

SOLID WASTE REGULATIONS

N.J.A.C. 7:26

7:26-2C Participation by Landfills in Silver Track II Tier of Silver and Gold Track Program for Environmental Performance

7:26-2C.1 Purpose and Scope

This subchapter establishes the requirements for landfills to participate in the Silver Track II Tier of the Silver and Gold Track Program for Environmental Performance. This program is based on achieving environmental excellence through commitments and accountability beyond standard regulatory requirements. The Silver and Gold Track Program consists of three tiers: Silver Track, Silver Track II, and Gold Track. The goals of Silver Track II are to encourage facility operators to implement voluntary covenants which go beyond traditional levels of environmental compliance, to advance pollution prevention techniques, enhance energy efficiency and foster the continued development and implementation of creative approaches to reducing GHG emissions.

7:26-2C.2 Definitions

The following words and terms, when used in this subchapter, shall have the meanings given below unless the context clearly indicates otherwise.

“Effective date” means the date the Silver Track II Covenant is signed by the participating entity and the Commissioner, or duly authorized representative of the NJDEP.

“Enhanced permit” means a permit that includes a range of operating scenarios to provide operational flexibility for facility expansion and/or change of operation within the confines of the applicable requirements and without requiring a new or modified permit. An enhanced permit allows the inclusion of pollution prevention, pollution control and/or other operational characteristics.

“Equipment” means any device capable of causing the emission of an air contaminant, and any stack or chimney, conduit, flue, duct, vent or similar device connected or attached to, or serving the equipment.

“Facility” means the combination of all structures, buildings, equipment, control apparatus, storage tanks, source operations, and other operations that are located on a single site or on contiguous or adjacent sites and that are under the common control of the same person or persons.

“Greenhouse gas” or “GHG” means any of the following gases: carbon dioxide (CO₂); methane (CH₄); nitrous oxide (N₂O); certain hydrofluorocarbons, (HFC23, HFC-125, HFC-134a, HFC-143a, HFC-152a, HFC-227ea, HFC-236fa, HFC-4310mee); certain perfluorocarbons (CF₄, C₂F₆, C₄F₁₀, C₆F₁₄); and sulphur hexafluoride (SF₆).

“Minor violation” means any violation which the Department, pursuant to N.J.S.A. 13:1D-125 et seq. (Grace Period Law), has designated as a minor violation.

“Person” means an individual, public or private corporation, company, partnership, firm, association, society, joint stock company, international entity, institution, county, municipality, state, interstate body, the United States of America, or any agency, board, commission, employee, agent, officer, or political subdivision of a state, an interstate body, or the United States of America.

“Pollution Prevention” shall have the same meaning as defined for the term “pollution prevention” in the Pollution Prevention Program Rules, N.J.A.C. 7:1K-1.5.

“Pollution Prevention and Sustainability Plan” means the written plan that discusses the long-term environmental goals and milestones selected by the facility to reduce existing environmental and operational impacts of the facility, to reduce emissions and discharges from the facility to achieve Federal, State or solid waste management district pollution prevention goals.

“Responsible official” means one of the following:

1. For a corporation:

i. a president, secretary, treasurer, or vice-president of the corporation, who is in charge of a principal business function;

ii. Any other person who performs similar policy or decision-making functions for the corporation; or

iii. A duly authorized representative of the person in 1i. Or ii above, if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a preconstruction permit or certificate, or an operating permit, and either:

(1) The facilities for which the representative is responsible employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(2) The delegation of authority to the representative is approved in writing in advance by the Department;

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

3. For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this subchapter, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (for example, a Regional Administrator of EPA); or

4. For affected facilities under Title IV of the Clean Air Act:

i. The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Clean Air Act or the regulations promulgated thereunder are concerned; and

ii. The designated Title IV representative for any other purposes under 40 CFR Part 70.

“Significant noncomplier” or “SNC” shall have the same meaning as the term “significant noncomplier” at N.J.A.C. 7:14-8.2.

“Significant violation” means any violation of any statute, regulation, plan, approval or agreement, which, because of its nature, environmental impact or duration is considered by the NJDEP or the USEPA to merit this designation, and any violations in any program that the Department designates non-minor pursuant to N.J.S.A. 13:1D-125 et seq. (Grace Period Law).

“Silver Track II Application” means the submittal made to the Department by the regulated entity which desires to participate in the Silver Track II tier of the Silver and Gold Track Program for Environmental Performance.

"Silver Track II Covenant" or "covenant" means an individual agreement between the Department and each Silver Track II participating entity which defines the requirements and commitments of the Silver Track II participating entity and the incentives and flexibilities offered by the Department to the Silver Track II participating entity.

"Silver Track II participating entity" or "participating entity" means any entity that owns or operates a facility, including, but not limited to, industrial operations, government operations, and service sectors, that has been accepted by the Department as a participant into the Silver Track II program.

"Source operation" or "source" means any process or any identifiable part thereof that emits or can reasonably be anticipated to emit any air contaminant. A source operation may include one or more pieces of equipment or control apparatus.

7:26-2C.3 Silver Track II Application Process for Sanitary Landfills

(a) An entity who wishes to participate in Silver Track II shall submit a Silver Track II application on forms provided by the Department, which may be obtained electronically from the Department's website, www.state.nj.us/dep/opppc/.

(b) Each application shall include the following information:

1. Facility name;
2. Facility "New Jersey Employer Identification Number (NJEIN)";
3. Facility address (street, city, county, state, zip code);
4. Facility telephone number, fax number and e-mail address;
5. Contact name;
6. Affiliation of contact;
7. Contact mailing address (street, city, state, zip code);
8. Contact telephone number, fax number and e-mail address;
9. List of active NJDEP and USEPA permits (including a description of the permitted activity and permit number);
10. List of all required NJDEP environmental plans, such as Discharge Prevention Control and Countermeasures (DPCC Plans) and Pollution Prevention Plans;
11. List of all NJDEP/USEPA enforcement actions taken in the 5 years prior to the application date; and
12. A summary of the applicant's compliance history for all applicable environmental rules and regulations.

(c) The completed Silver Track II application shall be submitted to:

New Jersey Department of Environmental Protection
Office of Pollution Prevention and Permit Coordination
401 East State Street 3rd Floor East Wing
P.O. Box 423
Trenton, New Jersey 08625-0423
Attention: Silver Track II Program Manager

(d) A Silver Track II Application must be accompanied by the following Silver Track II certification, signed by a responsible official as defined at N.J.A.C. 7:26-2C.2 above. The certification shall state:

“I certify, to the best of my knowledge, based on reasonable inquiry, that the information submitted in this certification is true, complete and accurate, and the facility for which this application is submitted is currently in compliance, and intends to remain in compliance with all applicable State and Federal environmental requirements I understand that false certification will result in the rejection of the Silver Track II application and/or removal from the Silver Track II tier of the Silver Track II Program for Landfills. I am aware that there are significant civil and criminal penalties, including the possibility of fines or imprisonment, or both, for submitting false, inaccurate or incomplete information.”

(e) If the Department determines that the Silver Track II application is incomplete, the Department shall issue a Notice of Deficiency (NOD) identifying the incomplete items and advising what is needed to complete the Silver Track II application. The incomplete items shall be provided to the Department within 30 days of the applicant's receipt of a NOD.

(f) Failure to respond to a NOD in the allotted time provided for in (e) above shall result in an automatic rejection of the applicants Silver Track II application. The applicant shall not be allowed to reapply for Silver Track II until six months from the date of notification of its rejection from the Department.

(g) If the Department determines that the information submitted in response to the NOD makes the application complete, the Department shall commence with the compliance screening and the record review pursuant to (i) and (j) below.

(h) If the Department determines that the information submitted in response to the NOD is incomplete, the Department shall reject the applicant's Silver Track II application. The applicant shall not be allowed to reapply for Silver Track II until 6 months from the date of notification of its rejection from the Department.

(i) Once an application is found to be complete in accordance with N.J.A.C. 7:26-2C.3(b)1 through 12 above, the Department shall review the application and determine whether it satisfies the eligibility requirements set forth at N.J.A.C. 7:26-2C.4 below.

(j) If the Department determines that the eligibility requirements of N.J.A.C. 7:26-2C.4 have been met, the Department shall conduct a records review including but not limited to all plans, permits, registrations, and approvals that the applicant is required by State and Federal environmental statutes, rules and regulations to have and maintain for the applicant's facility, in order to determine if they are up to date, accurate and approved.

(k) An entity shall be accepted into Silver Track II if the Department determines that:

1. The application submitted by the entity is complete;
2. The entity has satisfied all of the eligibility criteria set forth at N.J.A.C. 7:26-2C.4 below; and
3. A review of the Department's records indicate that the applicant possesses all permits, plans, registrations and approvals that it is required to possess pursuant to all applicable State and Federal environmental statutes, rules and regulations and that these permits, plans, registrations and approvals are accurate and up-to-date.

(l) The Department shall disapprove a Silver Track II application if:

1. The application submitted by the applicant is incomplete;
2. The Department determines that the requirements of (d) below have not been met; or
3. The records referred to in N.J.A.C. 7:26-2C.3(i) above are not up-to-date, accurate or approved by the appropriate State or Federal agency(s).

7:26-2C.4 Silver Track II for Landfills Eligibility Criteria for Landfills Seeking Participation in Silver Track II

(a) Any sanitary landfill processing greater than 100 tons per day may negotiate a 15-year Silver Track II Covenant with the Department provided the applicant demonstrates that it complies with the following eligibility criteria:

1. The applicant shall have no significant violations nor have been considered a significant non-complier during the five year period preceding the date of filing an application to participate in the Silver Track II.

2. For entities with NJPDES stormwater permits, the applicant must be in compliance with its permit. Applicant's with NJPDES stormwater permits who are not operating in compliance with its permit are ineligible to participate in Silver Track. A permit issued by a publicly owned treatment work (POTWs) constitutes a NJPDES permit.

3. The applicant shall have obtained all applicable permits and/or approvals and shall have submitted all applicable plans required by any State or Federal environmental statute, regulation or permit. (For example, 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).

4. The applicant shall not have failed to comply with an executed Memorandum of Understanding, Administrative Consent Order (ACO), and/ or other directive issued by or executed with the Department for the performance of any regulated activity.

(b) In determining whether an applicant has satisfactorily demonstrated its eligibility to participate in Silver Track II, the Department may take into consideration any defenses which the applicant raises concerning violations as well as the conduct of the applicant in responding to such violations. The Department may also consider whether the Silver Track II applicant entered into an Administrative Consent Order (ACO) with the Department in order to resolve any of these violations and whether the applicant is in compliance with the milestones of that ACO.

(c) Any minor violations committed by the Silver Track II applicant during the five-year period preceding the filing of its application shall be reviewed on a case-by-case basis in order to determine eligibility. In conducting this review the Department shall consider:

1. The number and type of minor violations;
2. Whether those violations were corrected during the grace period under N.J.S.A. 13:1D-129 et seq.;
3. Whether the minor violations occurred at a source that had a continuous emissions monitor installed and if so, whether the minor violations occurred with decreasing frequency (downward trend); and
4. The corrective steps the applicant has taken to avoid future violations.

(d) Silver Track II applicants shall not have committed any criminal violations at any time.

7:26-2C.5 Development of the Silver Track II Covenant

(a) Once the Department approves an application for a facility to participate in Silver Track II, and prior to the participating entity being entitled to regulatory flexibility, the Department and the participating entity shall develop a Silver Track II Covenant, which will have a minimum term of five years and shall become effective upon execution by both the participating entity's responsible official and the Commissioner, or a duly authorized representative of the Department.

(b) The Silver Track II Covenant shall include the following:

1. The commitments made by the Silver Track II participating entity to comply with the provisions set forth in N.J.A.C. 7:26-2C.6, 2C.7, and 2C.8; and
2. The regulatory flexibilities and incentives offered by the Department to the participating entity set forth in N.J.A.C. 7:26-2C.9.

(c) If, at any time during the Silver Track II Covenant term, a participating entity anticipates an inability to meet a commitment set forth in its Silver Track II Covenant, the Silver Track II participating entity shall submit the following to the Department in writing ten days before such failure is expected to occur:

1. An explanation of why the participating entity will not meet such commitment;
2. The measures the participating entity will take to meet such commitment, and an anticipated date when such commitment will be satisfied; and
3. An explanation of whether the reasons for the participating entity's not meeting the commitment were within the entity's control.

(d) After reviewing the information provided in accordance with N.J.A.C. 7:26-2C.4(c), the Department may grant the participating entity a one-time extension, not to exceed one year, to meet the stated commitment. The Department will determine the duration of the extension in consultation with the participating entity. The Department and the participating entity will revise the Silver Track II Covenant to reflect the new deadline. At such time, with the concurrence of the Department, the entity may also change its originally stated plans for meeting its commitments. For example, the participating entity may decide to use GHG emission credits in accordance with the procedures contained in the Department's proposed Open Market Emission Trading Rule N.J.A.C. 7:27-30 to meet its GHG emission reduction requirement.

7:26-2C.6 Pollution Prevention and Sustainability Plan

(a) Within one year of the effective date of its Silver Track II Covenant, the participating landfill applicant shall develop and submit a Pollution Prevention and Sustainability Plan with a scope consisting of the next 10 years of operations. The plan shall include a discussion of the long-term environmental goals and milestones selected by the applicant for inclusion in the Silver Track II Covenant. The applicant shall select those goals and milestones which will reduce the existing environmental and operational impacts of the facility, emissions and discharges from the facility and achieve Federal, State or solid waste management district pollution prevention goals to the greatest extent possible. At a minimum, applicants must incorporate within their long-term plan the necessary activities, milestones and timeframes to implement the following:

1. An accounting of the inputs and outputs of materials at the facility, including estimates of the quantities of raw materials used and wastes generated at each source to incorporate maximum achievable levels of pollution prevention;

2. Methods to reduce energy usage by the facility, including both the facility equipment usage and vehicle transportation. This reduction shall be based on an energy balance for the facility and vehicle transportation;

3. Methods to eliminate or reduce levels of hazardous substances used by the facility through material or product substitution or other means;

4. Methods to reduce the level of the facility's process residue and/or the development of programs to more effectively treat or use residue as a product;

5. Methods to reduce water usage by the facility;

6. Methods to reduce wastewater discharges by the facility; and

(b) In addition to the requirements under (a) above, applicants must identify at least three of the following areas and/or identify other areas for incorporation within the long-term plan to develop activities, milestones and schedules to reduce the existing environmental and operational impacts of the facility, emissions and discharges from the facility and achieve Federal, State or solid waste management district pollution prevention goals to the greatest extent possible:

1. Methods to increase the recovery of materials from solid waste through the addition of manual or mechanical materials recovery systems in furtherance of State and solid waste management district recycling goals;

2. Methods to reduce levels of discarded products containing heavy metals, particularly those containing cadmium, lead and mercury from the solid waste disposal stream. This reduction shall be based on a materials balance for the facility;

3. Methods to reduce levels of discarded products containing volatile organic compounds from the solid waste disposal stream. This reduction shall be based on a materials balance for the facility;

4. Methods to reduce the quantity of household hazardous waste, small quantity generator waste and/or universal waste disposed of by the solid waste facility;

5. Formulation of a landfill mining plan to extract valuable resources for recycling, reduce the size of the landfill footprint, reclaim additional disposal capacity or otherwise improve resource management;

6. Methods to reduce the likelihood of accidental spills or releases of hazardous substances;

7. Methods to reduce direct and/or fugitive air emissions from the facility;

7:26-2C. 7 Community Outreach Plan Provisions

(a) Within one year of the effective date of its Silver Track II Covenant, the participating landfill applicant shall develop and implement a Community Outreach Plan.

(b) The Silver Track II Community Outreach Plan shall at a minimum consist of the following components:

1. The identification of the community that will be targeted in the outreach effort. This should include, but not be limited to, residents, other nearby businesses, neighborhood or community groups and local government officials.

2. A commitment by the participating entity to meet with the community on a yearly basis to define and discuss issues and concerns of common interest;

3. A commitment by the participating entity to prepare and distribute to the community and the Department an annual report, written in a reasonably simple and understandable manner and which is easily read, discussing the environmental performance of all operations conducted at the Silver Track II facility from a multi-media perspective, and including a summary of the yearly meeting.

(c) A participating entity shall review and update the Community Outreach Plan at a minimum on a quarterly basis.

(d) The Community Outreach Plan shall be available on the operating premises for review by the Department or its representatives.

7:26-2C.8 Reduction of Green House Gas Emissions

(a) If not already in place, applicants shall commit to the implementation of a methane recovery system consisting of turbines, microturbines, and/or fuel cells, or implementation of pollution prevention measures to reduce methane emissions to levels consistent with a recovery system;

(b) If controls are currently in place, applicants shall commit to an upgrade of the existing methane recovery system to state-of-the-art (SOTA) standards as set forth in N.J.A.C. 7:27-8.12 or implementation of pollution prevention measures including upgrades to equipment that produce cleaner emissions (i.e. replace diesel generators with microturbines or fuel cells) to reduce methane emissions consistent with SOTA;

7:26-2C. 9 Flexibilities and Incentives

(a) A participating entity that is in compliance with all commitments contained within its Silver Track II Covenant is eligible for the following incentives and regulatory flexibilities:

1. Public acknowledgement and recognition through one or more of the following means:

i. Issuance by the Department of a special seal or flag in recognition of the participating entity's commitment to advanced environmental protection and continuous environmental performance improvement;

ii. Inclusion in an annual publication highlighting the accomplishments of all Silver Track II entities;

iii. Inclusion on the Department's Internet home page highlighting the accomplishments of all Silver Track II entities and

iv. Participation in an annual award program for outstanding achievements in environmental protection, with a separate category for Silver Track II participating entities.

2. A single point of contact within the Department for all single media and multi-media permit applications and renewals for each Silver Track II participating entity.

3. Participation in any Department initiatives developed to eliminate duplicative reporting requirements and utilize consolidated reporting, as opportunities for such participation become available.

4. The Department shall provide guidance on how to submit an application for an "Enhanced Permit."

5. A commitment from the Department to review and approve a demonstration protocol within 30 business days of receipt of a complete application for a Research

Development & Demonstration approval for projects with a duration not to exceed one year. Approval letters will be issued by the Department for qualifying RD&D projects.

6. An extension of the current 5-year Solid Waste Facility permit of the participating landfill by the Department, in 5-year increments for up to 15 years. Where additional 5 year extensions are approved, applicants shall be exempt from the permit renewal requirements found at N.J.A.C. 7:26-2.7 and shall further be exempt from the payments of permit renewal fees as provided at N.J.A.C. 7:26-4.

7. The option to stockpile chipped tires on site for use as construction material, provided the piles shall have a maximum height of 20 feet and the maximum volume of material that may be stored at any one time shall not exceed one year's worth of tire chips needed for proposed landfill construction projects.

8. Expedited review of engineering designs of participating landfills which opt to use chipped tires or other suitable recycled materials in place of natural materials such as crushed stone in their leachate collection systems or methane gas recovery systems;

9. Compliance and Enforcement inspections based on the classification of the solid waste facility. Classification levels shall range from 1 to 3, with a level 1 facility requiring the least frequent compliance monitoring and a level 3 facility requiring the most frequent compliance monitoring. The classification levels are defined as follows:

i. A level 1 facility operates in substantial compliance with its SWF permit, having incurred only minimal administrative violations, if any. Level 1 facilities shall have an inspection frequency of once per year.

ii. A level 2 facility operates in substantial compliance with its SWF permit, having incurred only administrative violations and/or minor environmental violations, if any, that did not require remediation of the site. Level 2 facilities shall have an inspection frequency of quarterly.

iii. A level 3 facility operates in substantial compliance with its SWF permit, having incurred only administrative violations and/or minor environmental violations, if any, that did require remediation of the site. Level 3 facilities shall have an inspection frequency of monthly.

10. Reduction in annual registration fees as described in N.J.A.C. 7:26-4.3 in line with the three tiered classification system identified in 8. above. Level 1 facilities shall pay an annual registration fee of \$884.00 if the sanitary landfill operates at 31, 200 tons per year or more and \$532.00 if the sanitary landfill operates at less than 31, 200 tons per year. Level 2 facilities an annual registration fee of \$3,537.00 if the sanitary landfill operates at 31, 200 tons per year or more \$2,129 if the sanitary landfill operates at less than 31,200 tons per year. Level 3 facilities an annual registration fee of \$10,610.00 if the sanitary landfill operates at more than 31,200 tons per year and \$6,386.00 if the sanitary landfill operates at less than 31,200 tons per year.

11. Participating landfills will be considered for financial awards provided for within the Electric Discount and Energy Competition Act at N.J.S.A. 48:3-49, as a way to meet the Renewable Portfolio Standards. Such financial benefits could be applied to equipment upgrades which increase energy recovery/production efficiency at these facilities, while decreasing air emissions. Portions of the funding for these financial awards specifically target grid-connected projects for Class 1 renewable energy projects, for which landfill operations provide distinctly suitable sites; and

12. A streamlined county planning process, consistent with the requirements pertaining to administrative actions described in N.J.A.C. 7:26- 6.11, for any increase in the solid waste disposal capacity of an existing permitted landfill which is less than or equal to the volume equivalent of the acceptance of an additional 100 tons per day of solid waste over the smaller of 10 years or the remaining life of the existing permitted landfill. Only one capacity increase over the operational life of the regulated solid waste facility may be accomplished via administrative action.

7:26-2C.10 Procedures for Withdrawal of Silver Track II Status

(a) A participating entity that wishes to withdraw its participation in Silver Track II shall first enter into an Administrative Consent Order (ACO) with the Department which shall contain scheduled transition milestones and a final compliance date. The ACO shall also set forth appropriate penalties stipulated for an entity's failure to comply with the terms of the ACO.

(b) A participating entity may withdraw its participation in Silver Track II at any time during the life of its Silver Track II Covenant with written notification to the Department. Withdrawal shall be effective on the date the ACO identified in (a) above is executed by all parties. The withdrawal notification shall be addressed to:

New Jersey Department of Environmental Protection
Office of Pollution Prevention and Permit Coordination
401 East State Street 3rd Floor East Wing
P.O. Box 423
Trenton, New Jersey 08625-0423
Attention: Silver Track II Program Manager

(c) A participating entity that has withdrawn its participation in Silver Track II shall no longer be entitled to the incentives and flexibilities set forth in N.J.A.C. 7:26-2C.9 above.

(d) A participating entity that has withdrawn its participation in Silver Track II may be re-instated into the program by re-applying as set forth in N.J.A.C. 7:26-2C.3(a)-(c) above.

7:26-2C. 11 Revocation of Silver Track II Status

(a) The Department may revoke a participating entity's Silver Track II status for any of the following reasons:

1. Failure of the participating entity to develop and implement a Pollution Prevention and Sustainability Plan in accordance with N.J.A.C. 7:26-2C. 6 above;
2. Failure of the participating entity to develop and implement a Community Outreach Plan in accordance with N.J.A.C. 7:26-2C. 8 above;
3. Failure of the participating entity to meet the GHG commitments as defined in the Silver Track II Covenant, unless an extension has been granted by the Department in accordance with (e)4 above;
4. The occurrence of one or more violations identified in N.J.A.C.7:26-2C.4(a)1-2 above at the participating entity's facility after the effective date of its Silver Track II Covenant.

(b) If the Department determines to revoke Silver Track II status on the basis of the criteria in 1i.-iv. above, the Department shall notify the participating entity of the revocation in writing by certified mail. The notice of revocation shall state the reason for the revocation and the effective date of the revocation.

7:26-2C. 12 Procedures for Renewal of Silver Track II Status

(a) A Silver Track II Covenant may be renewed in accordance with the following:

1. If a participating entity wishes to renew its five year Silver Track II Covenant for an additional five years, the participating entity shall re-apply to the Department, at least 6 months prior to the expiration date of the Silver Track II Covenant, in accordance with the application procedures set forth at N.J.A.C. 7:26-2C.3, above.

2. If the Department determines that the renewal application is complete and meets the criteria for approval set forth at N.J.A.C. 7:26-2C.4 above, and none of the criteria for revocation pursuant to N.J.A.C. 7:26-2C. 11 above exists, the Department shall issue a renewal to the participating entity, and the participating entity and the Department shall develop a new Silver Track II Covenant.

3. If the new Silver Track II Covenant is not signed prior to the expiration of the existing Silver Track II Covenant, but the participating entity has submitted a complete application that meets the criteria for approval set forth at N.J.A.C. 7:26-2C.4 above, and none of the criteria for revocation pursuant to N.J.A.C. 7:26-2C.11 above exists, the participating entity's existing Silver Track II Covenant shall remain in effect until the new Silver Track II Covenant is signed by the participating entity and the Commissioner, or a duly authorized representative of the NJDEP.

4. The renewed Silver Track II Covenant shall include those elements required in N.J.A.C. 7:26-2C.5, above.

7:26-2C. 13 Requests for an Adjudicatory Hearing

(a) Any applicant or participating entity who is aggrieved with respect to any of the following may request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1:

1. If applicant or participating entity is aggrieved with respect to a decision made by the Department to:

i. Deny an application to participate in the Silver Track II Tier of the Silver and Gold Track Program for Environmental Performance;

ii. Deny or modify any plan submitted pursuant to any requirement of this subchapter;

iii. Impose any condition on any approval issued pursuant to any requirement of this subchapter, which the applicant, or participating entity finds objectionable;

iv. Revoke, withdraw or modify any approval issued pursuant to any requirement of this subchapter ;

v. Deny an entity the ability to participate in the Silver Track II Tier of the Silver and Gold Track Program for Environmental Performance through the Deferral Track provisions, N.J.A.C. 7:26-2C.15; or

vi. Deny the request for a stay under N.J.A.C. 7:26-2C.13(e);

(b) Requests for a contested case hearing shall be submitted to:

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection
401 East State Street
PO Box 402
Trenton, New Jersey 08625-402

(c) All requests for a contested case hearing must be received by the Department within 20 days of the date upon which the notice of decision was received.

(d) All requests for a contested case hearing must be submitted by the applicant in writing to the Department in accordance with (b) above and shall contain:

1. The name, address and telephone number of the person making such request;
2. A statement of the legal authority and jurisdiction under which the request for a hearing is made;
3. A brief and clear statement of specific facts describing the Department decision being appealed, as well as the nature and scope of the interest of the requester in such decision; and
4. A statement of all facts alleged to be at issue and their relevance to the Department decision for which a hearing is requested. Any legal issues associated with the alleged facts at issue must also be included.

(e) Determinations made pursuant to this section shall be made in writing and mailed to the specific party making such request.

(f) The Department shall determine whether any request for a contested case hearing should be granted. In making such determination, the Department shall evaluate the request to determine whether a contested case exists and whether there are issues of fact, which, if assumed to be true, might change the Department's decision. Where only issues of law are raised by a request for a hearing, the request will be denied. Denial by the Department of a request for a contested case hearing shall constitute the final decision of the Department for the purposes of judicial appeal.

7:26-2C.14 Request for a Stay of the Effective Date of a Departmental Determination

(a) The Department, in its discretion, may grant a stay of the effective date of a decision to revoke any previous approval upon application for a stay by the aggrieved party.

(b) To request a stay, an aggrieved party must submit the following documents, which substantiate, by a preponderance of the evidence, that one of the following circumstances exist:

- i. The granting of the stay is required as a constitutional or statutory right;
- or
- ii. The potential effect on human health and welfare or the environment which might result from a decision to grant a stay is greatly outweighed by immediate, irreparable injury to the specific party requesting such stay.

(c) The Department's decision to grant a contested case hearing request shall not automatically result in a stay of the Department action appealed from, in the absence of an express decision by the Department to stay such action. The burden shall be upon the

party requesting a hearing to explicitly request a stay of action within the same document, as well as to describe reasons why such stay should be granted.

(d) Department decisions are effective according to their terms, unless stayed by the Department in writing.

(e) Written requests for a stay of the effective date of the Department's decision shall be made to the Department at the address provided at N.J.A.C. 7:26-2C.13 within 20 days of the date upon which the notice of decision was received.

(f) Any stay granted by the Department shall be temporary and shall not extend beyond the date of the Department's final decision in respect to the contested case.

7:26-2C.15 – Deferral Track

(a) An applicant for Silver Track II which, after an eligibility review by the Department pursuant to N.J.A.C. 7:26-2C.4, is determined by the Department to be ineligible for participation in Silver Track II as a result of having a disqualifying violation(s) as set forth at N.J.A.C. 7:26-2C.4, may be eligible for participation in Silver Track II pursuant to the requirements of this section after a deferral period.

(b) In order to be eligible for Silver Track II under the requirements of this section, an applicant shall fall within either of the following categories:

1. An applicant that has a disqualifying violation(s) that occurred within the five year eligibility review period but for which the applicant has fully achieved compliance and/or has paid to the Department any civil administrative penalties owed in connection with a disqualifying violation(s), or;

2. An applicant that has a disqualifying violation(s) that occurred within the five year eligibility review period and which has entered into an Administrative Consent Order with the Department to achieve compliance; is in compliance with the Administrative Consent Order, including all milestones and corrective action requirements of the Administrative Consent Order, and which has paid any civil administrative penalties due to the Department in connection with the disqualifying violation(s).

(c) An applicant for Silver Track II, who has any criminal violations, is not eligible for deferral.

(d) An applicant who falls within any of the categories set forth in N.J.A.C. 7:26-2C.15, may be eligible for participation in Silver Track II one year subsequent to the Department notifying the applicant, in writing, of its deferral, if the following criteria are met:

1. The applicant agrees, in writing, to perform all of the requirements applicable to an approved Silver Track II participant pursuant to N.J.A.C. 7:26-2C.5-2C.8 during the one year deferral period.

2. The applicant agrees, in writing, within the one year deferral period:

i. To perform a facility-level accounting of the inputs and outputs of materials at the facility. This accounting must include reasonable estimates of the amount of hazardous substances: contained in the products at the facility; consumed (molecularly altered) at the facility; used by or put into each process at the facility; generated as an air, water or waste release, prior to treatment or control; and sent for recycling either on-site or off-site, to incorporate maximum achievable levels of pollution prevention and to identify opportunities for materials reuse, product substitution and energy efficiency.

Toward performing the necessary accounting, the applicant may choose to utilize a process for evaluating pollution prevention, materials reuse, product substitution and energy efficiency opportunities that has obtained certification by the New Jersey Corporation for Advanced Technology (NJCAT); and

ii. To develop an implementation plan to maximize achievable levels pollution prevention and to identify opportunities for material reuse, product substitution and energy efficiency at the facility. This implementation plan shall contain (the specific elements identified in N.J.A.C. 7:26-2C.6) milestones for implementation of pollution prevention, material reuse, product substitution, or energy efficiency.

iii. The facility's accounting results and implementation plan shall be submitted to the address given in 7:26-2C.3 prior to the end of the one-year deferral period for the Department's approval. The accounting results and implementation plan prepared pursuant to (d)2 above will be used by the Department as a criterion for determining full eligibility in the Silver Track Program at the conclusion of the one-year deferral period pursuant to 7:26-2C.15(f).

3. The applicant agrees, in writing, that it shall not be eligible for the flexibilities and incentives, pursuant to N.J.A.C. 7:26-2C.9, during the one-year deferral period.

4. The applicant shall enter into a Memorandum of Agreement (MOA) with the Department memorializing its obligations pursuant to N.J.A.C. 7:26-2C.15 (d)1 -3, and a compliance schedule setting forth milestones for complying with all applicable requirements of the Silver Track II program.

(e) At the end of the one-year deferral period, the Department shall determine whether the deferred applicant may participate in Silver Track II and shall so notify the applicant, in writing, of its decision. The applicant shall not be eligible for the flexibilities and incentives of the Silver Track II program, pursuant to N.J.A.C. 7:26-2C.9, until it receives written confirmation from the Department that it has been accepted into the Silver Track II program. If accepted into Silver Track II, the applicant shall comply with all requirements of Silver Track II set forth in this subchapter.

(f) No deferred applicant shall be eligible for approval as a Silver Track II participant at the end of the one-year deferral period if the Department determines that the applicant has:

1. Committed a disqualifying violation(s) set forth at N.J.A.C. 7:26-2C.4 above, during the one-year deferral period;

2. Has not complied with the terms of an executed Administrative Consent Order;

3. Has not entered into an Administrative Consent Order with the Department if required under (b);

4. Has failed to submit the accounting or implementation plan required pursuant to (d) 2i or ii, respectively, above; or

5. Has not obtained the Department's approval of the facility's implementation plan.