



Department of Energy
Washington, DC 20585
November 15, 2002

U.S. Environmental Protection Agency
Enforcement and Compliance Docket
and Information Center
Ariel Rios Building (Mailcode 6102)
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Docket Number A-2000-47

Dear Sir or Madam:

On August 13, 2002, the Environmental Protection Agency (EPA) published a notice of proposed rulemaking (NPRM) in which EPA proposes regulatory changes to provide additional incentives for National Environmental Performance Track members.

The Department of Energy (DOE) appreciates the opportunity to comment on the proposed rule. Seven of the Department's facilities applied for Charter membership in the Performance Track Program, and five were accepted. The Department believes that providing additional incentives, such as consolidated reporting and extended accumulation time for waste generators, would encourage additional facilities to apply to the National Environmental Performance Track program.

Enclosed are the Department's comments on the proposed rule. For clarity, each comment is preceded by a reference to the section of the NPRM to which it applies. If you have any questions or need further clarification of our comments, please call Sharon Brown of my staff on (202) 586-6377. You may also contact Ms. Brown via e-mail at sharon.brown@eh.doe.gov.

Sincerely,

A handwritten signature in cursive script that reads "Andy Lawrence".

Andy Lawrence
Director
Office of Environmental Policy and Guidance

Enclosure

cc: Office of the Federal Environmental Executive



**United States
Department of Energy**

**Comments On
National Environmental Performance Track Program
Notice of Proposed Rulemaking
(67 *FR* 52674; 08/13/02)**

**U.S. Department of Energy
Comments on
Notice of Proposed Rulemaking
National Environmental Performance Track Program**

General Comments

1. The U.S. Department of Energy (DOE) supports EPA's efforts to provide regulatory incentives for sites with good performance records, such as participants in the National Environmental Performance Track (NEPT) program. The proposed incentives are a useful start. We encourage EPA to continue to identify and implement additional incentives.
2. Since most major Federal regulatory programs are delegated to the States, few potential regulatory flexibility incentives will be effective unless the States join with EPA in offering comparable incentives. We urge EPA to continue to work with States to encourage them to offer similar incentives

Specific Comment

II.C. "180-Day Accumulation Time for Performance Track Waste Generators"

DOE supports the proposed incentive; we believe that increased accumulation time could be cost effective for some sites. At the same time, this provision would not provide an incentive for all sites. One DOE site (a Performance Track Charter member) pointed out that this provision would not provide an incentive to it for two reasons:

- (1) Adding a weight limit would require significant operational changes. This site operates as a 90-day (large quantity) generator, with a post-closure permit. It presently has no weight limit, just a storage time limit. In addition to hazardous waste generated from routine operations, this site uses 25 yd³ roll-off containers for soil and debris which is a RCRA hazardous waste. When full, these containers normally weigh in excess of 10,000 kg each. These containers remain on site for a period of time (typically a week or two) before being shipped out of state. In the past, the site has had as many as four of these containers on site waiting to ship. The site states that for a 180-day accumulation period, the weight limit would need to be 100,000 kg to benefit that facility.
- (2) The requirement for secondary containment for 180-day would require adding containment. The site stages roll-offs with "soil and debris" at the site where they are used. Appropriate precautions are taken to prevent releases; however, this does not include, or require secondary containment as defined in the RCRA regulations. The site does not feel that adding containment is necessary.

Additional Comment

The Notice of Proposed Rulemaking requests comments on additional incentives for participation in Performance Track. We want to note a disincentive which is built into the way the program criteria are currently structured. Under these current criteria, large and complex (i.e., multi-permitted) facilities are placed at a disadvantage, since they must meet the same “one size fits all” numerical compliance criterion as very small facilities. We urge EPA to examine this issue in order to ensure a level playing field for all facilities which want to apply for recognition in National Environmental Performance Track. The compliance criterion has led EPA to recommend that some DOE sites withdraw their Performance Track applications; it has led other DOE sites not to apply.