



# New York Green Business Guidance Document

## Introduction

This program guidance supplements Commissioner's Policy 67: New York Environmental Leaders (CP-67). The Department of Environmental Conservation (Department) is implementing the New York Green Business (NYEL) program in order to promote compliance with environmental laws and the adoption of pollution prevention practices that go beyond compliance by providing recognition and incentives to entities that demonstrate their commitment to sustainable operations. While CP-67 sets forth the general approach the Department will take in implementing the NYGB program, this guidance will provide information that applicants can use when evaluating their own environmental management efforts in relation to NYGB requirements. Further, this guidance will provide the Department with more specific criteria to use when evaluating potential candidates for the program.

## Membership Requirements

In order to become a member of NYEL, an entity must fill out an application and meet the membership criteria in the following areas: commitment to compliance, performance commitments, and public outreach. The criteria for each area is below:

### Commitment to Compliance

To qualify for participation in NYEL, applicants must demonstrate a commitment to compliance with environmental requirements. The following outlines the process and criteria the Department will utilize and consider when reviewing an applicant's record of compliance.

#### *The Compliance Screening Process*

Upon receipt of an application, the Pollution Prevention Unit will request the appropriate DEC Program/Regional Representatives to conduct compliance screens for applicants. Representatives will be responsible for providing the following:

1. The Office of General Counsel Representative will assess existing compliance data sources and document all violations that should be considered in an assessment of an applicant's record of compliance.
2. Environmental Quality Program Representatives will provide relevant information on the applicant's compliance history in their program area.
3. The Regional Representatives will check with their regional programs to assess compliance with existing environmental requirements, and to report on whether any enforcement action is being undertaken or contemplated.

Upon completion, the information gathered will be transmitted to the Pollution Prevention Unit.

If there is not enough existing information to assess the applicant's record of compliance, the Pollution Prevention Unit may request that the applicant allow the Department to conduct a compliance assessment. If the applicant agrees, then the Pollution Prevention Unit, in cooperation with the DEC Regional Representative, will take the lead in coordinating this effort. Violations discovered during this compliance assessment will be handled as a compliance assistance visit in accordance with Commissioner's Policy 59: Environmental Audit Incentive Policy (CP-59). If the applicant does not agree to this compliance assessment they will not be considered for entrance to NYEL unless an alternative method to assess compliance is agreed upon by the applicant and Department. The Department will not require an on-site compliance assessment for applicants that are not required to hold DEC permits or registrations, and is not a regulated generator of hazardous waste.

### *The Compliance Standard*

The Department will use the following criteria to evaluate the record of compliance of applicants to NYEL and to determine whether the commitment to compliance criteria has been met for admission purposes. Any of the following may be a basis for excluding applicants from NYEL membership:

1. Within the five year period before the date of application, has the applicant:
  - i. been denied a permit for the same or substantially similar activity or activities being conducted at the facility covered by the NYEL application;
  - ii. been found in an administrative order or hearing to have violated environmental conservation law and or environmental regulations.
  - iii. been found in a civil proceeding to have committed a negligent or intentionally tortious act, or has been convicted in a criminal proceeding of a criminal act involving violation of an environmental requirement, regulation, order or permit condition of the federal, or other state, government;
  - iv. been convicted of a criminal offense under the laws of any state, or of the United States, which involves a violent felony or fraud, bribery, perjury, theft, or an offense against public administration as that term is used in Penal Law Article 195;

- v. in any matter within the Department's jurisdiction, knowingly falsified or concealed a material fact, knowingly submitted a false statement, or made use of or made a false statement on or in connection with any document or application submitted to the Department.
- b. Within the three year period before the date of the application, has the applicant:
  - i. had three or more significant violations at the facility. More information on what constitutes a significant violation can be found below.
- c. At the time of the application, whether the applicant:
  - i. is the subject of an ongoing criminal investigation;
  - ii. has an unresolved or unaddressed significant non-compliance or high priority violation at the facility, or any violations that are significant to affected Department programs;
  - iii. is the subject of planned but not yet filed judicial or administrative action on the facility;
  - iv. is not in compliance with the schedule and terms of an administrative or judicial order or decree;
  - v. is the subject of pending State or EPA initiated litigation at the facility

## 2. Pattern of neglect or non-cooperation

In addition to the exclusions noted above, the Department may exclude an entity from participating in NYEL if information gathered during the compliance screening indicates a pattern of neglect or non-cooperation regarding compliance with environmental requirements. The following factors will be considered when making a determination;

- i. Scope and magnitude of the applicant's operations
- ii. Trend over time in the instances of non-compliance and facility response
- iii. Prior willfulness and-or negligence regarding compliance with environmental requirements
- iv. Lack of good faith effort to resolve issues

## 3. Significant Violations

Applicants that have three or more significant violations within the past three years will be excluded from NYEL membership. Violations that meet USEPA criteria for Significant Non-Compliance (SNC) and High Priority Violation (HPV) will be considered significant for this purpose, as will any violations that are considered significant by relevant Department programs.

SNC and HPV are terms defined by the USEPA to describe compliance status and environmental violations that are considered the most serious and may pose a more severe environmental harm. Each EPA program uses its own program specific criteria to determine if a facility is currently in SNC or HPV status. The EPA documents that set forth the program specific criteria are referenced below.

- i. Clean Air Act HPV Definition – Can be found in the December 22<sup>nd</sup>, 1998 memo: Issuance of Policy on Timely and Appropriate Enforcement Response to High Priority Violations (<https://echo.epa.gov/help/reports/dfr-data-dictionary#SNCHPV>)
- ii. Clean Water Act SNC Definition – Can be found in the December 12<sup>th</sup>, 1996 EPA guidance document: A General Design for SNC Redefinition Enhancement in PCS (<https://echo.epa.gov/help/reports/dfr-data-dictionary#SNCHPV>)
- iii. RCRA SNC Definition – Can be found in the December 2003 Hazardous Waste Civil Enforcement Response Policy (<https://echo.epa.gov/help/reports/dfr-data-dictionary#SNCHPV>)

#### 4. Mitigating Factors

Basic compliance requirements allow for no more than two significant violations in the last three years. If this number is exceeded, however, the Department may also consider the following factors to determine whether to make an exception:

- i. The overall trend in the applicant's record of compliance demonstrates improvement;
- ii. The applicant has been cooperative in the resolution of violations;
- iii. Violations that are part of the applicant's record of compliance have been corrected in a timely and appropriate manner;
- iv. Violations were self-reported by the applicant;
- v. The applicant demonstrates that they have an environmental management system (EMS) that will prevent future violations.

#### *Disclosing Compliance Screen Results*

When informing an applicant of a decision to reject their application for membership in the NYEL program based upon not meeting the commitment to compliance criteria, the Pollution Prevention Unit will only disclose items that relevant DEC programs authorize the Pollution Prevention Unit to share with the applicant.

## Performance Commitments

Any entity seeking to become a member of the NYEL program must commit to taking actions that will decrease their environmental footprint and which represent leadership within its respective sector. The number of performance commitments that an applicant must make is based upon the number of employees that are present at the facility, regardless of the size of the corporate entity. Large facilities with one hundred or more employees must make three performance commitments. Small facilities with fewer than one hundred employees must make two performance commitments. The Department retains the discretion to develop sector specific entry requirements that will deviate from the number of commitments noted above in certain situations, if warranted.

<i>Number of Employees</i>	<i>Number of Commitments</i>
Fewer than 100	2
100 or More	3

Applicants may choose the types of commitments from the lists below and include “non-measurable” and “measurable” performance commitments. Applicants are limited to selecting only one “non-measurable” performance commitment. For applicants that are already carrying out labor intensive processes of a “measurable” performance metric that increases its environmental performance, sustaining the current level of performance will be considered a performance commitment.

The commitment requirements listed above may not be applicable for certain sectors that the Department has determined require sector-specific requirements.

### *Types of Commitments*

#### 1. Non-Measurable Environmental Performance Commitments

Facilities may choose one of the following types of non-measurable performance commitments to meet their required number of commitments. It is not mandatory to have a non-measurable performance commitment, and no more than one non-measurable commitment will be allowed.

##### *a. Environmental Management Systems (EMS)*

Implementation of a functioning EMS, such as a system following the ISO 14001 standard or other sector specific equivalent, for the duration of an applicant’s three year membership period in the NYEL program may be considered a performance commitment. The EMS will be independently verified, or deemed satisfactory after an on-site assessment by Department staff, the NYS Pollution Prevention Institute, or a Department-approved NYEL peer.

##### *b. Participation in a Department Approved External Environmental Program*

If an applicant participates in an external environmental program that the Pollution Prevention Unit has determined meets the criteria outlined in CP-XX, then continuing to

adhere to that standard and maintaining participation in good standing will be considered a performance commitment for NYEL.

- c. Alternatives Assessments  
Completing an alternatives assessment that is freely available to the public can be offered as a commitment for NYEL. The alternatives assessment will be conducted in compliance with guidance developed by the Interstate Chemicals Clearinghouse, or other appropriate standards. For more information on alternatives assessments go to: [http://theic2.org/alternatives assesment guide](http://theic2.org/alternatives_assesment_guide)
  - d. Identification of Environmental Improvement Opportunities with a Technical Assistance Provider  
Committing to working with a technical assistance provider, such as the NYS Pollution Prevention Institute, to identify opportunities to improve environmental performance will be considered a performance commitment for the NYEL program. Implementation of identified opportunities will be considered during future participation periods in the NYEL program.
1. Measurable Environmental Performance Commitments  
Large facility applicants are required to make at least two measurable environmental performance commitments, while small facility applicants must make at least one. New measureable performance commitments may be selected from the table below. Applicants may also choose to continue implementation of a labor intensive measurable improvement for the duration of their membership in the NYEL program.
- i. New Measurable Commitments  
Measureable environmental performance commitments must exceed minimum compliance requirements and be selected from the table below. When selecting commitments, applicants should consider addressing the facility's most significant environmental impacts.
- A member or applicant that chooses to focus more than one of its measurable performance commitments on a single category must utilize unique indicators for each of its commitments to the maximum extent practicable. Based upon an applicant's explanation of the resulting environmental benefits, and related demonstration of leadership, the Department may allow an applicant to offer two commitments focused on the same indicator in limited circumstances.
- Upon justification by the applicant, the Department may accept units of measurement that are not included in the below table.
- For each measurable commitment, the applicant will document a factor that they will use to normalize the indicator to account for increases or decreases in production, or other external factors (such as temperature), over time. The facility will determine the appropriate level of improvement that they commit to achieve.

The following categories and indicators are acceptable to the Department:

- ii. **Sustaining Past Measurable Environmental Performance Improvements**  
 In some instances, the Department will accept a commitment to sustain past levels of performance. In order to be considered for this option, an applicant must report the level of performance achieved, provide a description of the specific activities to be undertaken to sustain the current performance level, and provide a description of any negative impacts to the environment if it discontinued this level of performance.

<b>Stage: Upstream</b>		
<b>Category</b>	<b>Indicator</b>	<b>Units</b>
Material Procurement	Recycled content (Total or specific)	Pounds, tons
	Hazardous/toxic components (Total or specific)	Pounds, tons
Material Procurement	Components, materials or products certified by Greenseal, Ecologo, or other certification bodies approved by the Department (Total or Specific)	Pounds, tons, number of units
Local Supply Chain	Components, materials or products made by New York based entities (Total or specific)  Food Products designated under the Pride of NY program (Total or specific)	Pounds, tons
Suppliers' Environmental Performance	Any relevant Indicators from the Inputs or Nonproduct Outputs stages	As specified for the particular Indicator

<b>Stage: Inputs</b>		
<b>Category</b>	<b>Indicator</b>	<b>Units</b>
Material Use	Materials used (Total or specific)	Pounds, tons

	Hazardous materials used (Total or specific)	Pounds, tons
	Ozone depleting substances used (Total specific)	CFC-11 equivalent tons CFC-11 equivalent pounds
	Total packaging materials used	Pounds, tons
Water Use	Total water used	Gallons
Energy Use	Total (non-transportation) energy use by fuel type	kWh/MWh or Btu/MMBtu
	Transportation energy use (Total or specific)	kWh/MWh, gallons, cubic feet
Land and Habitat	Land and habitat conservation	Square feet, acres
	Community land revitalization	Square feet, acres

### Stage: Nonproduct Outputs

Category	Indicator	Units
Air Emissions	Total GHGs	MTCO <sub>2</sub> E
	VOCs (Total or specific)	Pounds, tons
	NOx	Pounds, tons
	SOx	Pounds, tons
	PM 2.5	Pounds, tons
	PM10	Pounds, tons
	CO	Pounds, tons
	Air toxics (Total or specific)	Pounds, tons
	Radiation	Curies, Becquerels
	Dust	Pounds, tons
	COD	Pounds, tons

Discharges to Water	BOD	Pounds, tons
	Toxics (Total or specific)	Pounds, tons
	Total suspended solids	Pounds, tons
	Nutrients (Total or specific)	Pounds, tons of Total N or P
	Sediments from runoff	Pounds, tons
	Pathogens (Total or specific)	MPN/ml, CFU/ml
Waste	Non-hazardous waste generation, broken down by management method (Total or specific)	Pounds, tons
	Hazardous waste generation, broken down by management method (Total or specific)	Pounds, tons

### Stage: Downstream

Category	Indicator	Units
Products	Expected lifetime energy use (Total or specific)	kWh/MWh or Btu/MMBtu
	Expected lifetime water use (Total or specific)	Gallons
	Expected lifetime waste (to air, water, land) from product use (Total or specific)	Pounds, tons
	Waste to air, water, land from disposal or recovery (Total or specific)	Pounds, tons
Building Construction	Amount of building area certified under green building standards such as LEED (Total or specific)	Square Feet

- iii. Sustaining Past Measurable Environmental Performance Improvements  
 In some instances, the Department will accept a commitment to sustain past levels of performance. In order to be considered for this option, an applicant must report the level of performance achieved, provide a description of the specific activities to be undertaken to

sustain the current performance level, and provide a description of any negative impacts to the environment if it discontinued this level of performance.

### Public Outreach

Each NYEL applicant must provide a public outreach plan that will explain how it intends to communicate information about its participation in NYEL to the public. Each plan should be customized to the facility's individual, unique characteristics, and at a minimum should include putting the facility's NYEL application, and associated annual reports, on its public website or creating links from the member's website to the Department's webpage that hosts the member's information. The applicant may also have a hard copy on site for inspection by visitors and employees and also post the information on an internal website for employee communication.

The Department also encourages applicants to incorporate other methods of public outreach, including participation in meetings with the local community, holding open houses, and organizing Earth Day events. In addition, the Department encourages applicants to have robust means to share environmental performance information with employees and gather feedback from employees on improvement ideas.

## **Membership Responsibilities**

Members of NYEL must carry out certain responsibilities in order to remain in good standing and continue participation in the program. A list of membership responsibilities and descriptions are as follows:

1. **Progress Toward Performance Commitments**  
Members of the NYEL program are expected to make progress toward their performance commitments during the three year membership period with the expectation that appropriate efforts will be made to meet all goals by the end of the third year. For members that choose to implement an EMS as a performance commitment, the EMS must continue in place for the entire duration of membership. Members committing to participate in an external environmental program must continue participation and remain in good standing with the program for the duration of their NYEL membership. Members that fail to implement their EMS or fall out of good standing in their external environmental program may have their NYEL membership terminated if alternative commitments are not made by the member.
2. **Annual Performance Reports**  
NYEL members are required to submit an Annual Performance Report (APR) that will outline progress being made toward commitments and public outreach plans. The APR can be completed in a form provided by the Department.
3. **NYEL Site Visits**

All NYEL members must agree to host a NYEL Site Visit for Department staff to review the member's progress in fulfilling the program's requirements. Department staff may request member site visits at least once during each three year membership period in the program. When a new member is accepted in to NYEL the Department will notify the member of the site visit requirement and make the member aware that Site Visits are in addition to any routine compliance inspections. Department staff will offer generic agendas for the visits and will strive to complete them within four hours. The site visit will focus on assessing the progress being made toward the member's performance commitments, providing assistance in locating sources of funding that may support their efforts, and discussing future opportunities to incorporate further pollution prevention practices. These are non-regulatory visits and will be considered compliance and technical assistance visits under CP-59. Department staff will coordinate scheduling of visits with the member.

#### 4. Public Outreach Plans

NYEL members must take steps outlined in their application to communicate their membership in the NYEL program to the public and report their public outreach activities in their APR.

## Incentives

Active members of the NYEL program in good standing are able to take advantage of all incentives available to NYEL members at the time. The incentives available may change over time as the Department periodically assesses whether there are other incentives that can be offered.

## Termination Procedures

If a member of NYEL fails to meet the program's membership requirements, it can be terminated from the program at the sole discretion of the Department. When the Pollution Prevention Unit determines that a member of NYEL is not meeting the membership requirements, it will contact the member to notify them of its determination and to create an agreed-upon plan to correct any deficiencies. If the member fails to carry out its commitments in the corrective plan, the Pollution Prevention Unit will send it a letter of notice providing it thirty days to complete the activities in the corrective plan. If the member fails to complete the actions included within the corrective plan by the end of thirty days, its NYEL membership will be officially terminated via letter from the Pollution Prevention Unit. The Department reserves the right to immediately terminate NYEL membership based upon the severity of environmental violations.

A member may also voluntarily withdraw from the NYEL program by contacting the Pollution Prevention Unit and providing written confirmation of its intention to withdraw. Upon receipt of the written confirmation of its intent to withdraw from the program, the Pollution Prevention Unit will provide an official termination letter to the member and its membership will cease immediately.

Immediately upon the termination of membership in the NYEL program, a former member may not hold itself out as a member of the NYEL program, must discontinue any use of the NYEL logo, and may no longer receive any of the benefits or incentives available as part of the program.