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

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OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Supplemental Environmental Projects (SEP) Policy

FROM: Sylvia K. Lowrance
Acting Assistant Administrator

TO: Regional Administrators, I-X
Regional Counsel, I-X

The continued use of Supplemental Environmental Projects (SEPs) in settlement agreements provides the Agency with a useful tool for achieving environmental benefits beyond those gained by compliance with Federal and state laws. The Regions' work in promoting and implementing SEPs over the past few years has been an important element in achieving these gains. With such environmental gains come the responsibility to ensure that these projects meet the applicable legal guidelines and are consistent with Agency policy. The purpose of this memo is to reiterate several important aspects of EPA's 1998 SEP Policy.

The SEP Policy describes the key characteristics that a project should have in order to be considered as a SEP. Projects must improve, protect, or reduce risks to public health or the environment; be undertaken in settlement of an enforcement action; and must be projects that the alleged violator is not otherwise legally required to perform.

The SEP Policy reflects the following legal guidelines to ensure that SEPs are within the Federal government's authority, and do not run afoul of any statutory requirements, especially the Miscellaneous Receipts Act (MRA), 31 U.S.C. §3302(b), and other applicable principles of appropriations law.

1) A project cannot be inconsistent with any provision of the underlying statute.

2) All penalty payments must be deposited into the Treasury unless otherwise authorized by law.

3) All projects must advance at least one of the objectives of the environmental statutes that are the basis of the enforcement action and must have adequate nexus. Nexus is the relationship between the violation and the proposed project. This relationship exists only if:

a) the project is designed to reduce the likelihood that similar violations will occur in the future; or

b) the project reduces the adverse impact to public health or the environment to which the violation at issue contributes; or

c) the project reduces the overall risk to public health or the environment potentially affected by the violation at issue.

4) EPA may not play any role in managing or controlling funds that may be set aside or escrowed for performance of a SEP.

5) The type and scope of each project are defined in the signed settlement agreement

6) A project cannot be used to satisfy EPA's statutory obligation or another federal agency's obligation to perform a particular activity.

7) A project may not provide EPA or any federal agency with additional resources to perform a particular activity for which Congress has specifically appropriated funds.

8) A project may not provide additional resources to support specific activities performed by EPA employees or EPA contractors.

9) A project may not provide a federal grantee with additional funds to perform a specific task identified within an assistance agreement.

10) Projects that involve only contributions to a charitable or civic organization are not acceptable.

It is important to note that these constraints are intended to ensure compliance with statutory requirements and cannot be waived by Agency officials. Working within these legal restrictions, the Agency has been extraordinarily successful in incorporating SEPs into settlements. SEPs are an important part of the settlement process and are an appropriate means to further Agency enforcement goals and objectives. We encourage the Regions to continue to promote SEPs and look for opportunities to incorporate such projects into their settlements.

The Multimedia Enforcement Division (MED) in the Office of Regulatory Enforcement (ORE) has overall responsibility for coordinating SEP issues for the regulatory enforcement program. Should you have any questions about a particular SEP or the SEP Policy, please contact me or MED's Director, David Nielsen at (202) 564-4022, or have your staff contact Beth Cavalier or Melissa Raack of David's staff. Beth can be reached at (202) 564-3271 and Melissa can be reached at (202) 564-7039.

Questions about SEPs at Federal facilities can be directed to Bernadette Rappold, Acting Director, Site Remediation and Enforcement Staff, Federal Facilities Enforcement Office (FFEO)

at (202) 564-0000, or to Melanie Garvey of her staff at (202) 564-2579. For any SEPs stemming from the cleanup enforcement program, please contact Ken Patterson, Director, Regional Support Division, Office of Site Remediation Enforcement (OSRE) at (202) 564-5134, or Michael Northridge of his staff at (202) 564-4263.

Attachment

cc: ORE Division Directors
Enforcement Division Directors, I-X
Ken Patterson, Director, RSD, OSRE
Charles Sheehan, Acting Deputy Director, RSD, OSRE
Craig Hooks, Director, FFEO
Bernadette Rappold, Acting Director, SRES, FFEO
SEP Coordinators
Enforcement Coordinators