UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 10 2003

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

Subject: Clarification and Expansion of Environmental Compliance Audits under the Supplemental Environmental Projects Policy

From: Phyllis P. Harris,
Principal Deputy Assistant Administrator

To: Regional Administrators (I-X)
Regional Counsel (I-X)

The purpose of this memorandum is to advise that the environmental compliance audit category of Supplemental Environmental Projects (SEPs) is being expanded and to notify you of our decision to allow all state and local governments, regardless of size, to undertake such audits as SEPs, without prior Headquarters approval. Environmental compliance audits are currently allowed only for small businesses (employing less than 100 persons) and small communities (containing less than 2,500 persons).

The SEP Policy allows for assessments and audits if they are not generally available as injunctive relief, and the defendant/respondent agrees to provide EPA with a copy of the assessment report. The SEP Policy limits environmental compliance audits to small companies because larger companies have the resources and expertise to routinely conduct them. Therefore, to mitigate penalties for such audits would reward violators for performing an activity that companies should already be doing. In contrast, these audits are not commonly done by small businesses, perhaps because they may be too expensive. We reviewed this limitation in the SEP Policy and determined that it is still appropriate. We recognize however, that some larger companies may conduct compliance audits that are exceptional; as such, a case team may always propose such a potential project under the "Other" category of the SEP Policy, and seek approval from the Director of the Multimedia Enforcement Division within the Office of Regulatory Enforcement. The case team should provide information on the exceptional environmental merit of such a project, and explain how the project is consistent with all other provisions of the SEP Policy.

Recently, several Regions requested that we consider expanding the "assessments and audits" category to allow state and local governments to receive SEP credit for conducting a compliance audit. Concerns were raised because state and local governments are similar to small business and small communities in that they do not commonly conduct compliance audits because they may be too costly and are not supported during state budget development. After reviewing this issue, we believe that it is appropriate to expand the assessments and audit category to allow state and local governments to conduct compliance audits as SEPs. Regions must ensure that all other aspects of the SEP Policy are met, e.g., nexus, for any proposed project.

As always, we appreciate your efforts to continue to include SEPs in settlements, as they are an important tool in our effort to obtain significant benefits for the environment and public health. If you have any questions, please contact Melissa Raack (202-564-7039) or Beth Cavalier (202-564-3271) of my staff. For questions concerning SEPs at Federal facilities, please contact Melanie Garvey of the Federal Facilities Enforcement Office (FFEO) at (202) 564-2579. For questions concerning SEPs and CERCLA, please contact Mike Northridge of the Office of Site Remediation Enforcement at (202) 564-4263.

cc: Media Enforcement Division Directors (I-X)
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