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

JUL 21 1998

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Revised Approval Procedures for Supplemental Environmental Projects

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

TO: Regional Counsels, Regions I-X
Director, Office of Environmental Stewardship, Region I
Director, Division of Enforcement and Compliance Assurance, Region II
Director, Compliance Assurance and Enforcement Division, Region VI
Director, Office of Enforcement, Compliance and Environmental Justice, Region VIII
Regional Enforcement Coordinators, Regions I-X

Through this memorandum, we are revising the implementing procedures for supplemental environmental projects (SEPs) to accommodate changes in the Final SEP Policy, which was effective May 1, 1998. This memorandum supersedes and replaces the April 24, 1996 memorandum entitled "Approval Procedures for Supplemental Environmental Projects," signed by Robert Van Heuvelen.

While most changes are minor, it is worthwhile to note that under the new approval procedures:

> a request for approval of a SEP that does not meet all of the legal guidelines must set forth a legal analysis supporting the conclusion that the project is within EPA's legal authority and is not otherwise inconsistent with the law.

Such SEPs may require Assistant Administrator approval. This contrasts with the procedures of the new "other" category. "Other" SEPs are those which fully comply with the Policy (including the legal guidelines), but do not fit within a specific category of SEP. Such SEPs may be

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approved by the appropriate office in OECA, unless otherwise delegated, with consultation by the Multimedia Enforcement Division. This division is delegated the authority to determine that a proposed SEP is consistent with the Policy.

Staff who manage implementation of the Policy in the Multimedia Enforcement Division, as well as the other divisions in the Office of Regulatory Enforcement, routinely respond to inquiries from Regional and Department of Justice staff on proper application of the Policy. These inquiries have been useful to us and the Regions, and in many of these consultations we have been able to offer suggestions on how to remedy problematic SEP proposals.

We encourage the Regions to continue to routinely consult with us on an informal and early basis concerning any questions you may have regarding implementation of the SEP Policy. At the same time, we need to clarify the procedures for when formal consultation and approval are necessary. The procedures governing approval of SEPs are set forth in Section J of the Final SEP Policy. This memorandum provides guidelines for how the procedures are to be implemented. These guidelines are consistent with the *Redelegation of Authority and Guidance on Headquarters Involvement in Regulatory Enforcement Cases*, issued by the Assistant Administrator on July 11, 1994.

Adherence to these procedures ensures consistent, fair and defendable application of the SEP Policy. We appreciate your compliance and look forward to working with you to obtain the best possible results in our enforcement cases.

The new approval procedures are set forth below. The wording in italics is a verbatim reproduction of text in section J of the Final SEP Policy. The implementing procedures are in bold.

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a. *Regions in which a SEP is proposed for implementation shall be given the opportunity to review and comment on the proposed SEP.*

The originating Region should send a short memorandum describing the SEP to each Region with a facility that will be affected by the SEP.

b. *In all cases in which a project may not fully comply with the provisions of this Policy (e.g., see footnote 1), the SEP must be approved by the EPA Assistant Administrator for Enforcement and Compliance Assurance. If a project does not fully comply with all of the legal guidelines in this Policy, the request for approval must set forth a legal analysis supporting the conclusion that the project is within EPA's legal authority and is not otherwise inconsistent with law.*

If there is an issue or question about whether a proposed SEP is

consistent with the Policy (or how a project can be modified to become consistent), the Region should consult with the appropriate Division in the Office of Regulatory Enforcement (ORE).[1] If there is still an issue after this consultation, the Region should send a memorandum containing a brief description of the SEP and the case to the Director of the Multimedia Enforcement Division in ORE. If MED determines that the SEP is consistent with the Policy, the proposed SEP does not need further review by me or the Assistant Administrator. If the Multimedia Enforcement Division believes a project is inconsistent with the Policy and the Region still wishes to proceed with the project, the Region may then elevate its request to the appropriate OECA Office Director (usually me) or the Assistant Administrator. Please remember that there may be some projects that, although inconsistent with the Policy's guidelines, are nevertheless justifiable and have such compelling environmental benefits that they could be approved as exceptions to the Policy.

c. *In all cases in which a SEP would involve activities outside the United States, the SEP must be approved in advance by the Assistant Administrator and, for judicial cases only, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice.*

Memoranda requesting approval for such projects should be sent to the Assistant Administrator, with a copy to ORE's Multimedia Enforcement Division. (The Multimedia Enforcement Division will provide copies to the appropriate media divisions in ORE.)

d. *In all cases in which an environmental compliance promotion project (section D.6) or a project in the "other" category (section D.8) is contemplated, the project must be approved in advance by the appropriate office in OECA, unless otherwise delegated.*

Requests for such approval should be sent to the appropriate Division Director in OECA, with a copy to the Multimedia Enforcement Branch Chief in ORE. I am delegating to the ORE Division Directors the authority to approve environmental compliance promotion SEPS and 'Other" SEPs in their respective programs, after consulting with the Multimedia Enforcement Division.

[1] If the case involves a federal facility or Superfund matter, the initial consultation should be with the Federal Facilities Enforcement Office or OSRE, respectively.

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Questions regarding these procedures, or any aspect of the Final SEP Policy, may be directed to Ann Kline of the Multimedia Enforcement Division, 202-564-0119.

cc: ORE Division Directors
OECA Office Directors
SEP Workgroup Members
Joel Gross, DOJ