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

MAR 22 2002

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Clarification of Interaction Between 1995 Clean Water Act Interim Settlement Policy and the 1998 Supplemental Environmental Project Policy

TO: Regional Counsel, Regions I-X
Water Division Directors, Regions I-X
Enforcement Division Directors, Region I-X

FROM: Mark Pollins, Director
Water Enforcement Division
Office of Regulatory Enforcement

David A. Nielsen, Director Rosemarie A. Kelley for
Multimedia Enforcement Division
Office of Regulatory Enforcement

This memorandum clarifies the interaction between the May 1995 Interim Clean Water Act (CWA) Settlement Penalty Policy (CWA Policy) in regards to settlements with municipalities that include supplemental environmental projects (SEPs), and the May 1998 Supplemental Environmental Project Policy (SEP Policy). This memorandum will clarify that for purposes of settling CWA cases with municipalities, or other public entities (such as a sewer authority), Regional and Headquarters CWA enforcement staff should follow the CWA Policy when considering the appropriate balance between the cash penalty and SEPs.

The CWA Policy states on page 17, that for municipal cases, "the cash penalty amount established by the tables may be reduced based on compelling ability to pay considerations and by up to 40 percent for appropriate supplemental environmental projects." Therefore, a minimum of 60% of the gravity component should be collected in cash. This differs from the SEP Policy, which provides for collection of a cash component of 10% of gravity plus economic benefit, or 25% of gravity, whichever is larger. (See SEP Policy, page 12).

The rationale behind this limitation is that the municipality penalty chart on page 17 of the CWA Settlement Policy already provides substantial penalty mitigation for municipalities.

As a result, additional mitigation for SEPs should be limited. However we recognize that there may be specific circumstances that would necessitate deviating from the 60% cash minimum when a particular municipality or public entity agrees to conduct a SEP as part of a CWA settlement. In such situations, Regional CWA enforcement staff should contact the Water Enforcement Division for consultation and approval.

Should you have any questions regarding this matter, please contact Mark Pollins, Director, Water Enforcement Division at (202) 564-4001.

cc:

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SEP Regional and HQ Coordinators
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