Enhancing habitat or species conservation.
- ⇒ Monitoring or analysis of environmental concerns in the community.
- ⇒ Supporting environmental education activities.
- ⇒ Participating in resource conservation activities.
- ⇒ Assisting with community recycling programs.

The group will discuss what level of commitment within or across each of these activities might qualify a facility for the Gold Track during the next phase of the project.

Applicability of Established Compliance Record to New Facility Activities

As part of the discussion of qualifications, the group considered how a facility's status within the flexible track program, which is based on its established compliance record for existing activities, might affect its permitting process for new activities:

- The group agreed that status within the flexible track program applies only to a single site. Therefore, a company with one facility in the Silver or Gold Track cannot extend the benefits of flexibility from this facility to a new plant being constructed elsewhere.
- For changes within a facility, the first consideration is whether the new activity represents a significant change in facility operations.
 - ⇒ If, for example, the new activity involves simply adding a new vent, any flexibility that a facility may have already been granted by virtue of qualifying for the Silver or Gold Track may apply to the new activity.
 - ⇒ On the other hand, participants raised some questions concerning how such flexibility should apply to the new activity if it involves installing a completely new process. Some industry representatives

commented that the potential for flexibility when making operational changes was one of the key advantages of participating in a flexible track program, because it is precisely during such changes that facilities need additional flexibility. They also noted that adding a new process line within a plant does not usually entail a wholesale change in the skills needed to manage operations effectively. These new lines tend to use similar technologies, chemicals and personnel. Therefore, the ability for facility management to achieve a record of commendable performance in its current operations should reflect positively on its ability to continue to meet the same high standards with respect to the new process line.

The participants identified the following three options for how flexibility granted to a facility in the Silver or Gold Tracks could affect requirements on newly installed process lines:

- Option 1.** A facility will be required to prove its ability to operate the new process effectively under the regular rules during an initial shakedown period before being allowed to operate it under the flexible rules. In this case, it may be possible to write a permit that requires a certain level of monitoring during the initial shakedown period of operation but incorporates a set schedule for automatically introducing flexibility if the facility demonstrates the appropriate level of performance relative to this new process. The facility's performance in operating the new process will not affect the flexible track status of the existing processes.
- Option 2.** If there is no increase in emissions above the existing cap, a flexible track facility will be allowed to operate the new process under the flexible rules that it has been granted for existing processes. This option acknowledges that the good management practices that earned the facility its status in the flexible track program are also likely to enable it to operate the new process line well. However, if the facility fails to meet the appropriate performance level for the new process line, the status of the entire facility within the flexible track program will be jeopardized.
- Option 3.** Allow flexible track facilities to choose whether to: (1) operate a new process line under the regular rules for a shakedown period; or (2) operate it under flexible rules with the

understanding that failure to meet the required performance levels could jeopardize the status of the entire facility under the flexible track program. This option, especially during the pilot implementation phase of the flexible track program, would allow us to learn more about both the preferences and performance of facilities regarding new processes.

Process for Evaluating a Facility's Performance

Another aspect of the discussion of qualifications concerned how a facility's performance would be evaluated. The following issues were raised:

- Will there be an audit requirement included in the qualifying process? One possibility is to require a no fault audit similar to the OSHA star audit, in which penalties for violations discovered during the audit are waived if facilities correct them within a set grace period.
- Would requiring an audit affect the ability of small businesses to participate in a flexible track program? Audits can be costly, especially for smaller facilities; therefore, we may want to consider ways to ensure that a flexible track program remains accessible to smaller companies.
- Who would perform the audit if it is required? The regulatory agencies? A hired auditor? Other "mentor" facilities?
- To the extent that an internal audit system, such as an EMS, is a criteria for the program, do regulatory agencies have the capability to evaluate the effectiveness of these systems?
- Under what conditions would amnesty be offered for violations discovered during audits?
- Once a facility qualifies for a given track, would there be a period after which its status is reevaluated?

The group decided to discuss these issues in greater detail in the next phase of the project.

FACILITY INCENTIVES FOR PARTICIPATION IN A FLEXIBLE TRACK PROGRAM

CHAPTER 4

To achieve its objectives, a flexible track program must provide sufficient incentives to encourage facility participation and, ultimately, influence corporate culture and management to strive for a high level of environmental performance. According to the New Jersey Chemical Industry Project Stakeholder Group and studies sponsored by GEMI, state and federally-sponsored performance-based initiatives such as flexible track are more likely to attract industry participation when they offer significant and tangible incentives.

The foremost incentive for facility participation is the opportunity to achieve greater economic efficiency. Such opportunities could come in several different forms but would likely involve either or both of the following:

- ***An increase in operational flexibility*** through which facilities can make changes in plant operations that will achieve cost-effective environmental improvements without obtaining approval from NJ DEP.
- ***A decrease in transaction costs***, such as reducing the amount of corporate resources that are allotted for the administrative tasks of completing paperwork necessary for meeting federal, state and local requirements.

Areas where a flexible track program could create the opportunity for economic efficiency and environmental improvement include: permitting, inspection, monitoring, reporting, and regulatory flexibility granted on a case by case basis. There are likely to be additional benefits, such as increased recognition for environmental performance and enhanced corporate image, improved relations with the community and regulatory agencies, and additional access to technical assistance. Although these latter benefits may also lead to improved economic performance, their contribution

*Draft: May 7, 1997
Flexible Track Framework*

to a company's financial performance and market competitiveness may be less direct than flexibility in permitting, inspection and other areas that can lead to increased operational efficiency and/or decreased demand on staff resources.

It is important to note that a consistent theme relevant to all of the potential incentives described in this document is accountability -- the need to maintain an information base to verify facilities' compliance with regulatory requirements. This is particularly the case when we simultaneously consider potential flexibility in multiple requirements such as permitting, inspections and monitoring. This is the primary reason that facilities will be required to have an effective internal audit system to qualify for the program. In addition, we intend to evaluate through this project both the incentives offered and their combined effect on the availability of information with which the community and regulators can hold facilities accountable for their performance.

It is also important to note that some of the incentives suggested in this paper may be sound ideas not only for good environmental performers who are in the flexible track, but for all facilities as long as the changes involved do not compromise environmental performance. EPA and NJ DEP may want to test these reforms through including them in a flexible track effort prior to implementing them on a larger scale. This will provide information on the effects of these changes.

In the following sections, we describe incentives for facility participation in a flexible track program that were suggested by discussion participants. We first present those incentives that seem to have the most direct links to monetary benefits and, therefore, are likely to provide the strongest motivation for participation in the program. For example, the first incentives listed, permitting reforms, will likely create substantial monetary benefits by increasing the speed with which facilities can modify processes and bring a new product to market. Subsequent incentives presented may also yield substantial facility benefits. However, some of those listed toward the end of the chapter, such as enhanced corporate image and improved relationship with the community, tend to be less directly associated with monetary benefits and may not represent primary drivers that encourage facility participation in a flexible track program.

Permitting Reforms

Facility representatives highlighted permit reforms as a significant benefit of the flexible track program. We have identified a variety of ways in which the current permitting system can be changed and classified them into the five categories presented below. We will continue to work with the flexible track subgroup and other interested members of the Stakeholder group to develop additional ideas for permit reforms.

Relief from Permit Modifications

Facility representatives suggested that facilities participating in a flexible track program should be exempt from completing applications for permit modifications when they change their processes if their emissions do not increase above their currently permitted levels. While it is important for the agencies to have information about such changes, participating facilities would be allowed to report this information simply by self-certifying these changes and notifying the appropriate agencies. Obtaining agency pre-approval would not be required.

This reform is likely to:

- ***Eliminate disincentives that cause facilities to postpone implementing changes until permit renewal***, including those changes that improve environmental performance.
- ***Eliminate the waiting period necessary for pre-approval***, help to eliminate production delays related to permitting, and speed the process of introducing new products.
- ***Decrease transaction costs for facilities*** by reducing paperwork requirements related to applying for permit modifications.
- ***Provide an incentive for pollution prevention***, as facilities can avoid permit modifications by staying below permit limits.
- ***Ensure that agencies continue to receive important information*** concerning operational changes.
- ***Decrease the extent of government resources allocated to reviewing good performers' permit modifications*** and focus them on facilities needing additional assistance to meet requirements.

Expedited Permit Review

When participating facilities need to apply for a permit modification (e.g., if production levels increase) or if they need to apply for a new permit, facility representatives suggested that flexible track participants could receive expedited permit review. The benefits of quicker review include enabling facilities to bring new products to market more quickly and reducing uncertainty in facility operations over potential delays related to the timing of permit approvals.

A key issue in expedited permitting is determining how the agency will accomplish this goal. NJ DEP representatives indicated that agency re-engineering teams are currently investigating ways to make the permit review system more efficient for all facilities. In addition to improvements made as a result of these efforts, participants suggested that permitting for flexible track facilities could be further expedited by establishing a different (i.e., less intensive) level of review of permit applications for these facilities. This approach would have the double advantage of providing for quicker review and allowing the agency to shift some of its resources toward working with facilities that are poor environmental performers to encourage improvement. This option could also involve changing some of the required elements of preparing applications. For example, the need to complete a "state of the art" review could be waived for flexible track facilities. In addition, permit fees for facilities qualifying for the flexible track program could be reduced to reflect the decrease in agency resources needed to review their applications.

Integrated Permitting

Integrated permitting would allow facilities to obtain permits that apply across all media. One system of doing this is the facility-wide permit. NJ DEP is currently conducting a pilot project in which facilities are allotted emission caps on a production process level. The facility is allowed to make a change in its production process without pre-approval as long as it does not increase emissions above the cap. Another approach is the bubble permit, which is similar to the facility-wide permit but differs in that emission limits are set at the facility level instead of the process level. *[Note -- there may be some NJ DEP concerns with this approach that we need to explore. We also need to explore further the resources required for NJ DEP to revise regulations to allow integrated permitting and issue integrated permits.]*

An integrated approach to permitting is likely to benefit facilities by:

- ***Providing facilities with operational flexibility*** by allowing facilities to determine the most cost-effective means to reduce emissions rather than requiring them to achieve reductions at a specific point(s). For example, instead of requiring emissions reductions at the end of the pipe which may cost \$1,000/lb., a flexible track facility may be allowed to change another part of their operations to achieve equivalent emissions reductions for a cost of only \$100/lb.

- ***Reducing facilities' transaction costs*** by allowing facilities to complete their permit-related work for all media at one time rather than in a piecemeal fashion.

An integrated approach is also likely to provide an incentive for pollution prevention by allowing facilities to make changes that keep it within the existing emissions cap without seeking prior approval, and to decrease the government resources required to review permits of participating facilities by allowing the agency to review one integrated permit instead of several media-specific permits.

An additional form of integrated permitting suggested by facility representatives is permits that apply across facilities in a watershed or other geographic area. These permits could be structured so that permits for flexible track participants in a specific watershed or geographic area are all due at the same time. One representative noted that this could encourage creative emissions trading arrangements that could achieve reductions more cost-effectively.

Simplified Permit Renewal

The renewal process can be streamlined to reduce transaction costs by decreasing paperwork requirements for both the facilities and regulators. In cases where there have been few or no changes since the previous permit application was filed, the permit renewal application and the agency review could focus only on these changes rather than addressing the entire permit. EPA Region 2 has already begun to implement this approach for air permits. Therefore, it may not be appropriate to link it exclusively to participation in the flexible track program.

Extended Permit Duration

Workshop participants suggested that there may be flexibility in the length of permits issued flexible track facilities. This would reduce resources required in preparing permit renewals and reduce any potential uncertainty facilities may have concerning permit renewals. The group noted that although regulatory agencies may have some flexibility in setting permit duration, the duration for certain permits is limited by statutory requirements. For example, the Clean Water Act and Title V of the Clean Air Act have five year renewal periods and RCRA has a ten year renewal period.

Reduced Inspection Burden

In addition to requirements associated with permit applications and renewals, facility representatives commented on the large burden associated with regulatory inspections. This burden is related to both the frequency and duration of the inspections, which consume significant staff time. Some inspections are conducted by federal and state governments. Others are conducted by county and municipal governments, which have the authority to perform inspections for the state of New Jersey under the County Environment and Health Act.

Reducing the duration and frequency of inspections for flexible track facilities would provide them with a direct monetary benefit through reducing staff burden. It would also decrease the government resources required to perform these inspections. NJ DEP noted that changing the frequency of inspections for flexible track facilities could be pursued under the existing regulatory framework, suggesting that this type of incentive may be relatively easy to implement.

Reduced Reporting Burden

Facility representatives cited reduced reporting requirements as a potential incentive for participation in a flexible track program. The key question concerning flexibility in reporting requirements, especially if granted in conjunction with flexibility in permit review and inspection schedules, is maintaining the ability to verify facility compliance with regulatory requirements. As such, workshop participants commented that it is important to consider agency needs and community concerns in determining the appropriate level of reporting to require of flexible track facilities. This may include consideration not only of the frequency of reporting, but also of the specific parameters that are reported.

Participants suggested several approaches for reducing transaction costs for both industry and government agencies that are associated with routine reporting to state, federal and local authorities solely for the purpose of demonstrating that a facility is in compliance. These approaches include:

- ***Consolidated reporting for duplicate requirements*** collecting the same data, such as TRI and the Biennial Hazardous Waste survey.
- ***Reducing the frequency of reporting.***
- ***Electronic reporting.*** Although electronic reporting may facilitate the completion of required forms, some participants highlighted the fact that it would not eliminate the need for collecting data or for data entry.

There are several ongoing initiatives, such as the metal finishing CSI, exploring these and other approaches. We may want to explore how they could be incorporated into a flexible track program. *[Note -- we are currently gathering information on the streamlined monitoring and reporting requirements that are being developed as part of the RIITE program.]*

Reduced Monitoring Burden

Facility representatives also cited reduced monitoring requirements as a potential incentive for participation. While flexible track participants may still want to gather monitoring data for decision-making purposes, monitoring costs for these facilities could be decreased while maintaining the quality and usefulness of monitoring data by allowing them to develop and implement their own methods of monitoring. For example, one participant suggested that flexible track facilities could be allowed to substitute some chemical-specific monitoring requirements with monitoring of well established surrogates. In addition, the use of material/energy balancing analyses or well calibrated models as alternatives to end of pipe monitoring could potentially provide useful performance information at a lower cost. Participants also noted that the flexibility that could be granted may be constrained by statutes specifying minimum monitoring requirements (e.g., NPDES monitoring requirements specified in 40 CFR § 122.44).

Regulatory Flexibility

In addition to the incentives described above, another incentive for facilities to participate would be to allow them to devise their own options for regulatory flexibility. For example, two companies participating in a flexible track program may be authorized to exchange waste materials across their facilities for reuse with reduced RCRA reporting requirements. Another example would be a company that obtains permission to install a pressure monitor to detect leaks in a production line instead of being required to have workers walk the production line for this purpose. This may be a more effective and less costly approach to leak detection. To receive this flexibility, facilities would need to show that the changes would result in environmental performance that is the same or better than that of current procedures.

The benefits of regulatory flexibility would depend on the specific flexibility granted. The first example would result in reduced transaction costs due to a decrease in reporting requirements and reduced waste disposal costs, while the second would result in operational flexibility that would likely decrease production costs.

Decreased Insurance Costs and Improved Access to Capital

The group discussed decreased insurance costs and improved access to capital as two other potential incentives that could lead to monetary benefits. While these have been suggested as incentives in other efforts, many of the companies represented in this discussion group did not feel that these benefits would provide strong motivation for facility participation. Specific comments regarding these incentives are presented below.

Decreased Insurance Costs

One participant noted that he has seen graduated insurance premiums for installing alarms on underground storage tanks. On the other hand, several other participants commented that good environmental performance would not affect their premiums because insurance companies are concerned with the risks of potentially catastrophic events, which cannot be eliminated by good performance alone.

Improved Access to Capital

This was not seen as an incentive for one large facility represented at the workshops. However, the potential for this to be an incentive may vary from company to company. In general, there are too many other factors (including competing projects and anticipated rate of return) influencing this process to determine whether this would be a significant incentive for companies. In addition, participation in the flexible track program will be determined at the facility level, while access to capital is likely to be applicable at the company level.

In the next phase of this project we plan to contact CMA, insurers, and Chief Financial Officers of representative companies for additional information on the potential for decreased insurance costs and improved access to capital.

Other Incentives

During the course of our discussions, participants identified several additional facility benefits that may be significant. Although these incentives may lead to an improvement in economic performance, participants suggested that they are not as directly linked to monetary benefits as the permitting, inspection, reporting and monitoring incentives outlined above. As such, these incentives reflect positive outcomes of participating in a flexible track program, but would not represent primary drivers for facility participation. These incentives are presented below.

Enhanced Corporate Image

By participating in a flexible track program, facilities can demonstrate a strong public record of environmental leadership, innovation and achievement. While some discussion participants indicated that market positions would be enhanced through recognition for environmental performance at the facility level, others thought it would only be enhanced if products themselves were recognized for environmental merit.

Workshop participants had mixed feelings on whether an enhanced corporate image would be a strong incentive for participation in the program. Some felt that it would be a substantial incentive, while others argued that it lacked the direct monetary benefits associated with other incentives. Other workshop participants indicated that this incentive would be greater for companies that sell directly to the public than for companies that sell to other companies.

Improved Relationship with the Community

Being recognized as a good environmental performer may improve a facility's relationship with the surrounding community. Such recognition may increase the community's trust in a facility and may encourage the community to be more supportive of company operations. A good relationship with the community is linked to economic performance in that community groups can influence such items as permit renewals and expansion plans. One industry representative also noted that it is possible for companies to foster their relationship with the community through other activities, which may in fact be easier to implement and/or more effective than participation in a flexible track program. Therefore, while an improved relationship with the community would be a valuable benefit, it may not be a strong incentive for facilities to participate in the program.

Improved Relationship with DEP and/or EPA

An improved relationship with NJ DEP and/or EPA was viewed as a positive incentive that may be linked with several of the incentives described above that have direct monetary benefits (e.g., flexibility in permitting, inspections, and monitoring). This improved relationship may also serve to decrease the uncertainty that companies experience in their dealings with the regulatory agencies.

Increased Access to Technical Assistance

The reaction of workshop participants to this incentive was mixed. For example, some representatives thought that a facility performing at a level that qualifies it for the flexible track program would not have a strong need for technical assistance, but would be more likely to be in a position to provide technical assistance or mentoring to other firms having difficulty complying with

environmental requirements. However, other participants suggested that even facilities with good environmental performance records would like to decrease compliance costs and that any compliance assistance tools would thus provide an incentive for participation. In addition, companies that currently meet compliance requirements may be interested in technical assistance to help them improve their performance even further.

One of the ways a flexible track approach differs from traditional environmental regulation is that, through its Stakeholder process, it provides an increased opportunity for community interests to be represented and considered. Community representatives have emphasized that community perspectives and values should be incorporated in the development of all aspects of a flexible track program. They noted that a diverse set of community groups should be involved both in developing the overall framework for the flexible track program and in evaluating subsequent flexible track proposals for specific facilities.

In this chapter, we consider the potential for community involvement in a flexible track program. We begin by outlining the potential benefits of the program for communities. Next, we discuss the ways in which communities can contribute to developing the overall program and to its implementation at specific facilities. Finally, we raise the issues of how best to identify the community and enhance participation of community members.

Potential Community Benefits

Through its reliance on a Stakeholder process, a flexible track program will benefit the community. Some of the advantages of a flexible track program over traditional environmental regulation for a community may include the following:

- ***Improved Environmental Performance.*** By providing incentives for facilities to improve their environmental performance, a flexible track program may reduce any negative human health or environmental impacts of these facilities within the community.

- ***More Effective Use of Government Resources.*** By not having to allocate as many resources to the oversight of flexible track facilities, regulatory agencies would be able to address other issues of concern to the community (e.g., increased compliance actions and enforcement on non-complying facilities, cumulative impact studies, and placed-based and/or community-based environmental programs).
- ***Increased Job Retention and Economic Opportunity.*** Increased economic efficiency for flexible track facilities can help keep them operating and lead to greater job retention in the community.
- ***Increased Assurance of Environmental Safety.*** A flexible track program may provide communities with additional information on environmental performance. For example, community groups may have increased opportunity to obtain environmental performance data from facilities by establishing community/company agreements. This may include information on permits, emission levels and the overall facility compliance record.
- ***Increased Access to the Regulatory Process.*** Participating in a flexible track program may allow community participants to have an increased understanding of and role in the regulatory process. Community input into the overall framework of the program and into decisions on the participation of specific facilities in flexible track projects is possible through the multi-Stakeholder process.
- ***Better Relationships with Industry and Regulators.*** Through its Stakeholder process, the flexible track program is likely to provide the opportunity for community groups to meet regularly with industry and regulators. This process is likely to encourage cooperation and respect among all parties.
- ***Improved Understanding of Environmental Conditions.*** Improved communications and access to environmental data can lead to improved knowledge of local environmental conditions and potential facility impacts.

Contribution of the Community in Developing a Flexible Track Program

Community Stakeholders, along with other Stakeholders, should be involved in developing the following components of a flexible track program:

- ***Criteria for eligibility*** (e.g., how firms can qualify for the program);

- *Type, degree and conditions of flexibility* in the flexible track program;
- *Reporting and recordkeeping requirements* for facilities in the flexible track program; and
- *Enforceability of environmental standards* and other conditions of the flexible track program.

Once the framework for the flexible track program has been developed, community groups would be welcome to provide feedback, such as recognizing accomplishments, suggesting improvements, and expressing concerns, as we move forward to implement specific flexible track pilot projects.

Contribution of the Community in Site-Specific Application of the Flexible Track Program

Community Stakeholders are likely to be primarily interested in assuring that flexible track programs lead to health, environmental, or economic improvements in their community. The following components were suggested as items to include in a flexible track program:

- *Consultation Concerning Participation of Specific Facilities in the Flexible Track Program.* Discussion participants suggested that the views of local community groups should be sought for: 1) comparing facilities' performance with the established flexible track criteria; and 2) evaluating facilities' performance on additional issues that may affect eligibility because they are important to a specific community.

While the relevant regulatory agencies would have final authority to decide which facilities can participate in the flexible track program, consultation with community groups would provide important input to these decisions. In addition to the established criteria, regulatory agencies could consider information from communities on site-specific issues. Although these issues may be outside of the set criteria, they are important in ensuring that agencies have considered all appropriate information in evaluating a facility's participation in the flexible track program. Examples of site-specific issues over which a community group may be concerned include hours of facility operation, traffic, site appearance, odor problems, etc. These issues could be addressed in site-specific community/facility agreements.

Potential models for such agreements might be Good Neighbor and CMA's Responsible Care agreements that have been made between communities and facilities.

Several community representatives noted that community participation could also include playing an active role in encouraging facility applications to the flexible track program. For example, a community may have a good relationship with a facility and proactively contact the relevant agencies to indicate its support of this facility's application. A community could also encourage additional facilities to apply to the program because of its interest in having facilities improve their environmental performance.

In discussing the role of the community in reviewing facility applications for the flexible track, participants have agreed that a community's position should be a strong consideration in the agencies' decision about a facility's participation, but communities should not have veto power. In fact, it seems best to strike a balance between the two potential extremes where communities may want to have an absolute veto over facility participation and facilities may feel entitled to the flexibility available through the program. Thus, it may be necessary to develop some mechanism for resolving disputes over a facility's eligibility -- perhaps some form of a review panel. *The group agreed that this topic should be raised during future discussions concerning detailed aspects of the program.*

- ***Assurances of Environmental Performance.*** Community groups are likely to want assurances that: 1) the facilities involved in a flexible track effort have demonstrated and continue to demonstrate good environmental performance; and 2) the facilities fulfill any commitments made as part of their involvement in the flexible track program, such as commitments for improving environmental performance or other commitments and agreements to enhance environmental quality, including any specific agreements made with the community.

The specific configuration of the requirements made for providing these assurances may be determined on a case by case basis with input from Stakeholders; however, the program is likely to contain minimum requirements. Possible requirements that were suggested include the following:

- ⇒ ***Accountability.*** Community groups may want to ensure that participating facilities:

- *Disclose information to community groups that verifies regulatory compliance and fulfillment of any commitments made to improve environmental performance.* This is especially important if flexibility is granted in the form of reduced frequency of inspection and reduced or streamlined reporting requirements.
 - *Disclose information to community groups that verifies facilities meet any additional commitments made.* These commitments, including commitments made with the community, are binding commitments that are just as important for a facility's continuing eligibility as are compliance and commitments to improve environmental performance.
 - *Receive appropriate penalties for noncompliance and/or not meeting commitments.* Community Stakeholders may want to be assured that the flexible track program specifies the potential consequences for a facility's failure to either comply with standard environmental regulations or to meet any additional commitments made as a result of participating in the program. These consequences may include standard enforcement actions for noncompliance and/or a reevaluation of a facility's continued eligibility for the program.
 - *Adopt mechanisms that encourage compliance,* such as self-certification, facility-specific internal audit policies or EMSs (e.g., ISO or other), and pollution prevention plans. While these measures do not guarantee environmental performance, they do encourage compliance and provide the means to achieve good overall environmental performance.
- ⇒ ***Independent verification of environmental performance.*** Third-party verification of a facility's performance may help assure community groups that companies are achieving the environmental results they promised.
- ⇒ ***Analysis of cumulative impacts.*** Analysis of the cumulative impacts of environmental emissions and human exposures may help to determine whether the local community and/or certain demographic subpopulations are currently or likely to become disproportionately exposed to pollutants. Both community and government representatives emphasized that such an analysis would require a

significant amount of data collection and may be very costly to implement. Some discussion participants noted that while this may potentially be undertaken by a facility in exchange for a certain level of regulatory flexibility, it is not feasible to require such analyses as criteria for entry into the flexible track program.

However, one participant suggested that facilities should be required to evaluate the incremental effects of increased flexibility granted under the program to ensure that it does not lead to an unacceptable risk level in the community when considered in the context of cumulative loadings. This type of analysis could be particularly important if facilities were applying for flexibility to tradeoff emissions of specific pollutants within an overall facility emissions cap for a general class of pollutants.

- ***Clear Definition of Facility Responsibilities in Exchange for Flexibility.*** Communities may want to know:
 - ⇒ ***What commitments facilities are making in order to receive flexibility.*** This includes both a clear definition of the criteria used to select facilities for the flexible track program and any other commitments made.
 - ⇒ ***What the facilities' responsibilities are with respect to the community.*** This may include potential positive impacts that the participating facilities will bring to the community.
- ***Access to Environmental Data.*** Discussion participants suggested that community Stakeholders may want additional access to facilities' compliance and reporting data in order to undertake their own assessments of environmental performance. Communities may thus want facilities to:
 - ⇒ ***Improve disclosure of environmental data.*** Participating facilities can compensate for decreased reporting requirements by increasing the visibility of their environmental data, as well as the "understandability" of these data. This disclosure could take the form of concise, easy to read (i.e., non-technical) documents that contain all relevant environmental information for a company, such as permits and emission levels.

- ⇒ ***Provide technical assistance*** so that community groups can better interpret environmental data. This may help to assure communities that facilities will be in compliance. The technical assistance may be in the form of arranging for detailed discussions between community representatives and facility or agency technical staff or funding for third-party experts. The type and extent of technical assistance should be appropriate to the scale of the specific flexibility being considered at the facility.
- ⇒ ***Establish a policy of community/company cooperation***, through which community groups can express concerns or ask questions of a facility as they arise. In turn, the facility can answer questions and disclose the requested data in a timely fashion. As part of such a policy, the facility also could agree to notify community groups of any significant changes in its operations.

Who is the Community and How Can Participation be Enhanced?

Early and effective community participation in the development of a flexible track program is critical for two reasons. First, participation of a diverse group of community members representing a variety of interests can help to ensure that a facility's entry into a flexible track program does not adversely impact a particular subset of the community. Second, a flexible track program that is designed without explicitly considering community opinions from the outset may meet community opposition later in the process. As described below, obtaining this participation requires both identifying potential participants and undertaking efforts to enhance participation.

- ***Identify the Community.*** Potential community participants include the following:
 - Local residents
 - Neighborhood associations
 - School, religious and environmental groups
 - Community Advisory Panels (CAPs)
 - Labor unions
 - Other Non-government Organizations (NGOs)
 - Health care providers
 - Local officials, including both elected officials and officials responsible for emergency preparedness

Regulators, industry and other Stakeholders should be careful not to "define" the community or target only select groups. Instead, they should implement an "open admission" policy that allows good faith participation of any interested individual or group. It is also important to ensure that the composition of the Stakeholder group represents a balance of interests. Should there be interest in participation among a large group of Stakeholders, it may be appropriate to establish a Stakeholder committee to help facilitate Stakeholder involvement.

Another element of identifying the community is determining the appropriate geographic boundaries of the "community" potentially affected by a facility applying to the program. Even when the effects of activities at a facility are limited to a single community, it may be appropriate to notify neighboring communities to avoid any unforeseen objections as the application process proceeds.

- ***Enhance Community Participation.*** Regulators and industry should encourage community participation throughout all stages of designing and testing the flexible track program. A key to achieving this goal is getting the word out about the opportunity to participate in the program. The group should work with local officials and interest groups to identify the best means to provide notice. Some possible mechanisms for "getting the word out" and increasing participation that go beyond issuing formal notices include the following:
 - ⇒ ***Develop and implement capacity building programs.*** These programs, which may consist of workshops and explanatory materials, would be aimed at providing information to community groups about the flexible track program so that they can participate fully. If appropriate, these programs would be prepared in other languages in addition to English.
 - ⇒ ***Announce flexible track programs*** and periodic meetings well in advance.
 - ⇒ ***Schedule meetings at times that are convenient*** for community participants. This may mean holding meetings during the evening or other times outside of the typical business day. It also includes seeking input from community Stakeholders as to when and where meetings will be held.

⇒ ***Widely circulate information on project activities*** in a manner that optimizes both diversity and extent of participation. Potential ways to announce these activities include:

- *Newspapers and community newsletters.* These announcements should be targeted toward all neighborhoods and race, income and age groups. As a result, they should be placed in the appropriate sections of the appropriate newspapers and, depending upon the population targeted, may need to be written in other languages in addition to English.
- *Notices displayed in stores, community television programs, libraries, churches, community boards and other public locations.* As with newspapers, these notices should be targeted toward all neighborhoods and race, income and age groups.
- *Telephone calls or direct mailings to the NGOs and community groups in the area.*
- *Telephone calls or direct mailings reminding all regular, identified community Stakeholders about future meetings.*