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

APR 14 2000

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Appropriate Penalty Mitigation Credit under the SEP Policy

FROM: Eric V. Schaeffer, Director
Office of Regulatory Enforcement

TO: Regional Counsels, Regions I-X
Air Division Directors (Regions I-X)
Water Division Directors (Regions I-X)
RCRA Division Directors (Regions I-X)
Pesticides and Toxics Division Directors (Regions I-X)

The purpose of this memorandum is to reinforce a key element of the Supplemental Environmental Projects Policy (SEP Policy), SEP mitigation credit. I am sending this memorandum because I believe it is important from time to time to remind staff about certain aspects of the SEP Policy. Consistent application of the SEP Policy across all Regions is critical to its implementation.

The SEP Policy states that, while the percentage of penalty mitigation for a SEP is within EPA's discretion, with no presumption as to the correct percentage of mitigation, "[t]he mitigation percentage **should not exceed 80 percent** of the SEP COST, with two exceptions...." Section E, page 16. The two exceptions which allow for dollar-for-dollar SEP mitigation credit are:

(1) for small businesses, government agencies or entities, and non-profit organizations who can demonstrate that the project is of **outstanding** quality, and

(2) for any defendant/respondent if the SEP implements pollution prevention and the defendant/respondent can demonstrate that the project is of **outstanding** quality.

Dollar-for-dollar credit in other situations would not be consistent with the SEP Policy and would require a waiver from the Assistant Administrator. SEPs do not replace penalties. Rather, credit for SEPs is a recognition, based on many aspects of the project, of the

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environmental or public health benefits anticipated by the project. Therefore, dollar-for-dollar credit would be inappropriate where the project was not of outstanding quality, and requests for waivers to allow dollar-for-dollar credit should also demonstrate the outstanding quality that makes the project worth the additional credit. Refer to the six factors listed in section E, step 4a of the SEP Policy, p. 15-16, for how to determine whether a project would be of outstanding quality.

We appreciate the Regions' efforts and commitment to obtain the most benefit for the environment and public health from our enforcement actions. The SEP Policy is an important tool in that effort and we appreciate the opportunity to assist you in applying it. Questions from your staff about the SEP Policy can be directed to Melissa Raack (202-564-7039) or Beth Cavalier (202-564-3271). In addition, please do not hesitate to call me (202-564-2220) or David Nielsen, Director of the Multimedia Enforcement Division (202-564-4022).

cc: Regional Enforcement Coordinators, Regions I-X
ORE Division Directors
SEP Network