

Enforcement Program

SUPPLEMENTAL ENVIRONMENTAL PROJECTS POLICY

I. Purpose

This policy is designed to provide guidance on the development, review and approval of "Supplemental Environmental Projects" (SEPs). The rationale for a SEP is to encourage violators to take actions that reduce the risk of further pollution, benefit public health, restore and protect the environment, and/or promote environmental compliance. The goal is to use the penalty as an incentive to obtain benefits that would not otherwise occur, either because the actions are not required by law or would not be seen by the violator as economically viable, were it not for the impending penalty action. This policy outlines the conditions under which the Montana Department of Environmental Quality (Department) will consider mitigating a penalty with a SEP.

II. Authority

Pursuant to Section 75-1-1001(3), Montana Code Annotated (MCA), the Department may accept a SEP in settlement of an enforcement action as mitigation for a portion of the penalty.

III. Definition

A SEP is an environmentally beneficial project, which is not otherwise legally required, that a violator agrees to undertake in settlement, in lieu of paying a portion of a cash penalty assessed for an environmental violation.

IV. General Applicability

A. The policy and procedures contained in this document apply to the assessment of administrative and judicial penalties for violations of all of the environmental statutes, rules, and permits administered by the Department.

B. The policy and procedures contained in this document are intended solely for the guidance of Department staff.

C. The ultimate decision to allow a SEP in settlement of an enforcement case rests with the discretion of the Department's Director or his/her designee. This policy sets forth factors for the Department to consider in exercising its enforcement and settlement discretion. Dependent on the specific case, the Department may approve a SEP that is at variance with this policy or the procedures contained in this document if the Director or his/her designee considers it appropriate.

D. This policy is not intended to constitute rulemaking for the Department, and may not be relied upon by any person to create a right or a benefit, substantive or procedural, enforceable by law or in equity.

V. Discussion and Policy

In all settlements, violators are required to achieve and maintain compliance with all applicable regulations. Most settlements include appropriate monetary penalties related to the environmental damage caused, and financial gain the violator has received, as a result of the violation.

Section 75-1-1001(3), MCA, provides that the Department may accept a SEP in settlement of an enforcement action to mitigate a portion of an assessed penalty. Therefore, the Department, through this policy may establish a methodology through which violators may mitigate penalties by agreeing to conduct a project that benefits public health and the environment in Montana. The Department prefers to approve SEPs that are proposed by willing and able violators who are most likely to exercise expertise, drive, and discipline to succeed in completing the SEP independently. For this reason, the Department will accept a SEP if it meets the criteria listed in Section A below.

A. Required Criteria for an Approvable SEP

A judgment as to the appropriateness of a SEP in a particular case will generally be made in accordance with the following criteria:

1. Benefits Human Health and the Environment: A SEP must benefit human health and the environment in Montana.
2. No Potential for Further Damage to the Environment from SEP: A project cannot be inconsistent with any provision of the underlying statutes. Further, a project will be allowed only when the Department is satisfied that the SEP will not cause additional damage to the environment or to public health or safety if it is done poorly or if left uncompleted at any time during implementation.
3. Relationship to Violation: All projects must advance at least one of the objectives of the environmental statutes that are the basis of the enforcement action. The project should have adequate nexus in at least one of the following areas:
 - a) Designed to reduce the likelihood that similar violations will occur in the future;
or
 - b) Reduces the adverse impact to public health or the environment to which the violation at issue contributes; or
 - c) Impact of the project is within the area of the violation.

Generally, a SEP will be approved only if the Department determines that there is a direct and appropriate relationship between the nature of the violation and the environmental benefits to be derived from the SEP. However, the Director may approve a SEP if, while lacking a direct nexus to the violation, it either furthers the Department's statutory mission or reduces the likelihood of future violations similar to those at issue. To constitute a "direct nexus" SEP, the SEP must: i) improve the environment impacted by the violation; ii) reduce the total risk posed to public health or the environment by the violation; iii) result in the restoration of natural or man-made environments from the actual or potential damage

resulting from the violation; or iv) protect natural environments from actual or potential damage resulting from the violation.

4. Managing SEPs: A state agency may not play any role in managing or controlling funds that may be set aside or escrowed for performance of a SEP. In addition, a state agency may not retain authority to manage or administer a SEP.

When a SEP requires third-party oversight, the oversight costs must be borne by the violator. He or she must agree, as a part of the settlement, to pay for an independent third party that is acceptable to the Department to monitor the status of the SEP. The violator will be required by the settlement and is ultimately responsible to assure that the third party submits detailed periodic reports directly to the Department, including a final report evaluating the success or failure of the SEP.

5. Benefits to the Department's Programs: SEPs may not be used to:

- a) Satisfy the Department's or another state agency's statutory obligation to perform a particular activity. Conversely, if a statute prohibits the expenditure of state resources on a particular activity, the Department cannot consider projects that would appear to circumvent that prohibition;
- b) Provide the Department or another state agency with additional resources to perform a legislative-mandated activity. A project, however, may be related to a particular activity for which the legislature has specifically appropriated funds;
- c) Provide additional resources to support specific activities performed by state employees or contractors. For example, if the Department has developed a brochure to help a segment of the regulated community comply with environmental requirements, a project may not directly, or indirectly, provide additional resources to revise, copy or distribute the brochure; or
- d) Provide a state agency grantee with additional funds to perform a specific task identified within an assistance agreement.

6. Planned, Completed or Required Activities: SEPs will not be allowed for projects which the violator has already completed, already intends to do or is likely to do. Further, a SEP will not be approved if the violator is otherwise legally required to perform the proposed activity. For example, the SEP must not include actions required by any federal, state, or local law, regulation, administrative or court order, or permit. Further, SEPs cannot include actions that the violator may be required to perform as injunctive relief, as part of a settlement or order in another legal action, or as required by a state or local requirement.

7. Relationship to Monetary Penalty: A SEP will not totally displace a monetary penalty. A monetary penalty is still necessary in order to assure that the Department's enforcement actions are effective in deterring future violations by the violator and others in the regulated community. Penalties promote environmental compliance and help protect public health by ensuring that violators do not obtain an unfair economic advantage over their competitors who make the necessary expenditures to comply on time. Penalties also encourage companies to adopt pollution prevention and recycling techniques, so that they minimize

their pollutant discharges and reduce their potential liability. Accordingly, a settlement of a case that warrants a penalty shall include a monetary penalty set at a level that captures that violator's economic benefit plus some appreciable portion of the Adjusted Base Penalty.

8. Availability of Resources: The Department shall consider the availability of resources in deciding whether to accept a SEP as follows:

- a) The estimated amount of the Department's time and resources required for effective negotiation and drafting SEP provisions in a consent order and for oversight by the Department of SEP implementation is an important criterion to use in determining whether to allow a SEP in a settlement. In addition, in deciding whether to allow a SEP or in designing the form of a SEP, the Department must consider the impact on its own programs. An otherwise eligible SEP will not be allowed if it may be inconsistent with any of the Department's ongoing programs or if it would impose a burden on a Department program due to resource constraints;
- b) The Department will also consider whether the violator has the technical and economic resources needed to successfully complete the proposed SEP, and will not allow the SEP unless the violator has those resources. In an appropriate case, the violator may hire outside technical help for the proposed SEP.

9. Available Only if Violations and Pollution Corrected: A SEP may be considered only if violations and all pollution created or threatened by the violations are fully corrected and abated or will be fully corrected and abated in a timely manner under an enforceable consent order. A violator will not be given additional time to correct the violation or pollution and return to compliance in exchange for conducting a SEP.

10. Compliance History: The violator's compliance history and capacity to successfully and promptly complete the project must be examined during the evaluation of a proposed SEP. A violator who is a repeat offender will be a less appropriate candidate for a SEP than a first-time offender, since a repeat offender has already demonstrated an inability or unwillingness to meet environmental requirements.

11. Compliance with the SEP: The consent order must include date-specific milestones for completion of the SEP, including a final completion date. In the event that the violator does not fully satisfy the terms of the SEP, he or she shall be liable for the pro-rated amount of the mitigated portion of the assessed penalty that was allowed for satisfactory completion of the SEP.

The consent order should include a mechanism to ensure that the violator will promptly pay any amount of the assessed penalty that becomes due if the violator fails to satisfy the terms of the SEP. The incorporation of stipulated penalties or the posting of a letter of credit or other acceptable financial security in the amount that the assessed penalty was reduced for the SEP are examples of mechanisms that may be considered. The provision of financial security for the portion of the penalty that was mitigated for satisfactory completion of a SEP is especially appropriate if the Department has reason to believe that there may be an indication that the violator might use a SEP commitment to delay payment of a penalty while it moves assets out of reach or dissolves the business.

12. Main Beneficiary of SEP: The Department's interest in considering SEPs is to improve the adverse public health and/or environmental impacts of violations. Projects are not intended to reward violators for undertaking activities that are in their economic self-interest. Therefore, a SEP will not be approved when the violator, rather than the public, is likely to receive the substantial share of the benefits of the SEP. However, an otherwise eligible SEP will not be disapproved simply because it contains ultimate economic benefit to the violator. Indeed, a legitimate purpose of a SEP may be to provide economic incentives to prevent pollution. If the Department believes that a violator may get a significant economic benefit from a proposed SEP, the violator must demonstrate to the Department's satisfaction that:

- a) He or she would not be undertaking the project without the additional incentive of including it in the enforcement's settlement; and
- b) The public health and environmental benefits are substantial and that the public interest would be best served by providing this additional incentive.

B. Categories of Approvable SEPs

The Department considers the following categories of projects suitable as potential SEPs. Each project will be closely scrutinized to ensure that all aspects of the project(s) fulfill the legitimate objectives of this guidance in all respects.

1. Public Health Project: A public health project provides diagnostic, preventative, and/or remedial human health care related to actual or potential damage to human health caused by the type of violation cited against the violator. This may include epidemiological data collection and analysis, medical examinations of potentially affected persons, collection and analysis of blood/fluid/tissue samples, medical treatment, and rehabilitation therapy.

2. Pollution Prevention Projects: For purposes of this guidance, "pollution prevention" is defined as "any practice which reduces the use of any hazardous substance or amount of any pollutant or contaminant prior to recycling, treatment, or disposal; and reduces the hazards to public health and the environment associated with the use or release or both of such substances, pollutants, or contaminants." For the purposes of developing a SEP, a pollution prevention project is any project that substantially reduces or prevents the generation or creation of pollutants through:

- a) Source reduction - eliminating the source of pollution by changing industrial processes, or substituting less polluting fuels or less toxic raw materials in existing processes;
- b) Alternative/renewable energy, energy efficiency - application of measures and technologies to reduce or eliminate dependency upon traditional resources. Examples include, but are not limited to, wind, solar, biomass and geothermal powered generation of electricity, ethanol-based ("E-85") fuels for vehicles, and sustainable building engineering;
- c) Waste minimization - conserving those materials that are sources of pollution;

this includes application of closed-loop processes or other resource-efficiency measures;

d) In-process recycling - returning waste materials produced during a manufacturing process directly to production within the same manufacturing process using dedicated, fixed, and physically-integrated equipment so that no releases, including fugitive releases, occur;

e) Innovative recycling technologies - substantially reducing the discharge of generated pollutants through innovative recycling technologies that keep the pollutants out of the environment in perpetuity; or

f) Conservation - protecting natural resources through conservation or increased efficiency in the use of energy, water, or other materials. A specific example of such a project that the Department encourages is an up-front capital investment in energy efficiency improvements and reinvestment of the resulting cost savings into a long-term green energy program either on-site or in a community-based program, or a combination of both.

In order for a project to meet the definition of pollution prevention, there must be an overall decrease in the amount and/or toxicity of pollution released to the environment, not merely a transfer of pollution among environmental media.

3. Pollution Reduction Projects: A “pollution reduction project” is defined as a project that goes substantially beyond compliance with permit or regulatory limitations to further reduce the amount of pollution discharged into the environment. Where a pollutant or waste stream already has been generated or released, a pollution reduction approach (recycling, treatment, containment, or disposal techniques) may be appropriate, so long as it does not create an increased or adverse cross-media impact on public health or the environment. Examples include:

a) A project that reduces the discharge of pollutants through more effective end-of-pipe or stack removal technologies;

b) Improved operation and maintenance; or

c) Recycling of residuals for use as raw materials in production off-site, thereby reducing the need for treatment, disposal, or consumption of energy or natural resources.

4. Environmental Restoration and Protection Projects: The objective of an environmental restoration or protection project is to enhance the condition of an ecosystem or geographic area immediate to the violation, or to restore or protect natural environments or man-made environments, such as facilities or buildings. This includes the restoration of environments or ecosystems damaged as the result of a violation which are not restored by correcting the violation. Multimedia projects are a preferred option for this type of SEP. Examples of approvable projects include:

a) Reduction in discharges of pollutants that are not the subject of the violation or

the subject of other regulatory requirements within an affected air basin or watershed;

- b) Construction and installation of BMPS to restore a damaged wetland or drainage;
- c) Development of a conservation program or protection of habitat critical to the well-being of a species or ecosystem;
- d) Purchase and management of a watershed area as an open space buffer zone to protect sensitive species or drinking water supplies; and
- e) Conservation easements. Preference will be given to projects that benefit the same community or ecosystem that was affected by the violation and when the community is involved in the process.

In all cases, environmental restoration projects must take place within Montana. Environmental restoration projects could include, in appropriate circumstances, projects that involve the remediation of facilities and buildings, provided such activities are not otherwise legally required. This includes the removal/mitigation of contaminated materials, such as contaminated soils, asbestos, and leaded paint, which are continuing sources of releases and/or threats to human health and the environment.

5. Environmental Assessments and Auditing Procedures: An environmental auditing project may constitute an acceptable SEP. Environmental auditing that simply represents general good business practice is not acceptable under this policy. However, such a project may be considered as a SEP if the violator undertakes additional auditing practices designed to correct existing management and/or environmental practice deficiencies that appear to be contributing to recurring or potential violations at the facility at issue and at other facilities owned or operated by the same violator. In general, audits are only acceptable as SEPs when the violator is a micro-business or government entity. For purposes of this policy, a micro-business is one that employs 25 or fewer individuals. Government entities are state departments and agencies, municipalities, instrumentalities, or the political subdivisions of the state.

These SEPs can only be approved where the violator commits to provide the Department with copies of all assessments and reports certified under penalty of law and commits to implementation of technically feasible and economically reasonable steps identified in the assessments. If the violator chooses not to implement all recommendations in the assessment, it must submit justification for not implementing certain recommendations.

Under the category of “environmental assessments and auditing procedures,” there are four types of projects that are approvable by the Department:

- a) Pollution prevention assessments are independent, systematic internal reviews of processes and operations designed to identify and provide information about opportunities to reduce the use, production, and generation of toxic and hazardous materials and other wastes.

b) An environmental management system audit is an independent third-party evaluation of a party's environmental policies, practices, and controls. This type of evaluation may identify the need for: i) a formal corporate environmental compliance policy and enforceable procedures for implementation of that policy; ii) educational and training programs for employees; iii) equipment purchase, operation, and maintenance programs; iv) environmental compliance officer programs; v) budgeting and planning systems for environmental compliance; vi) monitoring, record keeping, and reporting systems; vii) in-plant and community emergency plans; viii) internal communications and control systems; and ix) hazard identification and risk assessment.

Any pollution prevention assessment or environmental management system development conducted as part of a SEP should include a materials accounting component that estimates the amounts of certain [or all] materials entering and exiting the facility. (See Attachment A for a full definition of materials accounting.)

c) Site assessments are investigations of the condition of the environment at a site or of the environment impacted by a site, and/or investigation of threats to human health or the environment relating to a site. A site assessment of an appropriate site other than the site where the subject violation occurred may constitute an acceptable SEP. Site assessments include but are not limited to: investigation of levels and/or sources of contamination in any environmental media at the site; investigation of discharges or emissions of pollutants at a site, whether from active operations or through passive transport mechanisms; ecological surveys relating to a site; natural resource damage assessment; and risk assessments. To be eligible, such assessments must be conducted in accordance with recognized protocols, if available, applicable to the type of assessment to be undertaken.

d) An environmental compliance audit is an independent evaluation of a violator's compliance status with environmental requirements. The value of an environmental compliance audit for purposes of penalty mitigation under this policy is limited to the costs associated with conducting the audit. While the SEP must require that all violations discovered by the audit must be promptly corrected, no credit will be given for remedying the violations since persons are required to achieve and maintain compliance with environmental requirements.

6. Environmental Compliance Promotion: These projects are defined as publications, broadcasts, or seminars that underscore the importance of complying with environmental laws or disseminate technical information about the means of complying with environmental laws. These projects provide necessary training and technical support to identify, achieve, and maintain compliance with applicable regulatory requirements; avoid violations; and go beyond compliance by reducing the generation, release or disposal of pollutants beyond legal requirements. Public awareness projects may include:

a) Sponsoring industry-wide seminars directly related to correcting widespread or prevalent violations within an industry (e.g., a media campaign funded by the violator to discourage fuel switching and tampering with automobile pollution control equipment);

- b) Organizing a conference on pollution prevention solutions for compliance in a particular sector;
- c) Sponsoring a series of public service announcements describing how violations were corrected at a facility through the use of innovative technology and how similar facilities could implement these production changes; or
- d) Community projects that encourage/promote good environmental stewardship, such as participation in recycling and conservation efforts.

7. Emergency Planning and Preparedness: An emergency planning and preparedness project provides assistance to emergency response personnel, including, but not limited to, computers and software, communication systems, chemical emission detection and inactivation equipment, HAZMAT equipment, or training to a responsible state or local emergency response or planning entity. This is to enable these organizations to fulfill their obligations under the Emergency Planning and Community Right-to-Know Act (EPCRA) to collect information to assess the dangers of hazardous chemicals present at facilities within their jurisdiction, to develop emergency response plans, to train emergency response personnel, and to better respond to chemical spills. EPCRA requires regulated sources to provide information on chemical production, storage, and use to State Emergency Response Commissions (SERCs), Local Emergency Planning Committees (LEPCs) and Local Fire Departments. This enables states and local communities to plan for and respond effectively to chemical accidents and inform potentially affected citizens of the risks posed by chemicals present in their communities, thereby enabling them to protect the environment and ecosystems which could be damaged by an accident. Failure to comply with EPCRA impairs the ability of states and local communities to meet their obligations and places emergency response personnel, the public, and the environment at risk from a chemical release. Emergency planning and preparedness SEPs are acceptable where the primary impact of the project is within the state affected by the violations and financial assistance was not already provided for the same purposes proposed in the SEP.

8) Other Types of Projects: Projects that have environmental merit which do not fit within at least one of the seven categories above but that are otherwise fully consistent with all other provisions of this policy, may be accepted with the approval of the Director or his/her designee.

C. Projects Which are Not Acceptable as SEPs

The Department will not accept the following types of projects to be considered as SEPs:

1. General public educational or public environmental awareness projects, e.g., sponsoring public seminars, conducting tours of environmental controls at a facility, promoting recycling in a community;
2. Contributions to fund environmental research at a college or university are not acceptable unless the study investigates innovative practical pollution prevention or reduction solutions with direct applicability to the violation. In addition, the company must commit to implement the results of the study, as feasible, and make available the technology or solution to other interested facilities. Failure to implement an approved

research SEP will cause the full amount of the assessed penalty to immediately become due and payable, plus any stipulated penalties and interest;

3. Projects which are beneficial to a community, but not related to environmental protection, e.g., making a contribution to a non-profit, public interest, environmental, or other charitable organization, or donating playground equipment;
4. Studies or assessments without a requirement to address the problem identified in the study (except as provided for in Paragraph B.5 above); or
5. Projects which violators will undertake, in whole or part, with low-interest federal loans, federal contracts, federal grants, or other forms of federal financial assistance or non-financial assistance (e.g., loan guarantees).

D. Implementation Guidelines

1. Proposing a SEP: The opportunity to propose a SEP may be offered only after the Department and the violator have agreed upon the settlement penalty. Generally, the Department will not accept a SEP proposal when the settlement penalty is less than \$10,000.

The proposal to do a SEP may be initiated by the violator or by suggestion from the Department. However, the burden of developing the SEP and convincing the Department of its benefits and likelihood of success is the responsibility of the violator.

A SEP proposal must be in writing and include the following:

- a) A detailed description of the project that the violator proposes as a SEP;
- b) A summary of the estimated costs associated with the SEP;
- c) A proposed schedule for completion, including milestones; and
- d) A description of expected benefits and results, and how the benefits and results will be measured or assessed.

2. Extent to Which a SEP Can Mitigate a Penalty: The Department retains complete discretion in allowing SEPs to mitigate a penalty. There are two steps in determining the extent to which a SEP can mitigate a penalty. The first step is to calculate the minimum portion of the penalty assessment that must be collected in cash. The second step is to determine the amount of credit against the penalty the violator will receive for each dollar spent on the SEP.

With regard to the first step, the minimum cash component of the penalty must equal or exceed one of the following:

- a) 100% of the economic benefit component plus 20% of the total penalty minus the economic benefit component; or

(b) 25% of the total penalty where there is no economic benefit. SEPs may be allowed to mitigate the remaining portion of the penalty assessment.

The second step determines the amount of credit the SEP will count towards the penalty. The credit the violator will receive for each dollar spent on a SEP will not typically be dollar for dollar. The ratio of penalty mitigation to SEP cost will normally be no less than 1 to 1.5 (e.g., to receive \$100,000 in penalty mitigation, a violator must spend \$150,000 on a SEP). In its consideration to determine the amount of credit that a SEP should receive for each dollar spent, the Department also may consider how well SEPs perform against the factors listed below in determining the amount of penalty mitigation to be allowed:

- a) Benefits to the public or environment at large - For example, the extent to which a project reduces discharges of pollutants to the environment and/or reduces risk to the general public resulting in a higher positive environmental effect, rate higher in these factors.
- b) Innovations - SEPs that further the development and implementation of innovative processes, technologies, or methods to more effectively reduce the use, generation, release, or disposal of pollutants; conserve natural resources; or promote compliance do well in this factor.
- c) Environmental justice - SEPs that mitigate damage or reduce risk to minority or low-income populations that have been disproportionately exposed to pollution, or are at environmental risk, perform well in this factor.
- d) Multimedia impacts - SEPs that reduce emissions to more than one medium perform well in this factor.
- e) Pollution prevention - SEPs that develop and implement pollution prevention techniques and practices perform well in this factor.
- f) Community input – Although the Department will not seek public review of SEP proposals, proposed projects that perform well on this factor will have been developed taking into consideration input received from the affected community. No credit should be given for this factor if the defendant/violator did not actively participate in soliciting and incorporating public input.
- g) Compliance history – Repeat violators will be allowed less flexibility with SEPs.

Under the following circumstances, the Department may allow that the cost of a SEP be applied as 100% mitigation, or a dollar-for-dollar penalty offset:

- a) The violator's history of compliance does not suggest a practice or pattern of noncompliance with environmental laws; or the violator is a department of state government, subdivision of state government, a county or municipality, or a non-profit organization; and
- b) The proposed SEP constitutes a pollution prevention or pollution reduction/waste minimization project and is an exceptional project.

In all instances, the Department retains complete discretion as to amount of the penalty that any SEP may mitigate.

3. Drafting a SEP Agreement: SEPs must be documented in an Administrative Order on Consent or a judicial Consent Order (Final SEP Agreement). The Final SEP Agreement must:

- a) Accurately and completely describe the SEP, including the specific actions to be performed by the violator and a timeline for performing the specific actions;
- b) Provide for a reliable and objective means to verify that the violator has completed the project as approved;
- c) Identify the benefits associated with the SEP and establish a method by which the benefits are subsequently tracked and measured;
- d) Require the violator, upon completion of the SEP, to submit a final report to the Department according to a defined schedule. The report must include a detailed description of the expenses, copies of relevant receipts, explanation of measurable results, and a certification from the violator that it has completed the SEP as described in the report;
- e) Provide that if the violator fails to complete the SEP as required, the initial unmitigated penalty, plus any statutory interest, will become due and owing. At its discretion, the Department may reduce a reinstated penalty for a partially completed project; and
- f) Require the violator to agree that whenever it publicizes a SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action.

4. SEP Completion: The violator must submit a “SEP Completion Report” to the Department within 3 months after completion of the SEP. At a minimum, the SEP Completion Report should describe:

- a) Nature and scope of the project;
- b) Implementation of the project;
- c) An estimate of air emissions, water use reductions, water quality improvements, waste reductions, or other resulting environmental benefits (if the benefits are not quantifiable, then the violator should provide anecdotal information to describe any reductions or benefits achieved); and
- d) The actual implementation costs of the projects with appropriate documentation. The calculation of the cost and benefits of the SEP must include actual costs and economic benefits to the violator. For example, the violator must clearly document

any benefits received by the sale of equipment being replaced by the SEP or benefits received from land donations.

If a SEP is not completed to the satisfaction of the Department within the time periods specified, or the violator fails to implement the terms of the SEP for the entire life of the agreement, the remaining penalty mitigation attributed to the SEP and/or a stipulated penalty shall be paid to the Department as an administrative or civil penalty. The Department may impose a stipulated penalty, in addition to the remaining penalty mitigation attributed to the SEP, for the violator's failure to comply with the specific requirements of the SEP (e.g., failure to meet deadlines in the agreement or inadequate completion of the SEP). The Department has sole discretion in determining whether a SEP has been satisfactorily completed.

VI. Level of Approval

Although the policy and the procedures contained in this document are intended to be used by Department staff, a SEP may not be allowed without the specific approval of the Director or his/her designee. The terms and provisions of this policy are subject to the reasonable interpretation of the Department.

ATTACHMENT A DEFINITION OF MATERIALS ACCOUNTING

Materials accounting is an estimate of the inputs and outputs of hazardous or polluting substances over a given time period, i.e., a calendar year. If all inputs and outputs are properly accounted for, inputs should equal outputs. Estimating the inputs and outputs of all substances allows facility managers to clearly see how materials are used and to identify areas for pollution prevention.

Inputs include substances:

- stored at the facility at the beginning of the calendar year;
- brought on site as raw materials;
- manufactured as products, co-products, or non-product output; and/or
- recycled and used on site as raw materials (this includes all materials recycled on site but not in-process).

Outputs include substances:

- stored at the facility at the end of the calendar year;
- consumed at the facility (e.g., molecularly altered so they no longer exist);
- shipped off-site as product; and
- generated as non-product output (this includes all substances that are generated by a production process that are not consumed).