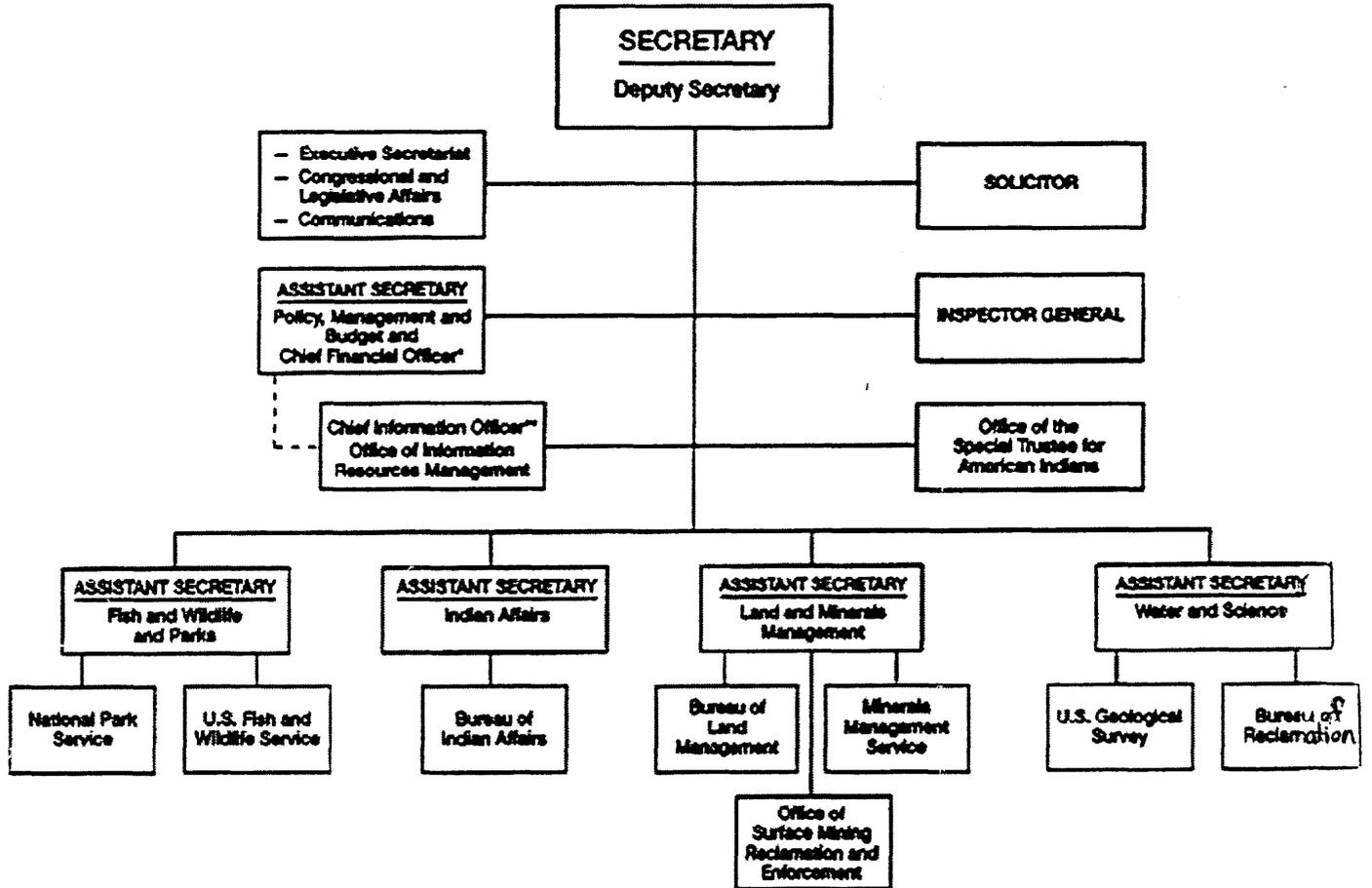


General Organization – U.S. Department of the Interior



Bid Schedule #1 - National Park Service wastes

BID ITEM	NPS - WASTE TYPE	VOLUME	CONT. TYPE	UNIT PRICE	COST
1	Adhesive-epoxy, hrdnr, rubber & vinyl	73.5 gal	5 gal cans	/gal	
2	Traffic tape and tape primer	7 gal.	5 gal. cans	/gal	
3	Batteries: Ni-cad	19 lbs	crdbrd box	/lb	
4	Batteries: Alkaline	150 lbs		/lb	
6	Latex paints	4.5 gls	30 gl. drn	/gal	
7	Oil-based paints	200 gls.	55 g drms	/drn	
8	Neoprene coating	0.5 gal	can	/gal	
9	rust (corium 10)	2 gal	can	/gal	
10	solvents	10.25	30 gl. drn	/gal	
11	lead-based traffic paint	70 gals	55 gl drms	/gal	
12	roofing adhesive	1 gal	can	/gal	
13	purging fluid	10 qt.s	1 qt cans	/gal	
14	diesel/asphalt mix	11 gal.	cans	/gal	
15	waste diesel	60 gal.	tank	/gal	
16	pavement/road tar	100 lbs	35 gal can	/gal	
17	motor oil	400 gal	400 g tote	/gal	
18	solar collector oil	20 gal.	5 gl. cans	/gal	
19	petroleum hydrocarbon contam. soils	90 cf.	tarps	/itm	
20	unknown gran. substance (requires characterization and packaging)	3 gal.	not contained	/itm	
	TOTAL FOR SCHEDULE #1				

Exhibit B

Bid Schedule #2 - National Biological Survey wastes

BID ITEM	NBS - WASTE TYPE	VOLUME	CONT. TYPE	UNIT PRICE	COST
1	Batteries: mercury rechargable	9.25 lbs		/lb.	
2	Batteries: lead acid	62 lbs	box	/lb	
3	Batteries: Ni-cad	21 lbs		/lb	
4	Batteries: Alkaline (12v)	5 lbs		/lb	
5	Batteries: Gel-cell (12v)	30 lbs		/lb	
6	Ketamie hydrochloride	260 ml.	gls	/itm	
7	euthanasia solution, T61	260 ml.	gls	/itm	
8	xylazine (Rompun)	200 ml.	gls	/itm	
9	SFE	100 g. & 10 ml.	plstc jar	/ea	
10	Heparin sodium	330 ml.	gls	/itm	
11	line hydrochloride	100 mg., 6 kg., & 20 g.	plstc, cb bx, & gls	/itm	
12	choline chloride	10 ml.	gls	/itm	
13	chloroform	50 ml.	gls	/itm	
14	DMF	1 kg.	gls	/itm	
15	Bouin's solution	2 l.	gls & pstc	/itm	
16	zinc phosphide	300 g.	can	/itm	
17	mercury	100 g.	gls	/lb	
18	potassium iodide	50 g.	gls	/itm	

19	glycerin albumin	1 l.	gls		
20	silicon cure agent	20 ml.	plstc	/itm	
21	para formaldehyde	50 g.	plstc	/itm	
22	betadene	20 ml.	plstc	/itm	
23	xylene, & xylenes/mineral spirits	50 g. & 0.5 gal.	gls & jar	/itm	
24	chloral hydrate	150 ml.	plstc	/itm	
25	aluminum powder	5 kg.	metal cyl	/itm	
26	formaldehyde	11 l.	plstc	/itm	
27	phenol	2 l.	gls	/itm	
28	acetone	5 gal.	can	/itm	
(29)	unknown liquid	100 ml.	gls	/itm	
30	methyl benzamine	1 tube	tube	/itm	
(31)	unknown powder	1 kg.	metal cy.	/itm	
32	iodine flakes	20 g.	gls	/itm	
	TOTAL FOR SCHEDULE #2				

Bid Schedule #3 - United States Geological Survey wastes

BID ITEM	USGS - WASTE TYPE	VOLUME	CONT. TYPE	UNIT PRICE	COST
1	Batteries: porta-pac (12v)	73 lbs		/lb	
2	Batteries: Dynasty Backup (6v & 12v)	34 lbs	box	/lb	
3	Batteries: Alkaline (6v)	45 lbs		/lb	
4	Batteries: Ni-cad (radio)	2 lbs		/lb	
5	Batteries: Gel-cell (12v)	60 lbs		/lb	
6	Batteries: Z Nair	125 lbs		/lb	
7	mercury	17 lbs	plstc	/lb	
8	mercury-contaminated items	1	bag	/lb	
9	chromic acid	125 ml.	gls	/itm	
10	selenium (ref. stnd)	16 oz.	plstc	/itm	
11	rubidium (ref. stnd)	4 oz.	plstc	/itm	
12	zinc (ref. stnd)	16 oz	plstc	/itm	
13	tellurium (ref. stnd)	3 oz.	plstc	/itm	
14	arsenic (ref. stnd)	16 oz.	plstc	/itm	
15	potassium dichromate	250 ml.	gls	/itm	
	TOTAL FOR SCHEDULE #3				

Investigation:

On July 27 and 28, 1995 a RCRA Compliance Evaluation Inspection (CEI), was conducted by inspectors from the U.S. EPA Region IX. There had not been a previous RCRA CEI conducted at HAVO prior to this inspection. The purpose of the inspection was to determine the compliance of HAVO with hazardous waste regulations promulgated under RCRA. On Thursday, July 27, the EPA inspectors met with Mr. Jack Minassian, HAVO's Fire Management Officer. Mr. Minassian acts as the back-up environmental/hazardous waste manager on site when Mr. Dennis Footer, Chief of Maintenance, and Mr. Jose Ramirez, Roads and Trails Foreman, are away from HAVO. On July 27, Mr. Footer was on the mainland, and Mr. Ramirez was in Kona attending a training course. Mr. Minassian assisted the EPA inspectors with the RCRA inspection, however Mr. Minassian was unable to answer many questions regarding HAVO's management of their hazardous waste. The EPA inspectors raised this as an issue with the facility, since Mr. Minassian is officially designated in the facility's contingency plan, as the back-up environmental manager and therefore should have had a better understanding of the wastes managed at this facility. On Friday July 28, Mr. Ramirez reported back to HAVO to assist in the RCRA CEI during the second day of the inspection.

Site Inspection:RCRA Hazardous Waste Storage Area/Dog Kennel:

The hazardous waste storage area was located in an abandoned dog kennel 200 yards from the maintenance complex. The dog kennel was located approx. 10 feet from the "official" <90 day accumulation area (which was empty), and measured approximately 30 feet by 30 feet. The dog kennel was surrounded by chain link fencing, had a concrete pad and curb, and was secured with a pad lock. The dog kennel did not have any signs posted to notify personnel that hazardous waste was being stored there (Photographs 1-3). It was raining during the inspection. This was normal as this part of the island experiences heavy annual rainfall.

The EPA inspectors observed that the facility had accumulated over 300 gallons of RCRA (D001) hazardous waste in four palleted rows of 5 gallon containers and 55 gallon drums. In addition, there were more than 620 lbs. of waste alkaline, zinc and NiCad batteries (D002, D008, D009). Located in front of the rows of pallets and containers was a large flammable locker which was empty. Between the flammable locker and in front of a palleted row of containers were waste collected from USGS and NBS which were stored in cardboard boxes. A written inventory provided by the facility later that day, indicated that this collection contained less than 50 kg. of laboratory wastes (expired shelf-life chemicals), including xylene (U239, F003), Phenol (U188), Zinc Phosphide (U249), Chromic Acid (U032), Formaldehyde (U122), Acetone (U002), Arsenic (D004) and over 17 lbs of Mercury (D009).

A sheet of plastic tarp had been placed on top of the cardboard containers which contained these wastes, however they were stored directly on the concrete pad which was extremely wet due to the frequent rain (Photograph 4). One palletted row of 55 gallon drums and other containers with zinc metal sheets on top for cover, also had a large Poly-SafetyPack stacked on top, containing a 5 gallon container of acetone(U002) and 1 box of xerox cartridges (Photograph 5). Also stored in the dog kennel were approximately 12 - 15 large army surplus truck tires which were product not waste.

There was no roof over the dog kennel, however an effort was made to cover the waste by placing metal sheets over the rows of containers. There were no hazardous waste labels visible on any of the containers observed in the dog kennel. In addition, there was insufficient aisle space in the dog kennel to be able to inspect each container (Photographs 6-10). There was evidence of rusting and deterioration of the waste containers and evidence of leaking containers at the site (Photograph 11-12), despite the presence of numerous empty poly overpack drums. There was a fire extinguisher and a water hose at the site. There was no spill response kit.

Due to the weather conditions and concerns for the potential exposure of inspectors to health and safety hazards, the metal sheets were not removed or the waste otherwise disturbed. After later reviewing the inventory which accompanied the waste it was verified that in addition to mercury, there were water reactive and unknown chemical wastes stored together (possible incompatible waste mixture). For this reason the EPA Inspectors recommended that the facility not disturb these wastes until qualified personnel were contracted to characterize, remove, and properly dispose of them.

Mr. Ramirez explained that the park was trying to collect and dispose of all of the wastes that had been accumulated over time. An inventory of the wastes [Attachment 2] had been prepared and a disposal contract was requested from the DOI Western Region Headquarters on December 20, 1994. Approximately two weeks prior to the RCRA inspection, Mr. Ramirez explained that he had moved all of the waste that was stored in the <90 day accumulation area to the dog kennel, in order to paint and epoxy coat the wall and floor. At the time of the inspection, the wastes which were found in the dog kennel had been illegally stored at HAVO since December 16, 1994 (over 7 months).

HAVO Points of Generation:

The following points of hazardous waste generation were also inspected on July 28, 1995.

Auto Shop:

The auto shop repairs and services all the HAVO vehicles. EPA inspectors observed an open container of used oil, unlabelled, and

with a funnel fitted into the top opening of the oil container. This is considered an open container because if the container was to be knocked over, the contents would spill to the surrounding area. There was not adequate secondary containment around the container, and one spigot towards the bottom of the container had been leaking onto the concrete below. The container did not have a used oil label on it as is required by 40 CFR §279.22(c). The auto shop did have some bags of absorbent on the premises.

There were three (3) five-gallon plastic buckets of waste anti-freeze, without labels. Each bucket was approximately three-quarters full, and one bucket had no lid on it. The other two buckets had lids placed on top, but were not fully secured. The auto-shop had an anti-freeze recycling unit, and Mr. Ramirez stated that the contents of the three buckets were to be emptied into the recycling unit.

The auto shop also had a used oil filter crushing unit. Shop personnel drain the filters into the container next to the crusher, and then crush the filters. The container of used oil next to the crusher also was not labelled with the required words, "Used Oil". The EPA inspectors observed that there were several crushed filters on a tray which was placed near the top portion of the crusher, as well as a few un-crushed filters. The EPA inspectors observed in total, three (3) open containers of used oil in the auto shop, all without the appropriate labels.

Paint Shop:

No violations found.

Welding Shop:

Open 5 gallon container of spent hydraulic oil. Not labelled as used oil.

Storage Shed:

Open 5 gallon container of used oil (with filter), not labelled as used oil.

Building 52:

Storage building for hazardous and flammable materials. There were no signs to identify this building as containing flammable or hazardous materials or waste (Photograph 13). This building contained a solvent still and a 55 gallon drum (3 inches of solvent) labelled as hazardous waste which was not closed.

Record Review:

Manifests - An on-site review of the facilities manifests indicated that Manifest number 95012 to Greenfield Environmental for the disposal of waste pentachlorophenol, and Silvex(D037, F027)

on January 17, 1995 was the only manifest on file for 1993, 1994 or 1995. Based on the facilities files, the wastes described in this manifest had been stored on-site from January 26, 1993 - January 17, 1995 (Over 23 months) [Attachment 5].

Training Plan - The facility did not have a written hazardous waste training plan. Mr. Ramirez did have basic training in hazardous waste management, however no written plan was in evidence.

Job Descriptions - The job description of Mr. Ramirez or Mr. Minassian did not include the duties for hazardous waste handling.

Contingency Plan - The facility contingency plan was deficient as it did not specify the hazards posed by the material being stored or address the proper response to spills or emergencies for the types of hazardous wastes stored at the facility.

Waste Analysis Plan - The facility did not have a waste analysis plan, nor waste profiles for the wastes stored at the facility.

Inspection Log - The facility did not maintain an inspection log.

Inspection Schedule - The facility did not have an inspection schedule.

Operating Record - The facility did not have an operating record.

Closure Plan - The facility did not have a closure plan.

**CONSTRUCTION OF VEHICLE WASHRACK
AND INSTALLATION OF A WASHWATER RECYCLING SYSTEM
HAWAII VOLCANOES NATIONAL PARK**

Background

Hawaii Volcanoes National Park operates and maintains 70 pieces of equipment (dump trucks, earth moving equipment, etc.) and 120 vehicles. These vehicles and equipment are washed approximately 4 times per year. In addition, the engines are regularly steam-cleaned to remove oil and grease. Because of the high acid environment, this dirt is removed regularly from the engine to prevent corrosion.

Currently, vehicle washing and engine steam cleaning occur in an open driveway. Periodically, the catch basin and drainage leading away from this driveway have been dug out to remove accumulated oil and grease.

Proposal

The National Park Service proposes to design a vehicle washrack and install a washwater recycling system in order to employ best management practices for this activity.

The washrack (25' x 40') would be designed to entrap washwaters and prevent capture of run-on rainwater. A canopy would be designed to minimize rainwater captured and sent through the recycling system. The pad would include a diversion trough designed to allow for settlement of sediments prior to reaching the recycling system. The washwater recycling system selected is equipment available from a GSA vendor, RGF Environmental Systems. The recycling system includes coalescing panels, oil skimmers and two filters positioned in series. Equipment specification is attached. Also, an equipment shed would be designed and constructed to house the recycling equipment.

The design of this washpad and the installation of the recycling system would be considered a pilot project, the results of which would be used to design and install similar systems in National Parks throughout the country.

Estimated Budget

Design of washpad	10,000
Construction of washpad, canopy, equipment shed and equipment installation	<u>80,000</u>
estimated cost	\$ 90,000

Proposed Schedule

Prepare design and contract documents	May 1, 1996
Solicit bids and award contract	August 1, 1996
Construction of System	November 1, 1996

Justification for this SEP per EPA's SEP Policy (5/8/95)

The National Park Service believes that this project fully qualifies as a Supplemental Environmental Project, per EPA's "Interim Revised EPA Supplemental Environmental Projects Policy," effective May 8, 1995. This SEP is an environmentally beneficial project that the NPS is not otherwise legally required to perform, but would perform in settlement of the enforcement action in this matter.

This project meets the legal guidelines for the following reasons:

- a. Nexus between the violation and this project is established through the site (Hawaii Volcanos National Park), and through the process/activity that generated much of the waste in question (vehicle maintenance);
- b. The project promotes waste minimization which is one of the declared objectives of the Resource Conservation and Recovery Act;
- c. EPA would not play any role in managing funds;
- d. The project scope is clear and definitive; and
- e. The project does not involve an activity that EPA is mandated by Congress to perform.

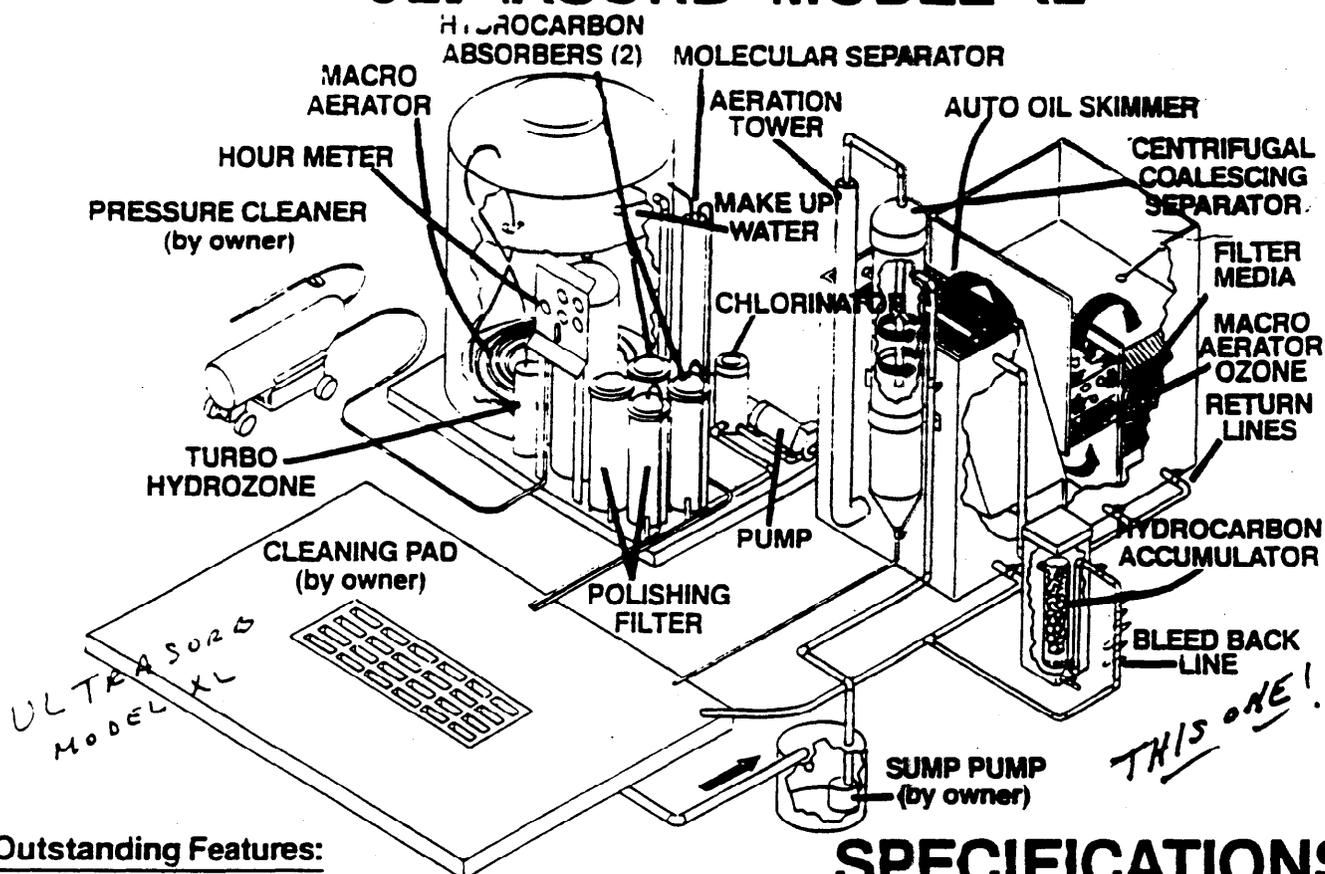
The project fits into the following category defined by EPA to constitute acceptable SEPs:

- a. **Pollution Prevention** The project involves "in-process" recycling of washwaters for reuse in washing activities. The project would minimize water utilization in vehicle washing due to the recirculation of water in this closed-loop system. The project effectively would eliminate the use of solvents and cleaners in vehicle maintenance activities though the use of high-temperature, high-pressure washing equipment. The project would prevent the run-off of washwaters.

In evaluating the SEP cost and its applicability to penalty mitigation, it can be demonstrated to meet the following criteria:

- a. **Benefits to the Public or Environment at Large:** This project would result in a reduction in multimedia discharge of pollutants (oils, grease, and heavy metals) to the environment.
- b. **Innovativeness:** The use of washwater recycling systems for vehicle maintenance activities is new to the National Park Service and other agencies. This project would be viewed as a pilot or model effort; the results of which would support improving vehicle washwater management practices at other parks and would help establish a benchmark standard for the National Park Service.
- c. **Environmental Justice:** The entire Park is considered sacred grounds to Native Hawaiians. This project would mitigate some of the impacts to this environment caused by park operations.
- d. **Multimedia Impacts:** In addition to the reduction of pollutants discharging to the ground, emissions of volatile organic compounds to the air would be reduced through the substantial reduction of solvents used in vehicle engine cleaning.
- e. **Pollution Prevention.** This closed-loop recycling system would result in the proper and best management of a significant washwater stream, preventing discharge to the environment.

ULTRASORB[®] MODEL XL



Key Outstanding Features:

- Polishing Filters** RGF's Poly-Micro H-D Foam™ cartridges are long lasting 1 micron hardened poly foam filters that are cleaned by a unique in-housing reverse flow flushing system.
- Series I** Custom fabricated of 1/2" thermo-welded UV protected PVC. (Over 800 gallons capacity.)
- Incline Tube Coalescor** Over 1,000 square feet of RGF's unique high efficiency 60° incline tube coalescor. Superior solids separator and oil coalescing.
- Turbohydrozone** RGF's heavy duty high output ozone generator produces over 1 lb. per day of ozone at one CFM. Superior to any other system on the market, will oxidize organics, VOC's, bacteria, viruses, algae, odors, etc.
- Multi-Media Filter** Over 800 lbs. of media, including over 400 lbs. of carbon (for VOC's), 150 lbs. ion-exchange (for metals), 250 lbs. of Volcansorb (for solids) - plus hydrocarbon absorbing foams.
- Molecular Separation Column** Recommended for high quality water applications. Removes up to 85% of soluble contaminants.

OPTIONS

- Chemical Flocking System
- Bag Filter System
- pH Control System
- Lift Station
- Lift Pump
- Sludge Drying Bin

The **ULTRASORB[®] SYSTEM** is a new generation of skid-mounted, packaged water-processing systems developed by RGF.

ULTRASORB[®] was designed to avoid EPA permitting and monitoring problems by simply avoiding contaminated water discharge through recycling.

SPECIFICATIONS

Size	Series I - PVC Tank	4'W x 7'L x 4'H (850 gals.)
	Series II	4'W x 9'L x 7'H
Flow Rate	1 - 30 GPM	
Operating Pressure	20 - 40 PSI	
Pressure Pump	3/4 HP - 110 V - 13.6 Amps - Stainless	
Hour Meter	Electric - 110 V	
Processing Pump	1/3 HP - 110 V - 10 Amps - Centrifugal	
Storage Tank	Polyethylene (550 gals.)	
Series I Tank - PVC	1/2" PVC Thermo-Welded - UV Protected	
Piping	PVC - UV Protected	
Finish	Two-Part Urethane (3 mils)	
Weight	Series I - PVC Tank	1,640 lbs.
	Series II - Skid	1,175 lbs.
Polishing Filter (2)	Stainless Steel (1 micron)	
Hydrocarbon Absorber (2)	Stainless Steel (RGF filter media)	
Make-Up Water Valve	3/4" NPT to Ball Float	
Gauges	Standard Glycerin Filled	
Valves	PVC-Ball	
Tubing	Ridged Poly	
Pressure Tank	30 Gallons Fiberglass	
Coalescing Centrifugal Separator	Polypropylene & PVC	
Make-Up Water Supply Fitting	3/4" NPT to Ball Float	
Supply to Pressure Cleaner	1" NPT	
Chlorinator	Auto Tablet Adjustable Flow Type	
Turbohydrozone	1 ^o Per Day Ozone 1 CFM/110 V - .5 Amp	
Macro Aerator	Porous Polymer Hose 1 CFM	
Molecular Separator Column	PVC Housing/20,000 Cut-off	
Multi-Media Filter	Carbon, AA, Volcansorb	
Auto Oil Skimmer	PVC Adjustable	

Manufacturer reserves the right to make changes without notice.

Distributed by:

NOTICES

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. 95F-FRL-5205-5]

Interim Revised EPA Supplemental Environmental Projects Policy Issued

Wednesday, May 10, 1995

*24856 AGENCY: Office of Enforcement and Compliance Assurance, EPA.

ACTION: Notice.

SUMMARY: The Office of Enforcement and Compliance Assurance (EPA) is issuing the Interim Revised EPA Supplemental Environmental Projects Policy. This Policy supersedes the February 12, 1991 Policy on the Use of Supplemental Environmental Projects in EPA Settlements. This Policy responds to numerous complaints that the 1991 Policy was too cumbersome, rigid and difficult to understand and apply. This Policy is being issued to provide greater flexibility to EPA in exercising its enforcement discretion to establish appropriate settlement penalties and to the regulated community in proposing supplemental environmental projects (SEPs) designed to secure significant environmental or public health protection and improvements. EPA intends to implement this Policy on an interim basis effective May 8, 1995.

DATES: Comments must be received on or before August 6, 1995.

ADDRESSES: Comments may be mailed to: SEP Policy, Multimedia Enforcement Division, Office of Regulatory Enforcement, Mail Code 2248-A, United States Environmental Protection Agency, 401 M Street, S.W., Washington D.C. 20460.

FOR FURTHER INFORMATION CONTACT: David A. Hindin, 202-564-6004, Gerard C. Kraus, 202-564-6047 or Peter W. Moore, 202-564-6014, Office of Regulatory Enforcement, Mail Code 2248-A, United States Environmental Protection Agency, 401 M Street, S.W., Washington D.C. 20460.

SUPPLEMENTARY INFORMATION: This interim final version of the EPA Supplemental Environmental Projects Policy expands and clarifies the 1991 Policy on the Use of Supplemental Environmental Projects in EPA Settlements. The primary purpose of this Policy is to obtain environmental and public health protection and improvements that may not otherwise have occurred without the settlement incentives provided by this Policy. The revised Policy, issued today, establishes a framework for determining whether a proposed project can be considered in establishing an appropriate settlement penalty. In addition, this Policy sets out clear legal guidelines, well-defined categories of acceptable projects and simple easy to apply rules for calculating and applying the cost of a SEP in determining an appropriate settlement penalty.

Dated: May 1, 1995

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance, United States Environmental Protection Agency.

A. Introduction

1. Background

In settlements of environmental enforcement cases, the U.S. Environmental Protection Agency (EPA) will require the alleged violators to achieve and maintain compliance with Federal environmental laws and regulations and to pay a civil penalty. To further EPA's goals to protect and enhance public health and the environment, in certain instances environmentally beneficial projects, or Supplemental Environmental Projects (SEPs), may be included in the settlement. This Policy sets forth the types of projects that are permissible as SEPs, the penalty mitigation appropriate for a particular SEP, and the terms and conditions under which they may become part of a settlement. The primary purpose of this Policy is to encourage and obtain environmental and public health protection and improvements that may not otherwise have occurred without the settlement incentives provided by this Policy.

In settling enforcement actions, EPA requires alleged violators to promptly cease the violations and, to the extent feasible, remediate any harm caused by the violations. EPA also seeks substantial monetary penalties in order to deter noncompliance. Without penalties, companies would have an incentive to delay compliance until they are caught and ordered to comply. Penalties promote environmental compliance and help protect public health by deterring future violations by the same violator and deterring violations by other members of the regulated community. Penalties help ensure a national level playing field by ensuring that violators do not obtain an unfair economic advantage over their competitors who made 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 liabilities.

Statutes administered by EPA generally contain penalty assessment criteria that a court or administrative law judge must consider in determining an appropriate penalty at trial or a hearing. In the settlement context, EPA generally follows these criteria in exercising its discretion to establish an appropriate settlement penalty. In establishing an appropriate penalty, EPA considers such factors as the economic benefit associated with the violations, the gravity or seriousness of the violations, and prior history of violations. Evidence of a violator's commitment and ability to perform a SEP is also a relevant factor for EPA to consider in establishing an appropriate settlement penalty. All else being equal, the final settlement penalty will be lower for a violator who agrees to perform an acceptable SEP compared to the violator who does not agree to perform a SEP.

The Agency encourages the use of SEPs. While penalties play an important role in environmental protection by deterring violations and creating a level playing field, SEPs can play an additional role in securing significant environmental or public health *24857 protection and improvements. [FN1] SEPs may not be appropriate in settlement of all cases, but they are an important part of EPA's enforcement program. SEPs may be particularly appropriate to further the objectives in the statutes EPA administers and to achieve other policy goals, including promoting pollution prevention and environmental justice.

FN1 Depending on circumstances and cost, SEPs also may have a deterrent impact.

2. Pollution Prevention and Environmental Justice

The Pollution Prevention Act of 1990 (42 U.S.C. 13101 et seq., November 5, 1990) identifies an environmental management hierarchy in which pollution "should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other release into the environment should be employed only as a last resort * * *" (42 U.S.C. 13103). In short, preventing pollution before it is created is preferable to trying to manage, treat or dispose of it after it is created.

Selection and evaluation of proposed SEPs should be conducted in accordance with this hierarchy of

environmental management, i.e., SEPs involving pollution prevention techniques are preferred over other types of reduction or control strategies, and this can be reflected in the degree of consideration accorded to a defendant/respondent before calculation of the final monetary penalty.

Further, there is an acknowledged concern, expressed in Executive Order 12898 on environmental justice, that certain segments of the nation's population are disproportionately burdened by pollutant exposure. Emphasizing SEPs in communities where environmental justice issues are present helps ensure that persons who spend significant portions of their time in areas, or depend on food and water sources located near, where the violations occur would be protected. Because environmental justice is not a specific technique or process but an overarching goal, it is not listed as a category of SEP; but EPA encourages SEPs in communities where environmental justice may be an issue.

3. Using This Policy

In evaluating a proposed project to determine if it qualifies as a SEP and then determining how much penalty mitigation is appropriate, Agency enforcement and compliance personnel should use the following five-step process:

- (1) Ensure that the project meets the basic definition of a SEP. (Section B)
- (2) Ensure that all legal guidelines, including nexus, are satisfied. (Section C)
- (3) Ensure that the project fits within one (or more) of the designated categories of SEPs. (Section D)
- (4) Calculate the net-present after-tax cost of the project and then determine the appropriate amount of penalty mitigation. (Section E)
- (5) Ensure that the project satisfies all of the implementation and other criteria. (Sections F, G, H and I)

4. Applicability

This Policy revises and hereby supersedes the February 12, 1991 Policy on the Use of Supplemental Environmental Projects in EPA Settlements. This Policy applies to settlements of all civil judicial and administrative actions filed after the effective date of this Policy, and to all pending cases in which the government has not reached agreement in principle with the alleged violator on the specific terms of a SEP.

This Policy applies to all civil judicial and administrative enforcement actions taken under the authority of the environmental statutes and regulations that EPA administers. It also may be used by EPA and the Department of Justice in reviewing proposed SEPs in settlement of citizen suits. This Policy also applies to federal agencies that are liable for the payment of civil penalties. This Policy does not apply to settlements of claims for stipulated penalties for violations of consent decrees or other settlement agreement requirements. [FN2]

FN2 The Agency is evaluating whether SEPs should be used, and if so, how, in evaluating claims for stipulated penalties.

This is a settlement Policy and thus is not intended for use by EPA, defendants, respondents, courts or administrative law judges at a hearing or in a trial. Further, whether the Agency decides to accept a proposed SEP as part of a settlement is purely within EPA's discretion. Even though a project appears to satisfy all of the provisions of this Policy, EPA may decide, for one or more reasons, that a SEP is not appropriate (e.g., the cost of reviewing a SEP proposal is excessive, the oversight costs of the SEP may be too high, or the defendant/respondent may not have the ability or reliability to complete the proposed SEP).

This Policy establishes a framework for EPA to use in exercising its enforcement discretion in determining appropriate settlements. In some cases, application of this Policy may not be appropriate, in whole or part. In such cases, the litigation team may, with the advance approval of Headquarters, use an alternative or modified approach.

B. Definition and Key Characteristics of a SEP

Supplemental environmental projects are defined as environmentally beneficial projects which a defendant/respondent agrees to undertake in settlement of an enforcement action, but which the defendant/respondent is not otherwise legally required to perform. The three bolded key parts of this definition are elaborated below.

"Environmentally beneficial" means a SEP must improve, protect, or reduce risks to public health, or the environment at large. While in some cases a SEP may provide the alleged violator with certain benefits, there must be no doubt that the project primarily benefits the public health or the environment.

"In settlement of an enforcement action" means: (1) EPA has the opportunity to help shape the scope of the project before it is implemented; and (2) the project is not commenced until after the Agency has identified a violation (e.g., issued a notice of violation, administrative order, or complaint). [FN3]

FN3 Since the primary purpose of this Policy is to obtain environmental or public health benefits that may not have occurred "but for" the settlement, projects which have been started before the Agency has identified a violation are not eligible as SEPs. Projects which have been committed to or started before the identification of a violation may mitigate the penalty in other ways. Depending on the specifics, if a company had initiated environmentally beneficial projects before the enforcement process commenced, the initial penalty calculation could be lower due to the absence of recalcitrance, no history of other violations, good faith efforts, less severity of the violations, or a shorter duration of the violations.

"Not otherwise legally required to perform means" the SEP is not required by any federal, state or local law or regulation. Further, SEPs cannot include actions which the defendant/respondent may be required to perform: as injunctive relief in the instant case; as part of a settlement or order in another legal action; or by state or local requirements. SEPs may include activities which the defendant/respondent will become legally obligated to undertake two or more years in the future. Such "accelerated compliance" projects are not allowable, however, if the regulation or statute provides a benefit (e.g., a higher *24857 emission limit) to the defendant/respondent for early compliance.

Also, the performance of a SEP reduces neither the stringency nor timeliness requirements of Federal environmental statutes and regulations. Of course, performance of a SEP does not alter the defendant/respondent's obligation to remedy a violation expeditiously and return to compliance.

C. Legal Guidelines

EPA has broad discretion to settle cases, including the discretion to include SEPs as an appropriate part of the settlement. The legal evaluation of whether a proposed SEP is within EPA's authority and consistent with all statutory and Constitutional requirements may be a complex task. Accordingly, this Policy uses five legal guidelines to ensure that our SEPs are within the Agency's and a federal court's authority, and do not run afoul of any Constitutional or statutory requirements. [FN4]

FN4 These legal guidelines are based on federal law as it applies to EPA; States may have more or less flexibility in the use of SEPs depending on their laws.

1. All projects must have adequate nexus. Nexus is the relationship between the violation and the proposed project. This relationship exists only if the project remediates or reduces the probable overall environmental or

public health impacts or risks to which the violation at issue contributes, or if the project is designed to reduce the likelihood that similar violations will occur in the future. SEPs are likely to have an adequate nexus if the primary impact of the project is at the site where the alleged violation occurred or at a different site in the same ecosystem or within the immediate geographic [FN5] area. Such SEPs may have sufficient nexus even if the SEP addresses a different pollutant in a different medium. In limited cases, nexus may exist even though a project will involve activities outside of the United States. [FN6]

FN5 The immediate geographic area will generally be the area within a 50 mile radius of the site on which the violations occurred.

FN6 All projects which would include activities outside the U.S. must be approved in advance by Headquarters and/or the Department of Justice. See section I.

2. A project must advance at least one of the declared objectives of the environmental statutes that are the basis of the enforcement action. Further, a project cannot be inconsistent with any provision of the underlying statutes.

3. EPA or any other federal agency may not play any role in managing or controlling funds that may be set aside or escrowed for performance of a SEP. Nor may EPA retain authority to manage or administer the SEP. EPA may, of course, provide oversight to ensure that a project is implemented pursuant to the provisions of the settlement and have legal recourse if the SEP is not adequately performed.

4. The type and scope of each project are determined in the signed settlement agreement. This means the "what, where and when" of a project are determined by the settlement agreement. Settlements in which the defendant/respondent agrees to spend a certain sum of money on a project(s) to be determined later (after EPA or the Department of Justice signs the settlement agreement) are generally not allowed.

5. A project may not be something that EPA itself is required by its statutes to do. And a project may not provide EPA with additional resources to perform an activity for which Congress has specifically appropriated funds. In addition, a SEP should not appear to be an expansion of an existing EPA program. For example, if EPA has developed a brochure to help a segment of the regulated community comply with environmental requirements, a SEP may not directly, or indirectly, provide additional resources to revise, copy or distribute the brochure.

D. Categories of Supplemental Environmental Projects

EPA has identified seven categories of projects which may qualify as SEPs. In order for a proposed project to be accepted as a SEP, it must satisfy the requirements of at least one category plus all the other requirements established in this Policy.

1. Public Health

A public health project provides diagnostic, preventative and/or remedial components of human health care which is related to the actual or potential damage to human health caused by the violation. 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.

Public health SEPs are acceptable only where the primary benefit of the project is the population that was harmed or put at risk by the violations.

2. Pollution Prevention

A pollution prevention project is one which reduces the generation of pollution through "source reduction," i.e., any practice which reduces the amount of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise being released into the environment, prior to recycling, treatment or disposal. (After the pollutant or waste stream has been generated, pollution prevention is no longer possible and the waste must be handled by appropriate recycling, treatment, containment, or disposal methods.)

Source reduction may include equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, inventory control, or other operator and maintenance procedures. Pollution prevention also includes any project which protects natural resources through conservation or increased efficiency in the use of energy, water or other materials. "In-process recycling," wherein waste materials produced during a manufacturing process are returned directly to production as raw materials on site, is considered a pollution prevention project.

In all cases, 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 media. This decrease may be achieved directly or through increased efficiency (conservation) in the use of energy, water or other materials. This is consistent with the Pollution Prevention Act of 1990 and the Administrator's "Pollution Prevention Policy Statement: New Directions for Environmental Protection," dated June 15, 1993.

3. Pollution Reduction

If the pollutant or waste stream already has been generated or released, a pollution reduction approach--which employs recycling, treatment, containment or disposal techniques--may be appropriate. A pollution reduction project is one which results in a decrease in the amount and/or toxicity of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise being released into the environment by an operating business or facility by a means which does not qualify as "pollution prevention." This may include the installation of more effective end-of-process control or treatment technology. This also includes "out-of-process recycling," wherein industrial waste collected after the manufacturing process and/or consumer waste materials are used as raw materials for production off-site, reducing the need for treatment, disposal, or consumption of energy or natural resources.

4. Environmental Restoration and Protection

An environmental restoration and protection project is one which goes beyond repairing the damage caused by the violation to enhance the condition of the ecosystem or immediate geographic area adversely affected. [FN7] These projects may be used to restore or protect natural environments (such as ecosystems) and man-made environments, such as facilities and buildings. Also included is any project which protects the ecosystem from actual or potential damage resulting from the violation or improves the overall condition of the ecosystem. Examples of such projects include: Reductions in discharges of pollutants which are not the subject of the violation to an affected air basin or watershed; restoration of a wetland along the same avian flyway in which the facility is located; or purchase and management of a watershed area by the defendant/respondent to protect a drinking water supply where the violation, e.g., a reporting violation, did not directly damage the watershed but potentially could lead to damage due to unreported discharges. This category also includes projects which provide for the protection of endangered species (e.g., developing conservation programs or protecting habitat critical to the well-being of a species endangered by the violation).

FN7 If EPA lacks authority to require repair, then repair itself may constitute a SEP.

With regards to man-made environments, such projects may 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 soils, asbestos and leaded paint, which are a continuing source of releases and/or threat to individuals.

5. Assessments and Audits

Assessments and audits, if they are not otherwise available as injunctive relief, are potential SEPs under this category. There are four types of projects in this category:

a. Pollution prevention assessments; b. site assessments; c. environmental management system audits; and d. compliance audits.

a. Pollution prevention assessments are systematic, internal reviews of specific 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. To be eligible for SEPs, such assessments must be conducted using a recognized pollution prevention assessment or waste minimization procedure to reduce the likelihood of future violations.

b. Site assessments are investigations of the condition of the environment at a site or of the environment impacted by a site, and/or investigations of threats to human health or the environment relating to a site. These include but are not limited to: Investigations of levels and/or sources of contamination in any environmental media at a site; investigations 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 assessments; and risk assessments. To be eligible for SEPs, such assessments must be conducted in accordance with recognized protocols, if available, applicable to the type of assessment to be undertaken.

c. An environmental management system audit is an independent evaluation of a party's environmental policies, practices and controls. Such evaluation may encompass the need for: (1) A formal corporate environmental compliance policy, and procedures for implementation of that policy; (2) educational and training programs for employees; (3) equipment purchase, operation and maintenance programs; (4) environmental compliance officer programs; (5) budgeting and planning systems for environmental compliance; (6) monitoring, record keeping and reporting systems; (7) in-plant and community emergency plans; (8) internal communications and control systems; and (9) hazard identification, risk assessment.

d. An environmental compliance audit is an independent evaluation of a defendant/respondent's compliance status with environmental requirements. Credit is only given for the costs associated with conducting the audit. While the SEP should require all violations discovered by the audit to be promptly corrected, no credit is given for remedying the violation since persons are required to achieve and maintain compliance with environmental requirements. In general, compliance audits are acceptable as SEPs only when the defendant/respondent is a small business. [FN8], [FN9]

FN8 For purposes of this Policy, a small business is owned by a person or another entity that employs 100 or fewer individuals. Small businesses could be individuals, privately held corporations, farmers, landowners, partnerships and others.

FN9 Since most large companies routinely conduct compliance audits, to mitigate penalties for such audits would reward violators for performing an activity that most companies already do. In contrast, these audits are not commonly done by small businesses, perhaps because such audits may be too expensive.

These two types of assessments and environmental management system audits are allowable as SEPs without an implementation commitment by the defendant/respondent. Implementation is not required because drafting implementation requirements before the results of the study are known is difficult. Further, for pollution

prevention assessments and environmental management systems audits, many of the implementation recommendations from these studies may constitute activities that are in the defendant/respondent's own economic interest.

These assessments and audits are acceptable where the primary impact of the project is at the same facility, at another facility owned by the violator, or at a different facility in the same ecosystem or within the immediate geographic area (e.g., a publicly owned wastewater treatment works and its users). These assessments and audits are only acceptable as SEPs when the defendant/respondent agrees to provide EPA with a copy.

6. Environmental Compliance Promotion

An environmental compliance promotion project provides training or technical support to other members of the regulated community to: (1) Identify, achieve and maintain compliance with applicable statutory and regulatory requirements; (2) avoid committing a violation with respect to such statutory and regulatory requirements; or (3) go beyond compliance by reducing the generation, release or disposal of pollutants beyond legal requirements. For these types of projects, the defendant/respondent may lack the experience, knowledge or ability to implement the project itself, and, if so, the defendant/respondent should be required to contract with an appropriate expert to develop and implement the compliance promotion project. Acceptable projects may include, for example, producing or sponsoring a seminar directly related to correcting widespread or prevalent violation *2486 within the defendant/ respondent's economic sector.

Environmental compliance promotion SEPs are acceptable only where the primary impact of the project is focused on the same regulatory program requirements which were violated and where EPA has reason to believe that compliance in the sector would be significantly advanced by the proposed project. For example, if the alleged violations involved Clean Water Act pretreatment violations, the compliance promotion SEP must be directed at ensuring compliance with pretreatment requirements.

7. Emergency Planning and Preparedness

An emergency planning and preparedness project provides assistance--such as 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 (LFDs). 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 or 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 same emergency planning district or state affected by the violations. Further, this type of SEP is allowable only when the SEP involves non-cash assistance and there are violations of EPCRA or reporting violations under CERCLA Section 103 alleged in the complaint.

8. Projects Which Are Not Acceptable as SEPs

Except for projects which meet the specific requirements of one of the categories enumerated in {D. above, the following are examples of the types of projects that are not allowable as SEPs:

- a. General educational or public environmental awareness projects, e.g., sponsoring public seminars, conducting tours of environmental controls at a facility, promoting recycling in a community;
- b. Contribution to environmental research at a college or university;
- c. Conducting a project, which, though beneficial to a community, is unrelated to environmental protection, e.g., making a contribution to charity, or donating playground equipment;
- d. Studies or assessments without a commitment to implement the results (except as provided for in Section D.5 above);
- e. Projects which are being funded by low-interest federal loans, federal contracts, or federal grants.

E. Calculation of the Final Penalty

As a general rule, the costs to be incurred by a violator in performing a SEP may be considered in determining an appropriate settlement amount. Calculating the final penalty in a settlement which includes a SEP is a three-step process. First, the Agency's penalty policies are used as applicable to calculate all of the other parts of the settlement penalty (including economic benefit and gravity components). Second, calculate the net-present after-tax cost of the SEP. Third, evaluate the benefits of the SEP, based on specific factors, to determine what percentage of the net-present after-tax cost will be considered in determining an appropriate final settlement penalty.

1. Penalty

Penalties are an important part of any settlement. A substantial penalty is generally necessary for legal and policy reasons. Without penalties there would be no deterrence as regulated entities would have little incentive to comply. Penalties are necessary as a matter of fairness to those companies that make the necessary expenditures to comply on time: violators should not be allowed to obtain an economic advantage over their competitors who complied. Except in extraordinary circumstances, if a settlement includes a SEP, the penalty should recover, at a minimum, the economic benefit of noncompliance plus 10 percent of the gravity component, or 25 percent of the gravity component only, whichever is greater.

In cases involving government agencies or entities, such as municipalities, or non-profit organizations, where the circumstances warrant, EPA may determine, based on the nature of the SEPs being proposed, that an appropriate settlement could contain a cash penalty less than the economic benefit of non-compliance. The precise amount of the cash penalty will be determined by the applicable penalty policy.

2. Calculation of the Cost of the SEP

To ensure that a proposed SEP is consistent with this Policy, the net present after-tax cost of the SEP, hereinafter called the "SEP Cost," is calculated. In order to facilitate evaluation of the SEP Cost of a proposed SEP, the Agency has developed a computer model called PROJECT. To use PROJECT, the Agency needs reliable estimates of the costs and savings associated with a defendant/respondent's performance of a SEP. Often the costs will not be estimates but known amounts based on a defendant/respondent's agreement to expend a fixed or otherwise known dollar amount on a project.

There are three types of costs that may be associated with performance of a SEP (which are entered into the

PROJECT model): capital costs (e.g., equipment, buildings); one-time nondepreciable costs (e.g., removing contaminated materials, purchasing land, developing a compliance promotion seminar); and annual operation costs or savings (e.g., labor, chemicals, water, power, raw materials). [FN10]

FN10 PROJECT does not evaluate the potential for market benefits which may accrue with the performance of a SEP (e.g., increased sales of a product, improved corporate public image, or improved employee morale). Nor does it consider costs imposed on the government, such as the cost to the Agency for oversight of the SEP, or the burden of a lengthy negotiation with a defendant/respondent who does not propose a SEP until late in the settlement process.

In order to run the PROJECT model properly (i.e., to produce a reasonable estimate of the net present after-tax cost of the project), the number of years that annual operation costs or savings will be expended in performing the SEP must be specified. At a minimum, the defendant/respondent must be required to implement the project for the same number of years used in the PROJECT model calculation. If certain costs or savings appear speculative, they should not be entered into the PROJECT model. The PROJECT model is the primary method to determine the SEP cost for purposes of negotiating settlements. [FN11]

FN11 See PROJECT User's Manual, January 1995. If the PROJECT model appears inappropriate to a particular fact situation, EPA Headquarters should be consulted to identify an alternative approach. For example, the December 1993 version of PROJECT does not readily calculate the cost of an accelerated compliance SEP. The cost of such a SEP is the additional cost associated with doing the project early (ahead of the regulatory requirement) and it needs to be calculated in a slightly different manner.

*24861 EPA does not offer tax advice on whether a company may deduct SEP expenditures from its income taxes. If a defendant/respondent states that it will not deduct the cost of a SEP from its taxes and it is willing to commit to this in the settlement document, and provide the Agency with certification upon completion of the SEP that it has not deducted the SEP expenditures, the PROJECT model calculation should be adjusted to calculate the SEP Cost without reductions for taxes. This is a simple adjustment to the PROJECT model: just enter a zero for variable 7, the marginal tax rate. If a business is not willing to make this commitment, the marginal tax rate in variable 7 should not be set to zero; rather the default settings (or a more precise estimate of the business' marginal tax rates) should be used in variable 7.

If the PROJECT model reveals that a project has a negative cost, this means that it represents a positive cash flow to the defendant/respondent and as a profitable project thus, generally, is not acceptable as a SEP. If a project generates a profit, a defendant/respondent should, and probably will, based on its own economic interests implement the project. While EPA encourages companies to undertake environmentally beneficial projects that are economically profitable, EPA does not believe violators should receive a bonus in the form of penalty mitigation to undertake such projects as part of an enforcement action. EPA does not offer subsidies to complying companies to undertake profitable environmentally beneficial projects and it would thus be inequitable and perverse to provide such subsidies only to violators. In addition, the primary goal of SEPs is to secure a favorable environmental or public health outcome which would not have occurred but for the enforcement case settlement. To allow SEP penalty mitigation for profitable projects would thwart this goal. [FN12]

FN12 The penalty mitigation guidelines in subsection E.3 provide that the amount of mitigation should not exceed the net cost of the project. To provide penalty mitigation for profitable projects would be providing a credit in excess of net costs.

3. Penalty Mitigation

After the SEP Cost has been calculated, EPA should determine what percentage of that cost may be applied as mitigation against the preliminary total calculated gravity component before calculation of the final penalty. The SEP should be examined as to whether and how effectively it achieves each of the following five factors listed below.

- Benefits to the Public or Environment at Large. While all SEPs benefit public health or the environment, SEPs which perform well on this factor will result in significant and quantifiable reduction in discharges of pollutants to the environment and the reduction in risk to the general public. SEPs also will perform well on this factor to the extent they result in significant and, to the extent possible, measurable progress in protecting and restoring ecosystems (including wetlands and endangered species habitats).

- Innovativeness. SEPs which perform well on this factor will further the development and implementation of innovative processes, technologies, or methods which more effectively: reduce the generation, release or disposal of pollutants; conserve natural resources; restore and protect ecosystems; protect endangered species; or promote compliance. This includes "technology forcing" techniques which may establish new regulatory "benchmarks."

- Environmental Justice. SEPs which perform well on this factor will mitigate damage or reduce risk to minority or low income populations which may have been disproportionately exposed to pollution or are at environmental risk.

- Multimedia Impacts. SEPs which perform well on this factor will reduce emissions to more than one medium.

- Pollution Prevention. SEPs which perform well on this factor will develop and implement pollution prevention techniques and practices.

The better the performance of the SEP under each of these factors, the higher the mitigation percentage may be set. As a general guideline, the final mitigation percentage should not exceed 80 percent of the SEP Cost. For small businesses, government agencies or entities, and non-profit organizations, this percentage may be set as high as 100 percent. For any defendant/respondent, if one of the five factors is pollution prevention, the percentage may be set as high as 100 percent. A lower mitigation percentage may be appropriate if the government must allocate significant resources to monitoring and reviewing the implementation of a project.

In administrative enforcement actions in which there is a statutory limit on administrative penalties, the cash penalty obtained plus the amount of penalty mitigation credit due to the SEPs shall not exceed the statutory administrative penalty limit.

F. Performance by a Third Party

SEPs are generally performed either by the defendant/respondent itself (using its own employees) and/or by contractors or consultants. [FN13] In the past in a few cases, a SEP has been performed by someone else, commonly called a third party. Because of legal concerns and the difficulty of ensuring that a third party implements the project as required (since by definition a third party has no legal or contractual obligation to implement the project as specified in the settlement document), performance of a SEP by a third party is not allowed.

FN13 Of course, non-profit organizations, such as universities and public interest groups, may function as contractors or consultants.

G. Oversight and Drafting Enforceable SEPS

The settlement agreement should accurately and completely describe the SEP. (See related legal guideline 4 in Section C above.) It should describe the specific actions to be performed by the defendant/respondent and provide for a reliable and objective means to verify that the defendant/respondent has timely completed the project. This may require the defendant/respondent to submit periodic reports to EPA. If an outside auditor is necessary to conduct this oversight, the defendant/respondent should be made responsible for the cost of any such activities. The defendant/respondent remains responsible for the quality and timeliness of any actions performed or any

reports prepared or submitted by the auditor. A final report certified by an appropriate corporate official, acceptable to EPA and evidencing completion of the SEP, should be required.

To the extent feasible, defendant/respondents should be required to quantify the benefits associated with the project and provide EPA with a report setting forth how the benefits were measured or estimated. The defendant/respondent should 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.

The drafting of a SEP will vary depending on whether the SEP is being performed as part of an administrative or judicial enforcement action. SEPs with long implementation schedules (e.g., 18 months or longer), SEPs which require EPA review and comment on *24862 interim milestone activities, and other complex SEPs may not be appropriate in those administrative enforcement actions where EPA lacks injunctive relief authority or is subject to a penalty ceiling. Specific guidance on the proper drafting of SEPs will be provided in a separate guidance document.

H. Failure of a SEP and Stipulated Penalties

If a SEP is not completed satisfactorily, the defendant/respondent should be required, pursuant to the terms of the settlement document, to pay stipulated penalties for its failure. Stipulated penalty liability should be established for each of the scenarios set forth below as appropriate to the individual case.

1. Except as provided in paragraph 2 immediately below, if the SEP is not completed satisfactorily, a substantial stipulated penalty should be required. Generally, a substantial stipulated penalty is between 50 and 100 percent of the amount by which the settlement penalty was mitigated on account of the SEP.

2. If the SEP is not completed satisfactorily, but the defendant/respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, no stipulated penalty is necessary.

3. If the SEP is satisfactorily completed, but the defendant/respondent spent less than 90 percent of the amount of money required to be spent for the project, a small stipulated penalty should be required. Generally, a small stipulated penalty is between 10 and 25 percent of the amount by which the settlement penalty was mitigated on account of the SEP.

4. If the SEP is satisfactorily completed, and the defendant/respondent spent at least 90 percent of the amount of money required to be spent for the project, no stipulated penalty is necessary.

The determinations of whether the SEP has been satisfactorily completed (i.e., pursuant to the terms of the agreement) and whether the defendant/respondent has made a good faith, timely effort to implement the SEP is in the sole discretion of EPA.

I. EPA Procedures

1. Approvals

The authority of a government official to approve a SEP is included in the official's authority to settle an enforcement case and thus, subject to the exceptions set forth here, no special approvals are required. The special approvals apply to both administrative and judicial enforcement actions as follows: [FN14]

FN14 In judicial cases, the Department of Justice must approve the SEP.

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

b. In all cases in which a SEP may not fully comply with the provisions of this Policy, the SEP must be approved by the EPA Assistant Administrator for Enforcement and Compliance Assurance.

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.

d. In all cases in which a SEP includes an environmental compliance promotion project, the SEP must be approved by the Office of Regulatory Enforcement in OECA. With time, this approval requirement may be delegated to Regional officials.

2. Documentation and Confidentiality

In each case in which a SEP is included as part of a settlement, an explanation of the SEP with supporting materials (including the PROJECT model printout, where applicable) must be included as part of the case file. The explanation of the SEP should demonstrate that the five criteria set forth in Section A.3 above are met by the project and include a description of the expected benefits associated with the SEP. The explanation must include a description by the enforcement attorney of how nexus and the other legal guidelines are satisfied.

Documentation and explanations of a particular SEP may constitute confidential settlement information that is exempt from disclosure under the Freedom of Information Act, is outside the scope of discovery, and is protected by various privileges, including the attorney-client privilege and the attorney work-product privilege. While individual Agency evaluations of proposed SEPs are confidential documents, this Policy is a public document and may be released to anyone upon request.

This Policy is primarily for the use of U.S. EPA enforcement personnel in settling cases. EPA reserves the right to change this Policy at any time, without prior notice, or to act at variance to this Policy. This Policy does not create any rights, duties, or obligations, implied or otherwise, in any third parties.

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60 FR 24856-01, 1995 WL 270057 (F.R.)

END OF DOCUMENT

SEP Penalty Calculation

1. Economic Benefit: _____

2. Gravity (gravity amount of penalty, after all adjustments): _____

3. **Preliminary Penalty (line 1 + line 2):** _____

4. 10% of Gravity (0.1 x line 2): _____

5. Economic Benefit + 10% of Gravity (line 1 + line 4) _____

6. *or*
25% of Gravity (0.25 x line 2): _____

7. **Minimum Penalty (greater of line 5 or line 6):** _____

8. SEP Cost (from PROJECT): _____

Evaluation Factors	Performance	
	Poor	Good
Benefits to Public or Environment at Large	-----	-----
Innovativeness	-----	-----
Environmental Justice	-----	-----
Multimedia Impacts	-----	-----
Pollution Prevention	-----	-----

9.a Does the SEP implement pollution prevention? Yes No

9.b Is defendant small business, gov't. agency or non-profit? Yes No

10. **Percent mitigation:** _____

Not to exceed 80%, unless "Yes" is checked in 9.a. or b.; never greater than 100%

11. **SEP Mitigation (line 8 x line 10):** _____

12. **Final Penalty (line 3 - line 11):** _____

Must be equal to or greater than minimum penalty calculated in 7., above.



United States Department of the Interior

OFFICE OF THE SOLICITOR
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IN REPLY REFER TO:

June 14, 1996

Via Hand Delivery

Victoria Lang, Esq.
U.S. Environmental Protection Agency
Office of General Counsel
75 Hawthorne Street
San Francisco, CA 94105

Re: Hawaii Volcanoes National Park
Penalty Justification

Dear Ms. Lang:

As articulated in several informal settlement communications, the National Park Service ("NPS") strongly desires to reach an amicable and equitable settlement of the issues addressed in the amended complaint dated January 10, 1996 ("Complaint"), in which the U.S. Environmental Protection Agency ("EPA") assessed a \$243,800.00 penalty against Hawaii Volcanoes National Park ("Park") for allegedly violating the Resource Conservation and Recovery Act ("RCRA" or the "Act") and the regulations promulgated pursuant to the Act.

As a federal agency with a natural resource protection mandate, the NPS takes seriously its environmental protection and compliance responsibilities. The NPS continually strives to act responsibly as a committed environmental steward. In managing its approximately three hundred and seventy NPS units, the NPS faces many challenges. Full substantive compliance with the complex legal and regulatory provisions of RCRA on a limited budget while administering millions of acres of public lands and providing visitor services represents one such challenge. To address this particular challenge, the NPS has attempted to focus efficiently its Congressionally appropriated 12 million dollars for addressing the full panoply of solid and hazardous waste issues facing the NPS. Of this 12 million dollars, the NPS devotes fully 10 million of these dollars to compliance with the provisions of RCRA. The NPS has established national, field area, and park unit hazardous waste programs to provide necessary expertise, funding and training to NPS units that generate or otherwise manage hazardous wastes.

With respect to this case, the NPS has conducted a detailed investigation of the Park's hazardous waste management practices during the time period relative to the Complaint. The NPS believes that certain, key factual assessments contained in the Complaint, and the conclusions based thereon, may be erroneous. NPS recognizes the difficulty of making determinative evaluations of a facility's waste management practices based upon a one or two day inspection. The NPS

is therefore providing the factual information contained in this penalty justification to facilitate an appropriate resolution of this matter.

For purposes of settling this matter, the NPS is willing to acquiesce to the assessed penalty associated with Count II of the amended complaint. However, the NPS believes that the penalty assessed for Count I is based on factual misunderstandings regarding the Park's hazardous waste management practices, application of incorrect regulatory provisions and an excessive multi-day penalty. The NPS believes that the penalty associated with Count I should be reduced. Information supporting a reduction in the penalty amount for Count I is set forth in Sections I and II below.¹

Once both agencies have agreed upon a revised penalty amount, the NPS will provide detailed information regarding potential Supplemental Environmental Projects ("SEPs"). Although NPS is willing to present an update of its SEP planning process today, we have not prepared a detailed SEP proposal because EPA personnel have indicated that SEPs cannot meaningfully be addressed until agreement on a revised penalty amount is achieved.

I. The Park is a Small Quantity Generator Entitled to Accumulate Hazardous Wastes On-site for 270 days.

EPA's Complaint alleges that the Park is a large quantity generator because the Park collected over 1,000 kilograms of hazardous waste in one calendar month (December, 1994.) As a result, the Complaint concludes that the Park was only entitled to store the hazardous wastes on site for 90 days, after which time the Park became subject to RCRA permit requirements. The NPS believes this factual and regulatory determination is erroneous and that the Park is instead a small quantity generator entitled to accumulate hazardous wastes for a period of 270 days pursuant to the provisions of 40 C.F.R. § 262.34(e).

Based upon a review of all available information and extensive interviews with NPS personnel, the NPS has determined that the Park did not generate over 1,000 kilograms of hazardous waste in any calendar month during the time period at issue in the Complaint. Additionally, the Park did not have greater than 6,000 kgs. of hazardous wastes on site and is located more than 200 miles from the nearest permitted RCRA facility. Moreover, the Park substantially complied with additional requirements relevant to small quantity generators such that the Park was entitled to accumulate wastes on site for 270 days without needing a RCRA permit.

Interviews with Mr. Jose Ramirez, who is the Park's Roads and Trails and Auto Shop

¹ Please note that this letter is prepared for the purposes of settlement and in no way constitutes a waiver of any legal or factual claim or defense that the NPS may assert in the unlikely event that this matter is not fully resolved prior to a hearing before an Administrative Law Judge.

Supervisor and who also serves as the Park's Hazardous Materials Coordinator, have revealed that the hazardous wastes at issue in this matter were generated primarily in November and December 1994. The generation of these wastes occurred when Park supervisory personnel, including Mr. Ramirez, inspected their inventories of hazardous materials during these months and made determinations about which materials were useable product and which were hazardous wastes. At the time the responsible individual made the decision that the materials could no longer serve a useful purpose, the materials became "generated" hazardous wastes subject to regulation for purposes of RCRA. See 40 C.F.R. § 260.10.

Hazardous wastes were generated at several Park offices in November, 1994 after Mr. Ramirez visited various Park offices (fire cache, buildings and utilities, auto shop) and informed relevant supervisory personnel that they should identify all hazardous materials that no longer provided any useful purpose so that the Park could prepare for a hazardous wastes disposal event. Mr. Ramirez provided general information to the supervisors to assist them in determining what materials were wastes that should be collected for disposal. Following these meetings, the supervisory personnel in these offices determined that certain materials in their facility were wastes. The wastes that were generated in November, 1994 are reflected on Table 1. Because some supervisors responded to Mr. Ramirez's request at a later date, the wastes from their areas were generated in December, 1994. These wastes are also listed on Table 1.

Mr. Ramirez, as the supervisor for the Park's Roads and Trails division, was responsible for the "rain shed" area which is a storage location for paint and other materials. In November, 1994, Mr. Ramirez himself determined that certain hazardous materials located in the Park's Rain Shed Paint Room were hazardous wastes. In December, 1994, Mr. Ramirez made additional decisions that other materials in the rain shed were wastes. The wastes generated at the rain shed area are listed on Table 1.

On December 12, 1994, Mr. Ramirez and another Park employee picked up all of the Wastes that had been generated in November and December, 1994 and transported them to the Primary Area. Mr. Ramirez also picked up the hazardous wastes that had been generated by the U.S. Geological Survey and the National Biological Service on the same date and transported them to the Primary Area pending pick up by the contractor.

Based on the foregoing, the NPS has concluded that the Park generated 844 kgs. of hazardous waste in November, 1994 and 706.9 kgs. of hazardous waste in December, 1994.² The remaining wastes transported off-site were generated prior to the off-site transport of the Wastes in October, 1995. See Table 1.

The Park has also significantly complied with the other requirements pertaining to small quantity

² The NPS has recalculated the total amount of hazardous wastes listed on the bid sheets at 1550.9 kgs. This figure was derived using a 9 pounds per gallon conversion factor. This figure differs from EPA's total by 149.1 kgs.

generators. A significant majority of the Park's wastes was stored in containers that were in good condition and not leaking. The containers were closed, and except for a two week period in July, 1995, they were stored in an area protected from rain and direct sun. A storage locker was used to hold and segregate wastes such as batteries and lab chemicals. Mercury was stored in a poly-overpack container. Many of the wastes had either hand written labels or their original factory labels. In addition, the Park had measures in place to control any fires or accidental releases: the fire house, which is equipped with engines, fire suppression equipment and emergency personnel, is within approximately 350' of the Primary and Temporary Accumulation Areas; many Park employees, including those most directly involved in the management of hazardous wastes, had training in managing hazardous wastes and responding to releases; and communication equipment was nearby in both the fire house and maintenance facility. (Detailed information on training, emergency equipment, and the condition of containers is contained in Section II.)

II. The Penalty Assessed for Count I is Excessive.

In the Complaint, EPA determined that the Park's failure to obtain a RCRA permit under 40 C.F.R. § 270.1(c) constituted a "major-major" violation under the terms of EPA's 1990 RCRA Civil Penalty Policy ("Penalty Policy"). EPA therefore assessed a penalty of \$237,300.00 for Count I. This penalty includes a \$22,500.00 gravity based penalty and a \$1,200.00 multi-day penalty for 179 days of violation. No good faith or other offsets were considered.

For the information and reasons set forth below, the NPS believes this penalty should be recalculated. EPA's authorities to reduce a penalty based upon new information are found at page 31 of the Penalty Policy.

The Penalty Policy requires that RCRA penalties be based on an assessment of two factors: the extent of deviation and the potential for harm. For the purposes of settlement, NPS is willing to characterize the alleged failure to obtain a permit as a "major" deviation from the RCRA regulations. However, the NPS believes that the potential for harm associated with this violation is moderate. (Violations that constitute a moderate potential for harm are those that pose a significant risk of exposure to humans or other environmental receptors and a significant impact to the RCRA program.) The NPS believes that the appropriate gravity based penalty is \$9,500.00 and that the appropriate multi-day penalty is \$600.00 for 76 days resulting in a penalty of \$55,100.00 for Count I.³ The justification supporting this revised penalty is set forth below.

³ For purposes of calculating the number of days of accumulation, NPS used November 1, 1994 as the start date of accumulation. October 12, 1995 was used as the end date of the accumulation period. There are 346 days between November 1, 1994 and October 12, 1995, leaving 76 days of accumulation beyond the allowable 270 days.

A. Potential For Harm - Risk of Exposure

The risk of exposure associated with a violation of the RCRA program is based on an assessment of the probability of exposure and the potential seriousness of contamination should an unpermitted release occur. In the penalty justification contained in the Complaint,⁴ EPA determined that there was a substantial risk of exposure based on the following factual assumptions regarding the Park's waste management practices:

- * the wastes were stored for over seven months in the tropical heat and heavy rainfall in the temporary storage area
- * over seventeen pounds of mercury, along with other unknown chemicals, were stored in cardboard boxes directly on the concrete floor in the temporary hazardous waste storage area and these boxes had a substantial potential for deterioration due to sun and rain exposure
- * the individuals assigned to collect and store the wastes did not have proper training.

Based upon NPS investigations, we have found these assumptions to be incorrect.

1. Waste Management Practices

The hazardous wastes ("Wastes") that EPA observed in the temporary storage area ("Temporary Area") during the July 27-28, 1995 inspection were only placed in that location for **two weeks**, from approximately July 17 - July 29, 1995. Mr. Ramirez collected hazardous wastes from various Park facilities in November and December 1994 and brought the Wastes to the Park's primary accumulation area.

The Park's primary hazardous waste storage area ("Primary Area"), which is a 24.5' x 21.5' structure, is located within the Park's maintenance complex.⁵ When the Wastes were placed

⁴ On May 17, 1996, the NPS formally requested "[a]ny documents, such as field notes, produced by US EPA field inspectors pertaining to the inspection of Hawaii Volcanoes National Park..." Letter to Ms. Arlene Kabei, USEPA, from Heather Davies, NPS (May 17, 1996). The NPS has not yet received any documents responsive to this request. Upon receipt of these materials, the NPS may revise the analysis set forth in this Section II.

⁵ A diagram of the Primary Area is contained in the Park's Hazardous Waste Management Plan which is included in the Park's Response to Violation Notice at Exhibit B ("NPS Response at Exhibit --"). Exhibit B also contains a map (not to scale) showing relative distances to the maintenance facility, fire house, and

in the Primary Area, its condition was as follows. The Primary Area has a cement slab floor. The bottom two feet of the walls are made of cinder block and the top portion of the walls is chain link fence. There is a berm at the entrance to the area to provide for secondary containment in the event of a spill. There is a metal, pitched roof over the entire structure. This roof protected the Wastes from direct rain fall and sunlight. The Primary Area was signed as containing hazardous waste and it had a locking device. Access into the maintenance facility area was controlled. The road leading into this area was signed as open only to Park employees and residents. At night, there was a gate across the road.

Mr. Ramirez placed the Wastes on wooden pallets or inside a metal locker that was located along the perimeter of the Primary Area. The metal locker served as a type of supplemental containment and Mr. Ramirez stored the waste batteries and many of the lab chemicals in the metal locker. Mr. Ramirez placed the mercury wastes in a poly-overpack container. Finally, there was aisle space between the Wastes.

The Wastes remained in the Primary Area until approximately July 17, 1995. Shortly before this date, the NPS had decided to epoxy paint the floor of the Primary Area to make the floor impervious and chemically-resistant to facilitate spill cleanup. In order to paint the floor, the Wastes had to be relocated temporarily. Mr. Ramirez moved the Wastes from the Primary Area to the Temporary Area on or about July 17, 1995. Mr. Ramirez also moved the locker into the Temporary Area and placed the same wastes (batteries and lab chemicals) inside the locker. The Temporary Area is roughly 10' from the Primary Storage Area. The Wastes remained in the Temporary Area until approximately July 29, 1995.

During the two week period the Wastes were located in the Temporary area, the condition of the Temporary Area was as follows. The Temporary Area is slightly smaller in size than the Primary Area. The Temporary Area has a cement slab floor, a two foot cinder block wall, and then a chain link fence wall above the cinder block. Unlike the Primary Area, the Temporary Area did not have a roof. To compensate for the lack of a roof, Mr. Ramirez placed sections of sheet metal roofing and plastic sheeting over the Wastes to protect them from direct sun and rain. The temporary area was locked and the Park did put a sign on the chain link fence indicating that there were hazardous wastes inside. This sign was not in place at the time of the EPA inspection.

Following the EPA inspection, Mr. Ramirez and another Park employee moved the Wastes back to the Primary Area on or about July 29, 1995. The Wastes remained in the Primary Area until they were picked up for off-site transport and disposal on October 12, 1995. The only change in the condition of the Primary Area after July, 1995 was that the cement slab floor had been painted with two coats of epoxy paint.

EPA's Complaint alleges that none of the Wastes were labeled. The Complaint however indicates that the EPA inspectors did not move the Wastes to search for any labels. Contrary

other Park facilities.

to the facts alleged in the Complaint, approximately one third of the waste containers did have labeling indicating their contents. For example, Mr. Ramirez has indicated that many of the laboratory chemicals were in their original containers with their original labels. For other containers, Mr. Ramirez recalls that some of the Park personnel involved in generating the Wastes had written the name of the chemical by hand on some of the containers. Some of these containers were labeled "formaldehyde," "bird poison," and "mercury."

Further, when Mr. Ramirez collected the waste inventories from the various Park offices, he obtained Material Safety Data Sheets, to the extent available, from the generator. Along with these inventories, Mr. Ramirez used these MSDS sheets and other reference materials to create a database on which he recorded the EPA waste code(s) and hazard class for each container.

Based on the foregoing information, it is apparent that the Wastes were not exposed to sun and rain for over seven months as alleged in the Complaint. Nor were mercury or other wastes stored in cardboard boxes on the floor of the Temporary Area for over seven months. In fact, for the vast majority of the time, the Wastes were stored in a signed and locked facility that was shielded from rain and sun.

2. Provisions for Detecting and Preventing Releases

Other factors that weigh in favor of classifying this violation as moderate include the Park's training of employees and the safety measures that were in place to prevent releases. Jack Minassian, the Park's Safety Officer/Hazardous Waste Spill Coordinator, had received First Responder-Operational Level training. Previously, the NPS sent Mr. Minassian to attend First Responder training at the California Specialized Training Institute in 1991. NPS Response at Exhibit A. Mr. Ramirez, the Park employee who collected and managed these Wastes, had attended two NPS-sponsored hazardous waste management courses, one in April, 1994 (a primary instructor of this course was a EPA RCRA inspector) and the other in June, 1994. NPS Response at Exhibit A. The June, 1994 training took place within the Park. In addition to Mr. Ramirez, two additional Park employees attended this training course. Mr. Ramirez also attended a one-day EPCRA training course sponsored by USEPA in Honolulu in the summer of 1994.

Important safety-related measures were in place in the Park at all times relevant to the Complaint. First, the Park had a spill contingency plan and Park staff was trained in responding to spills. Second, the Park's maintenance staff holds bi-weekly "tailgate" safety meetings at which hazardous materials and hazardous waste management policies and practices are discussed. Third, the Park's fire station (including engines, equipment, fire extinguishers, a water supply, and trained personnel) is located approximately 350' from the Primary Area. Had any accidental spills occurred, the fire department response would have been immediate. Finally, maintenance employees, including Mr. Ramirez, regularly work in the vicinity of both the Primary and Temporary Area. Maintenance employees routinely carry two-way radios. Telephones are located nearby in the Park's maintenance facility.

The Park's commitment to training its employees, the proximity of the fire house and the

frequent presence of personnel in the areas immediately adjacent to both the Primary and Temporary Areas strongly indicate that had any spills occurred, they would likely have been detected very quickly, allowing for an immediate spill response.⁶

3. Quantity and Toxicity of the Wastes

As part of its mission, the National Park Service is called upon to provide utilities and services customarily found in an urban setting to accommodate visiting populations in remote and undeveloped areas. The National Park Service performs activities such as auto maintenance, roads maintenance, buildings maintenance, drinking water treatment, trash collection, electrical system maintenance, etc. These activities are consistent with those associated with a municipality. However, the NPS performs these activities on a much smaller scale. Hence, the quantities of waste generated by these activities are small in comparison to a municipality conducting an analogous operation.

In reviewing the Wastes that were disposed of by the Park, items such as: solvents -- 10.25 gallons; lead-based traffic paint -- 70 gallons; adhesives -- 73.5 gallons; and, its largest category, waste paints -- 200 gallons were identified. None of these wastes were classified as acutely hazardous. While there may have been a significant potential for harm to humans and/or environmental receptors should the entire inventory been released to the environment, these quantities of waste and the toxicity of the Wastes would not have caused substantial harm.

4. Likelihood of Transport to Receptors

The likelihood that these Wastes, if released, would have been transported into the air, water, or groundwater was small. For 96% of the time that the Waste was present at the Park, the Waste was accumulated in the Primary Area, which, as described above, was a covered, cement-slab structure with secondary containment. The Park had an Oil and Hazardous Substance Pollution Contingency Plan to outline First Response protocol (identification, evacuation, notification, and restrict access) and Park personnel had been trained how to respond to a spill.

5. Proximity of Receptor Populations

There are no surface water bodies in the vicinity of the Primary Area. The Primary Area is located within the Park's Maintenance Complex, a developed area with many maintenance-related shops and areas. Because of the developed nature and general level of activity in this area, wildlife do not frequent this area and prefer to be in other parts of the Park. Receptor populations and sensitive media were not at risk of exposure as a result of the waste management practices of the NPS.

⁶ There are no confirmed releases associated with the Temporary Area. The Park has submitted its closure plan to EPA and once approved, sampling to assess the presence of releases will be performed.

Based on the new information presented in Sections I(A)(1) through (5), a finding that the risk of exposure associated with the Park's hazardous waste management practices was "substantial" is erroneous. Rather, the risk is more accurately characterized as "significant," leading to the conclusion that the violation was moderate.

B. Potential for Harm - Harm to the RCRA Program

The Complaint indicates that EPA determined the harm to the RCRA program was substantial ("major") because the Park was operating a storage facility without a permit and in violation of RCRA. While the Park did accumulate the Wastes on site for longer than the allowed accumulation time, the Park did comply with many aspects of the regulations applying to small quantity generators ("SQG"). As a result, this violation is more properly characterized as a moderate harm to the RCRA program. Such a classification is consistent with the Penalty Policy that contains, as an example of a moderate violation, the failure to comply with each and every requirement pertaining to SQGs.

As outlined above, the Park significantly complied with applicable SQG regulations. For example, the Park stored its wastes in a covered, locked and signed storage area for all but two weeks. (The only reason that the Wastes were moved to the Temporary Area was to improve the impermeability of the cement floor in the Primary Area.) While in the Primary Area, wastes were stored in closed containers, some wastes had supplemental containment and there was aisle space inside the area. Some of the Wastes had their original factory labels indicating the contents (particularly the laboratory chemicals) while others had hand-written notations indicating what they were (e.g., formaldehyde, mercury, bird poison). Mr. Ramirez obtained MSDS for the wastes he collected and researched the hazard classification for each waste. The Park also had emergency response equipment and personnel and had sent many employees to hazardous waste-related training courses.

C. Offsets

RCRA Section 3008(a)(3) requires that EPA must consider "any good faith efforts to comply with applicable requirements" in assessing any penalties associated with violations of RCRA. 42 U.S.C. Section 6928(a)(3); Penalty Policy at 30. EPA, however, failed to provide any good faith offsets in the calculation of the penalty in this matter.

Specifically, the EPA failed to consider the following good faith efforts of the NPS. Park personnel received many hours of training in a wide variety of hazardous waste management issues (RCRA, OSHA, and EPCRA). With this knowledge, Park staff developed hazardous waste inventory forms and procedures. Several months prior to EPA's inspection, NPS advertised a contract to transport and dispose of the Wastes in a manner fully compliant with all applicable RCRA requirements. The Park's hazardous communications, contingency, and waste plans established procedures to ensure proper response in the event of any releases. For the vast majority of the time that the Wastes were on-site, the Park accumulated the Wastes in the Primary Area which was shielded from sun and rain, had secondary containment, aisle space,

and a locking device and a hazardous waste sign. The Park also took steps to minimize the potential for releases for the brief period of time within which the Wastes were located in the Temporary Area (e.g., placement of sheet metal roofing and plastic sheeting over the Wastes). The Park acquired drums to recontainerize the Waste to ensure all wastes were placed in proper containerization.

III. Conclusion

We hope that the information provided by this letter has clarified the position of the NPS related to the Park's hazardous waste management practices and provides a legitimate basis for a recalculation of the penalty assessed in this matter. The NPS respectfully requests that EPA consider this information, reassess its penalty calculation, and determine an appropriate, acceptable penalty so that this matter may be resolved in an expeditious manner fully consistent with the shared interests of EPA and the NPS.

We are fully cognizant of the amount of governmental resources that have been expended to date in this case and the potential for continuing resource demands if a resolution is not achieved soon. Indeed, the NPS, as an agency with significant personnel and financial resource constraints, looks forward to resolving this matter before significant, additional resources are expended in this matter.

Upon your review of this letter, please contact us with your thoughts on how best to proceed. We are particularly interested in your evaluation and determination of whether a reduced penalty amount to be assessed is warranted. If you have any questions or comments, please contact Barbara Goodyear at (415) 744-2507 or Shawn P. Mulligan at (303) 415-9014. Thank you.

Sincerely,

Ralph G. Mihan
Field Solicitor
Pacific Southwest Region


By: Barbara Goodyear
Assistant Field Solicitor

encl.

cc (w/encl):
Superintendent, HAVO
PGB SSO Superintendent
Shawn Norton, NPS, WASO
Shawn P. Mulligan, NPS, WASO

ASSIGNMENT OF NPS RCRA WASTES TO MONTH GENERATED

NOVEMBER 1994

GENERATION POINT	RCRA WASTE TYPE	VOLUME	KILOGRAMS
FIRE CACHE	Ni-Cad Batteries	7 lbs	3.2
PROTECTION	Ni-Cad Batteries	12 lbs	49.1
PLUMBERS SHOP	Thinner	1 gal	4.1
PLUMBERS SHOP	Waste Paint	1 gal	4.1
R&T RAINSHED	Adhesive	76.5 gal	313.0
R&T RAINSHED	Waste Paint (traffic)	70 gal	286.4
PAINT ROOM	Waste Paint	45 gal	184.1
			844.0 kgs

DECEMBER 1994

GENERATION POINT	RCRA WASTE TYPE	VOLUME	KILOGRAMS
PAINT ROOM	Waste Paint	124 gal	507.3
FIRE-CACHE	Waste Paint	6.2 gal	25.4
FIRE CACHE	Thinner	0.1 gal	0.4
FIRE CACHE	Purging Fluid	2.5 gal	10.2
FIRE CACHE	Rust Inhibitor	2.5 gal	10.2
FIRE CACHE	Unknown granular sub.	3 gal	12.3
R&T RAINSHED	Waste Paints	23.5 gal	96.1
AUTO SHOP	Solvent	7 gal	28.6
AUTO SHOP	Parts cleaner	2 gal	8.2
AUTO SHOP	Rust Inhibitor	2 gal	8.2
			706.9 kgs

"The information contained herein is true and accurate to the best of my information and belief."

Jose W. Ramirez
 Jose Ramirez

6-13-96
 Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

August 9, 1996

Barbara Goodyear, Esq.
United States Department of the Interior
Office of the Solicitor
San Francisco Field Office
600 Harrison Street, Suite 545
San Francisco, CA 94107-1373

Re: In re Hawaii Volcanoes National Park; RCRA
09-96-0002

Dear Barbara:

Thank you for your letter of June 14, 1996 detailing Hawaii Volcanoes National Park's ("HAVO") settlement position as to the enforcement action commenced by the United States Environmental Protection Agency ("EPA"). EPA is hopeful that this matter can be resolved through our continuing negotiations.¹

After reviewing your letter, EPA still believes that Count I (Storage of Hazardous Waste Without a Permit) of EPAs Complaint was a major/major violation under the terms of EPAs 1990 RCRA Civil Penalty Policy (Penalty Policy). EPA would like to take this opportunity to respond to certain statements made by HAVO in its letter so that HAVO may better understand EPA's position.

A. SMALL VERSUS LARGE QUANTITY GENERATOR STATUS

EPA understands that HAVO believes that it was a small, not a large, quantity generator, and believes that it was thus able to store hazardous waste for 270 days without benefit of a RCRA permit; that only after passage of 270 days did HAVO become

This letter has been prepared for the purposes of settlement negotiations and in no way constitutes a waiver of any claim, either legal or factual, on behalf of EPA.

subject to RCRA's permitting requirements; and, that EPA's multi-day penalty assessment should have started on day 271 and not before.

Count I of the Complaint was based on HAVO's violation of Section 3005 of RCRA, 42 U.S.C. § 6925 and 40 CFR § 270.1(c) - failure to have a permit to store hazardous waste. Irrespective of whether HAVO was a small or large quantity generator, HAVO needed a permit under 42 U.S.C. § 6925 because HAVO stored hazardous waste without complying with the safe container practices including a failure to mark an accumulation start date and the words "hazardous waste" on each container containing waste. While 40 CFR § 262.34 provides an exemption to large (90 days exemption) and small (180 or 270 days exemption) quantity generators for storage on site for certain designated time periods without the need to obtain a permit, a generator does not qualify for this exemption unless it complies with the safe container practices stated in section 262.34(a)(2) and (3) of the regulations. In other words, compliance with the safe container practices of section 262.34(a) (marking drums with the words "hazardous waste" and an accumulation start date) is a condition precedent for a generator to qualify for the storage accumulation exemptions of section 262.34. Should a facility fail to meet this condition precedent then it immediately triggers the permitting requirements of 42 U.S.C. § 6925. See In re Gordon Redd Lumber Co., 1994 RCRA LEXIS 29, *69-73 (1994); In the Matter of Humko Products, 1985 RCRA LEXIS 46, n. 5, n. 12, *49 (1985); In the Matter of National Standard Co., 1984 RCRA LEXIS 44, *14-15, *21-22 (1984).

It is EPA's continuing position that HAVO did not qualify for the storage exemption of section 262.34 (whether it be 90 or 270 days) because HAVO failed to comply with the safe container practices of 40 CFR § 262.34(a)(2) and (3) (made applicable to small quantity generators through section 262.34(d)(4)), and that HAVO needed a permit on the first day it accumulated/stored hazardous waste. While EPA in its discretion capped the multi-day component of its penalty calculations for Count I at 179 days, EPA could have assessed a multi-day penalty for the entire time period the waste was stored at the facility - 346 days according to footnote 3 of your letter.

B. POTENTIAL FOR HARM TO HEALTH AND THE ENVIRONMENT

HAVO's assessment is that the potential for harm on HAVO's storage without a permit was moderate. EPA disagrees and still believes that Count I presented a major potential for harm to human health and the environment, as well as to the RCRA program. The reasons EPA believes Count I presents a major potential for harm include:

Assuming that the waste was stored in the kennel for a two week period, the kennel still contained water reactive wastes in containers exposed to the rain.

Glass vials of waste were stored in rain soaked cardboard boxes which could have broken creating a spill.

The berm did not extend completely around the dog kennel. The kennel had a drain, and the spills on the floor of the kennel could have or may have released into the environment.

Potentially incompatible wastes were stored closely together in the kennel. For instance, flammable waste powder was stored amongst other types of ignitable wastes.

The containers lacked accumulation start dates required under 40 CFR § 262.34(a)(2). While some of the containers may have had commercial labels on them, many did not, and commercial labels do not satisfy the requirement that the words "hazardous waste" be marked on hazardous waste containers. See 40 CFR § 262.34(a)(3). The lack of proper labeling could have resulted in improper waste disposal.

The lack of proper labeling and the storage of unknown wastes could have resulted in emergency personnel not knowing how to respond to an emergency situation. In fact, fire management officer Jack Minassian, when questioned by EPA inspectors, did not know what wastes were stored in the kennel. Furthermore, the facility lacked spill kit safety equipment.

As far as HAVO's statement that during their inspection EPA inspectors did not move containers in the dog kennel, EPA inspectors do not put themselves at risk of the danger associated with moving potentially incompatible, unlabeled wastes exposed to the elements and stored in deteriorating containers. Furthermore, Jack Minassian was unable to assist the inspectors in their assessment of the various wastes stored in the dog kennel because he did not know what wastes were being stored. If the containers had been properly labeled and stored with the required aisle space this would not even be an issue. EPA points out that HAVO personnel were also placed at risk by having to handle unknown and/or unfamiliar wastes.

In response to HAVO's comment that a warning sign was posted at the dog kennel except when the EPA inspectors inspected the facility, such episodic posting of signs could lead to confusion amongst facility personnel in that they might conclude that there was no hazardous waste stored in the dog kennel during the times when the warning sign was not posted. EPA would also like to point out there were warning sign posting problems at other locations at the facility including Building 52 which lacked a warning sign despite that fact that the building contained hazardous waste. EPA in its enforcement discretion chose not to seek penalties for this violation.

As far as HAVO's comments going towards the condition of the permanent storage area, no hazardous waste was stored in the permanent storage area at the time of EPA's inspection. However, even if the wastes had been stored in the permanent storage area, EPA inspectors were informed that wastes was stored by generating

location, not by compatibility, and some wastes were unknowns. Situations such as this lead to the storage of potentially incompatible wastes. Furthermore, any wastes stored in the permanent storage area would have been exposed to tropical heat and humidity which can pop lids off drums and speed up the corrosion of containers. Many of the containers viewed by the inspectors in the dog kennel were rusted and deteriorated. All of this leads to the need to transfer hazardous waste offsite, in a timely manner.

C. POTENTIAL FOR HARM TO THE RCRA PROGRAM

EPA still believes that Count I presented a major potential for harm to the RCRA program. The safe container practices and permitting requirements are crucial to the effective enforcement of RCRA. The law is not designed to allow hazardous waste facilities to store waste until they are discovered by EPA. Instead, the permitting requirements are there so that, prior to storage, conditions may be outlined for operation of a storage facility in a manner that will be environmentally safe. The failure to apply for a permit or qualify for interim status oftentimes has the effect of concealing from EPA the nature of a facility's hazardous waste operations. The situation at HAVO could have continued had it not been for the fortuitous circumstance of EPA's inspection. In other words, the requirement that a facility must apply for a permit as a facility storing hazardous waste goes to the very heart, and has a major impact on the success, of the RCRA program. If this requirement is disregarded, advertently or inadvertently, the RCRA program cannot function.

D. GOOD FAITH MITIGATION

As to good faith, EPA did consider HAVO's efforts to comply with the regulations and decided not to assess penalties against the facility for violating a number of RCRA requirements applicable to storage facilities and other violations. See Inspection Report. HAVO should be aware that if EPA had chosen to seek a separate penalty for each distinguishable violation the total penalty assessed against HAVO would have greatly exceeded the amount sought in the Complaint. In addition, EPA does not give a downward adjustment if the facilities' efforts to comply primarily consist of coming into compliance. See Penalty Policy, p. 33. Furthermore, with regard to the National Park Service's advertisement six months prior to the inspection of a contract to transport and dispose of the waste, the wastes were not actually transported off the facility until approximately four months after the inspection. This delay occurred despite the warnings of the EPA inspectors that the situation at the facility was dangerous and the wastes needed to be characterized and shipped off-site in the immediate future. EPA does not believe that the delay in shipping wastes offsite evidences good faith on behalf of the facility.

E. CONCLUSION

Hopefully the information provided will help HAVO understand EPA's position as to Count I of the Complaint. As previously stated EPA still believes Count I was a major/major violation under the terms of EPAs Penalty Policy. However, in the hope of settling this matter without having to spend additional time and resources, EPA offers to reduce its penalty request to \$205,500. This represents lowering Count I to the bottom of the major/major penalty box for both the gravity and multi-day components (\$199,000), plus \$6,500 for Count II. Of course, HAVO may be able to mitigate a portion of this penalty with acceptable Supplemental Environmental Projects. EPA is aware that HAVO has been considering various SEP proposals and would be happy to discuss these ideas with HAVO.

Please contact me at your earliest convenience regarding this settlement offer. I may be reached at 744-1331. EPA looks forward to working with HAVO on resolving this matter.

Sincerely,



Vicky Lang
Assistant Regional Counsel

cc:

Heather Davies
David Nawi
Tony Terrell
Molly Measer
Arlene Kabei
Kathleen Johnson
Jean Rice

PROPOSED SUPPLEMENTAL ENVIRONMENTAL PROJECT

SEP NO. 1 - MODELS FOR ENVIRONMENTAL EXCELLENCE: DEVELOPMENT OF MODEL HAZARDOUS-WASTE AND HAZARDOUS MATERIALS MANAGEMENT PROGRAM PLANS; DISSEMINATION OF MODEL PLANS; AND IN-PARK PLAN REVIEW AND DEVELOPMENT OF INTEGRATED ENVIRONMENTAL MANAGEMENT SYSTEMS PLANS AT SIX PARKS

Proposed SEP (Supplemental Environmental Project) Number 1-REV12

- I. EXECUTIVE SUMMARY--DEVELOP MODEL HAZARDOUS WASTE AND HAZARDOUS MATERIALS MANAGEMENT PROGRAM PLANS AND MODEL TRAINING MODULES FOR USE IN NATIONAL PARKS WITHIN THE PACIFIC WEST REGION AND SERVICE-WIDE. DEVELOPMENT OF NEW REGIONAL CONTRACTS TO ACCOMPLISH MODELS DEVELOPMENT AND HAZARDOUS WASTE DISPOSAL. DISSEMINATE THESE PLANS THROUGH AN INTERNET WEBPAGE. IN-DEPTH REVIEW OF MODEL ADAPTATION AND USE AT SIX PARKS. COMPREHENSIVE TRAINING AND DEVELOPMENT OF INTEGRATED ENVIRONMENTAL MANAGEMENT SYSTEMS PLANS AT SIX PARKS.**

Brief Description of Proposed SEP: Work within fiscal years 1997 through 1999: to develop model hazardous waste and hazardous materials-related management program plans for use within National Park System units in the Pacific West Region ("the Region") and throughout the entire National Park Service; to contract for services to develop the model plans and for the disposal of hazardous waste throughout the Region; to advertise and distribute these model plans through a variety of means, including an Internet Webpage; to review comprehensively implementation of model plans at six parks; and to train fully park staff and develop strategic environmental management plan at six parks.

This SEP will serve as an enabling system to support the development and implementation of consistent and effective environmental management and regulatory compliance activities within the Pacific West Region and throughout the entire National Park Service ("the Service" or "NPS").

The Pacific West Region is composed of 52 parks in three clusters: the Columbia Cluster (17 parks in Washington, Idaho, and Oregon); the Pacific Great Basin Cluster (25 parks in California and Nevada); and the Pacific Islands Cluster (10 in Hawaii, Guam, and American Samoa). The types of facilities typically maintained and operations supported in Pacific West national parks include: historic and non-historic structures, visitor centers, administration

facilities, housing, concession facilities, comfort stations, campgrounds, picnic areas, roads, trails, parking areas, water and sewage treatment facilities, solid waste collection and transfer systems, above- and underground fuel storage tanks, vehicle fleet management centers, general maintenance facilities, waterfront facilities, shooting ranges, landfill areas, and undeveloped land. The National Park Service also has responsibilities as a federal land manager for the evaluation and remediation of contaminated lands.

The SEP focuses on the hazardous waste and hazardous materials-related environmental and regulatory compliance implications of the operations and maintenance of the facilities listed above. This SEP will help parks institutionalize environmental management activities into routine park operations. In addition to achieving and maintaining full compliance with environmental regulatory requirements in a systematic fashion, the SEP will enable National Parks to pursue goals that exceed regulatory requirements. Further, the SEP addresses the facilities and operations of park concessioners, private companies who are under contract to the National Park Service to provide certain types of visitor services (i.e., hospitality, guide services, and fuel retail).

II. SEP DESCRIPTION

The SEP will consist of three phases of work: **Model Plans Development, Models Plans Dissemination, and Implementation Review** (the latter phase will include six parks). The Model Plans Development Phase will consist of developing model environmental program support tools including, model documented program plans and model training plan outlines. The Model Plans Dissemination Phase of work will consist of the development and maintenance of an Internet webpage that will be used to "post" all of the plans and products developed in the first phase of work. The final phase of work consists of an in-depth review of plans and plan implementation by a review team at a set of six (6) parks. The Review Team will assist the park's Hazardous Waste and Hazardous Materials Program Coordinator with training seminars for the park staff and any other work necessary to ensure the proper functioning of that unit's compliance program. The Review Team also will help the park formulate an **Integrated Environmental Management System Plan (IEMSP)** which will be an executive summary for all of the environmental management programs at that park. The IEMSP will briefly summarize all of the environmental management plans maintained by the park; it will inventory the different types of facilities and activities within the park that require environmental management; it will define a single calendar for scheduling all of the cyclic events and actions called for in each of the individual documented program plans; it will include facility/activity-specific self-inspection checklists; and it will formulate a workplan of recommended projects and estimated costs for the next five years (these projects may be capital-intensive issues such as site assessment, remediation, fuel tank replacement, etc.).

The intent of this SEP is to provide Parks with useful support tools and assistance to improve the effectiveness and consistency of hazardous waste- and hazardous materials-related environmental management. An additional full-time-equivalent staff person will be brought

on as a term appointment to coordinate and lead the activities called for in this SEP. The activities identified as part of this SEP will be completed over a 2 1/2 year time frame.

A. PHASE I - MODEL PLANS DEVELOPMENT

Model hazardous waste- and materials-related management plans will be developed to help parks pursue pollution prevention and to satisfy RCRA-related environmental regulations in a more consistent and effective manner. Model documented programs and training modules will be developed to apply to the specific needs and organizational context of the National Park Service. These products will be written in a consistent and user-friendly language.

The model plans will address the following list of hazardous waste and materials regulatory requirements and management issues that are applicable to typical park facilities and operations (the regulatory citation defining the program plan is in parentheses):

Hazardous waste generation

Hazardous Waste Management Plan (40 CFR 262)
Contingency Plan (40 CFR 265.50)

Hazardous materials use and storage

Hazard Communication Plan (29 CFR 1910.1200)
Permissible exposure limits (PELs) (29 CFR 1910.1000)
Emergency Planning and Community Right-to-Know Act Notifications
Emergency Response Planning for commercial pipeline (49 CFR 194)
Hazardous Materials Business Plan (local)
Pollution Prevention Plan (Executive Order 12856)
Chemical Hygiene Plan (29 CFR 1910.1450)
Integrated Pest Management Plan
Hazardous Waste Operations Plan (29 CFR 1910.120)
Training (40 CFR 262.34)

Fuel storage

Fuel Systems Maintenance Plan
Spill Prevention Control and Countermeasure Plan (40 CFR 110 and 112)

Solid waste management

Medical Waste Management (29 CFR 1910.1030)
Integrated Solid Waste Management Plan (Executive Order 12873)
Affirmative Procurement Plan (Executive Order 12873)
Composting Facility Planning

Law enforcement

Shooting Range Lead Pollution Prevention Plan

Vehicle maintenance

Stormwater Management Plan (40 CFR 122 and 40 CFR 110)
CFC Recycling and Management (40 CFR 82)

Building maintenance and construction

PCBs management (40 CFR 761)
Asbestos Management Plan (40 CFR 60, 29 CFR 1910.1101)
Lighting Waste Management (PCB ballast and tubes)
Lead Worker Protection Plan (29 CFR 1025) and Lead Waste Management Plan
Respiratory Protection Plan (29 CFR 1910.138)
Medical Surveillance Plan (29 CFR 1910.120, 29 CFR 1910.134 and 29 CFR 1910.1025)
Confined Space Entry plan (29 CFR 146)

Wastewater treatment plant operation

Process Safety Plan for chlorine (29 CFR 1910.119)
Emergency Planning for extremely hazardous substances (40 CFR 355)
Risk Management Plan (40 CFR 68)

This initial list of programs and plans will be refined by the SEP Steering Committee, once convened. The Steering Committee also will recommend how and when to combine these topics into specific documents to be developed. Not all of these plans are specifically required by regulations; some of the above-specified plans may be recommended for the purpose of adequately documenting requisite protocols and/or to pursue a particular pollution prevention goal. For each of the categories, the SEP Steering Committee will solicit examples of such plans currently in use to review as a starting point, relying heavily on hazardous waste plans.

Each model plan will have prefacing comments that will help the Park Hazardous Waste/Hazardous Materials Coordinator determine if that particular plan applies to their facility. Specific data regarding the facilities and operations that are required to adapt the plan to a park's unique conditions will be identified and other recommendations to users of the model plan also will be included in the preface to the model plan.

Teaching modules for training called for in the model plans will be developed. The module package will consist of a detailed teaching outline; overheads/slides/video; hands-on training exercises; and student workbooks. Commercially-available video or other teaching aids will be selected to accompany the training module, rather than developing new training media. The modules will be designed to communicate effectively the instructional material to broad park staff audiences, including concession employees as appropriate. The Park's Hazardous Waste/Hazardous Materials Coordinator will administer the training course. For example, to accompany the Hazardous Waste Management Plan, a module for training park staff in hazardous waste management procedures would address: waste determination; proper labeling of hazardous waste; container management; separation of incompatible wastes; spill response procedures; etc.¹

In Indefinite Delivery and Quantities (IDQ) contract will be procured specifically for this

¹ The National Park Service uses private vendors for training that requires credentialed instruction (i.e., HAZWOPER First Responder Operations, or lead abatement worker training).

project. The Architect & Engineering Contractor will be selected based on their qualifications to perform SEP-related tasks (a copy of the A/E scope of work is attached). Model plan development will be assigned by the National Park Service to this contractor. The SEP Project Coordinator will manage the A/E contractor, develop and negotiate task orders and perform technical review of deliverables. Review of draft products will be performed by the SEP Steering Committee. The work products will be delivered in digital format to facilitate use by parks.

B. PHASE 2 - MODEL PLANS DISSEMINATION

For the purposes of distribution, an Internet webpage will be developed, linked to the existing National Park Service's web pages and, particularly highlighted on the NPS Sustainability Page and NPS Facility Management Page. At the NPS Models for Environmental Excellence website, the model plans and training outlines will be posted as abstracts and full text for distribution. The effort under the SEP will include the development and maintenance of the website for a minimum of three years. Maintenance will entail periodic additions and corrections to posted documents, as well as background on the SEP undertaking, and a complete, up-to-date list of parks that have participated by using the model plans. Park staff will be featured as columnists on the webpage, telling their stories about their work to achieve their pollution prevention goals and to improve overall compliance at the Park. Park Concessioners will be given space to describe their efforts. Other non-NPS users of the SEP models will be recognized as well. Advertisement of the website will be pursued in appropriate venues. In addition, the model plans will be presented and made available at NPS workshops and conferences pertaining to Facility Management. Digital copies will be readily available for distribution Service-wide.

C. PHASE 3: IN-PARK REVIEW OF PLANS AND DEVELOPMENT OF INTEGRATED ENVIRONMENTAL MANAGEMENT SYSTEMS PLANS AT SIX PARKS

This phase of work accomplishes three objectives: 1) provides quality assurance on the adaptation of model plans and implementation; 2) provides an opportunity to train park coordinators in how to use the prepared training modules giving park staff instruction in proper hazardous waste and hazardous materials management; and 3) helps parks integrate individual plans and implementation schedules into an Integrated Environmental Management System Plan.

In this phase, a Review Team will be formed to review six parks that have adopted the SEP model documents. After a park has finished adapting the model plans to its facility and operations, the Review Team will schedule a visit for an in-park, in-depth review of the plans and implementation. The Team will be composed of one person from the Support Office, one person from the SEP Steering Committee, and contractor support staff. Changes to the plans recommended by the Review Team will be discussed and made during the visit. Any recommendations that cannot be acted upon immediately (such as technical plans requiring

modeling; facility design changes; or equipment procurement) will be provided in written form.

The Review Team and park staff will together work on the development of an Integrated Environmental Management System Plan (IEMSP) for that park. The IEMSP will resemble an executive summary for all the park environmental management plans, including all the hazardous waste and hazardous materials related plans and other environmental management plans. The IEMSP will contain an inventory of all facilities and operations that require environmental management in that park. It will summarize the individual plans taking a cross-regulatory, cross-media, cross-functional perspective with emphasis on RCRA. The IEMSP will outline management and responsibility for each of the programs, and will create one calendar which schedules all of the cyclic events and activities called for in the individual plans. In addition, the IEMSP will include a collection of simple self-inspection checklists that are oriented to specific facility areas or operations (rather than regulatory program-oriented checklists). The IEMSP also will outline a five-year plan for recommended environmental management projects that are more capital- and/or time-intensive (such as site evaluation, facility replacement, or site remediation). The final IEMSP along with a reprint of all of the individual plans will be published in three-ring binders. An abstract of the Integrated Contingency Plan will be published in easy-to-use format for distribution in the field.

Representatives of the Review Team also will assist Park Hazardous Waste/Hazardous Materials Coordinators with training, using the model training outlines. Because the Park will have just completed a number of new plans, it is an appropriate juncture to offer training within the park. The Review Team will help the Coordinator perform the training, providing a varied degree of assistance - dependent on the degree of comfort the Hazardous Waste/Hazardous Materials Program Coordinator has with the model outlines. The training offerings and the number of staff who are trained will depend on the requirements of the newly-developed/updated plans for that park.

Concessioners of the National Park Service will be encouraged to undertake parallel actions. The Review Team also will visit with the concessioner's hazardous waste and hazardous materials management staff. The accomplishments of the parks and concessioners who are reviewed will be described in the Department of Interior's magazine "People, Land, and Water."

D. PHASES I-III - SEP STEERING COMMITTEE AND PROJECT COORDINATOR

The SEP Steering Committee and Project Coordinator will be actively involved in all three phases of this SEP to provide guidance on the direction and monitor progress of the SEP undertaking. The SEP Steering Committee will be composed of: one representative from the Pacific West Regional Maintenance Advisory Committee; one representative of concessions management; one representative of a NPS concessioner; one representative from the Columbia Cascades Cluster; one representative from the Pacific Islands Cluster; one representative from

the Pacific Great Basin Cluster; and one representative from the NPS's Washington D.C. Office, Pollution Prevention Program. The individuals selected for this Committee will be selected based on their knowledge and experience with environmental management issues, and based on their ability to contribute adequate time to the effort. The SEP Steering Committee will provide guidance on the development of the model plans; review the draft model plans; make recommendations on the scope and format of the Integrated Environmental Management System Plan; encourage and promote the use of the model plans by park staff; and participate in the park implementation reviews.

A two-and-one-half year term position (GS 12 Environmental Protection Specialist) will be created to work exclusively on the SEP Project. This position will report to the Hazardous Materials Program Coordinator. This person will be responsible for facilitating the work of the SEP Steering Committee and for coordinating the overall SEP project.

III. NATIONAL PARK SERVICE OPERATIONAL CONTEXT

In order to understand the usefulness of the proposed SEP to the Service, background information is provided below on the current management of the hazardous waste and hazardous materials management programs.

In a National Park System unit, hazardous waste and hazardous materials management coordination and activities are delegated by the Superintendent to a single person as a collateral duty. This duty may be allocated to 10 - 20% of this position's time (4 - 8 hours per week). Park Hazardous Waste/Hazardous Materials Coordinators are responsible for: planning and coordination of hazardous materials-related emergency response; training other park personnel in hazardous waste management; acquisition of hazardous waste management equipment and disposal services; hazardous waste determinations; authorship of documented program plans; records management; and oversight of general container management and hazardous waste labeling within all areas of the Park. Park hazardous waste coordinators often are called upon to do other hazardous materials-related activities within the park, including: preacquisition land surveys; managing contaminated lands evaluation and cleanup activities; and solid waste management and recycling services. In order to prepare these coordinators for these responsibilities, training opportunities are either offered by or contracted for by the Support Office and/or the Washington Office. Tuition and travel for these training opportunities are subsidized from designated "HAZMAT" funds (rather than coming from individual park accounts). In 1994, parks in the Western Regional Office received a set of notebooks containing relevant sections of the Code of Federal Regulations and other program support information. Each park coordinator is responsible for interpreting these regulations for their park's facilities and operations and for development of standard operating procedures to implement the applicable regulations.

In the Cluster Support Offices, hazardous waste- and hazardous materials-related support is provided by a single dedicated full-time equivalent staff person in the Pacific Great Basin

Support Office serving the parks of the Pacific Great Basin Cluster and Pacific Island Cluster, and by three collateral duty staff in the Columbia Cascades Office service the Columbia Cascades Cluster. The Support Office provides support and expertise to the parks in the following areas: hazardous waste management; regulatory enforcement negotiations; hazardous materials emergency response; emergency planning and community right-to-know reporting; natural resource damage assessment (NRDA); hazardous materials expertise for environmental crimes investigation; underground and above-ground tank management and replacement; petroleum-contaminated lands remediation; contaminated lands evaluation and cleanup; cost recovery under the Comprehensive Environmental Management and Compensation Act; solid waste management and recycling; landfill closure; realty preacquisition environmental assessments; lead-based paint management; and hazardous materials-related worker safety programs (Hazard Communication; Hazardous Waste Operations and Emergency Response; Respiratory Protection; and Medical Surveillance). The type of support provided by the Support Offices in these program areas includes technical consultative services; project scope definition; funds management; project design; construction specification writing; contracting; contract management; construction inspection; and regulatory liaison work.

In the National Park Service's Washington Office, the Pollution Prevention and Waste Management Program has a staff of seven that support the same program areas. The Washington Office is responsible for setting funding criteria for hazardous waste and hazardous materials-related projects and for funding accountability. This office also provides: technical expertise; legal support; develops and offers training; develops guidebooks; and provides the same types of project management for certain large projects.

IV. COMPARISON OF PROPOSED SEP TO EPA LEGAL GUIDELINES

A. NEXUS OF SEP TO ALLEGED VIOLATIONS

In order to demonstrate adequate nexus, a proposed SEP must remediate or reduce the probable overall environmental or public health impact or risk to which the violation at issue contributes, or reduce the likelihood that similar violations will occur in the future. Interim Revised EPA SEP Policy, page 5 (May 1995). As set forth more fully below, the NPS SEP satisfies this nexus requirement.

EPA's October 13, 1995 Notice of Violation states that during the inspection, EPA observed the following RCRA violations: unlabeled hazardous waste containers, rusting and leaking containers, containers stored in an unprotected area that was exposed to the rain, and unknown and reactive wastes stored together. The inspection report also alleges that the wastes were illegally stored in the Park for over seven months. All of these alleged violations relate to the generation, handling, storage and management of hazardous wastes. EPA inspectors also reported that the use of improper hazardous waste management practices threatened worker health and safety. EPA believed that worker safety may have been compromised due to a lack of understanding by park staff of the hazardous properties of the wastes they were handling

or by an inability to handle wastes properly because of the manner in which the wastes were stored. (Communication by Vicky Lang, EPA Counsel, and EPA Inspectors, February 23, 1996).

1. Hazardous Materials and Hazardous Waste Management

The NPS has prepared a SEP that is comprehensively designed to improve the manner in which the Service generates, handles, stores and manages hazardous wastes to promote the protection of health and the environment. The model plans to be developed through the SEP process collectively and synergistically address hazardous waste and hazardous materials management issues relevant to activities and operations common to national parks. For example, the Hazardous Waste Management Plan, the Integrated Contingency Plan, and the associated training modules address the mandates and goals of Subpart C of the Resource Conservation and Recovery Act requirements.

The proposal to develop a Shooting Range Management Plan is a hazardous waste issue. The NPS maintains shooting ranges in almost all parks, including Hawaii Volcanoes National Park, as a component of required law enforcement ranger weapons certification. Currently, there is no legal mandate requiring NPS to manage lead contamination at an actively-used shooting range. (EPA has proposed regulating waste and spent munitions as a hazardous waste under RCRA. See, proposed Military Munitions Rule: Hazardous Waste Identification and Management; Explosives Emergencies; Redefinition of On-site.) The model Shooting Range Management Plan will help the National Park Service design and maintain outdoor shooting ranges in an environmentally-sensitive manner. This component of the SEP has a nexus to the alleged violations because it will lead to better management of hazardous wastes and to improved health and safety by reducing the amount of hazardous wastes in the environment. The Shooting Range Management Plan meets the spirit of EPA's proposed RCRA rule and the overall goals and objectives of the RCRA program. See 42 U.S.C. Section 6902(a)(4),(5) and(6).

2. Worker Health and Safety

Worker health and safety is one of the primary goals of the RCRA program. See 42 U.S.C. Section 6902(a)(4). The SEP will facilitate the achievement of that goal within national parks by providing training courses and health monitoring of NPS staff and by developing a model Hazard Communication Plan and training module, a Respirator Protection Plan, and a Medical Surveillance Plan. These OSHA Plans have a high degree of nexus to the alleged violations because respirators are required by staff who work with hazardous wastes (HAWO standard operating procedures for waste paint consolidation mandate respiratory protection) and because medical surveillance is required for individuals who are required to wear respiratory protection. Finally and most importantly, there is a direct relationship between a staff person's understanding of the hazardous properties of a substance or waste, and his/her ability and willingness to manage it correctly.

Another health and safety related benefit of the SEP is that, immediately and over the long term, it will reduce the amount of hazardous wastes to which workers are exposed. Immediate benefits will result from the pollution prevention and product substitution aspects of the hazardous materials-related management plans to be developed. Over the long term, SEP initiatives such as contingency planning, EPCRA notifications, chemical hygiene, pipeline contingency planning, CFC management, and storage and use of acutely and highly hazardous substances will lead to a decrease in the use of hazardous materials. This will occur because these plans will create a greater understanding within the Service of hazardous materials management that will, in turn, positively affect hazardous waste management. For example, as the SEP is implemented, park staff will realize the true costs and responsibilities of using hazardous materials and will begin to find less-toxic, more sustainable, substitute products and procedures. If less-toxic or substitute materials are not available, the institutionalized understanding of hazardous materials management this SEP will create will decrease the likelihood of spills or other mishaps that would cause the generation of hazardous waste through cleanup activities.

3. Solid Waste Management

The model Integrated Solid Waste Management Plan (covering topics including medical waste management and affirmative procurement) addresses the mandates, goals and resultant outcomes of regulations enacted under Subtitle D of the Resource Conservation and Recovery Act. See 42 U.S.C. Section 6941. Due to new and costly requirements for landfill operations within RCRA Subtitle D (liner systems, gas and groundwater monitoring systems, etc.), many small and rural landfills outside of and closest to park units have closed or are in the process of closing. This change from rural to regional solid waste management facilities is causing increased expenses for parks in the form of hauling and tipping fees. Park units that haul waste out of parks will benefit from a model Integrated Solid Waste Management Plan, which when adapted to a particular park will help a park devise and implement source reduction and waste diversion practices. Further, the National Park Service is undertaking actions to close all solid waste landfills within parks that had been operated by the National Park Service; the model Integrated Solid Waste Management Plans to be developed through this SEP will aid park staff as they make the transition from in-park disposal operations to waste hauling and transfer and as they find new and innovative ways to minimize the volume of trash generated by visitors and park operations.

Finally, these solid waste plans will further the Service's implementation of Executive Order 12873, entitled "Federal Acquisition, Recycling, and Waste Prevention." This Executive Order encourages federal facilities to make and meet targeted waste reduction goals and to alternatively procure environmentally-preferable products when possible. Alternative procurement of five items (re-refined lubricating oil; concrete and cement containing fly-ash; recycled paper; retread tires; and insulation-containing recovered materials) are mandatory obligations for federal facilities as specified under Section 6002 of the Resource Conservation and Recovery Act; this plan will help parks identify affirmative procurement goals and opportunities and further NPS compliance with this RCRA mandate as well.

4. Underground Storage Tank Management

The National Park Service has pursued very aggressively the meeting of the 1998 deadlines outlined in Subtitle I of the Resource Conservation and Recovery Act for underground storage tanks and likely will meet these requirements in all cases. Compliance activities associated with this mandate are on-going currently and independent of this SEP. However, managing the new fuel tank systems, leak detection monitoring systems, and inventory management systems over the many sites (many of them remote and unstaffed) within even a single park has been challenging. In addition, park units are tasked also with the development of Spill Prevention Control and Countermeasure Plans at those locations where a non-compliant underground tank was replaced by an above-ground fuel storage system. The model Fuels Management Plan and the model Spill Prevention Control and Countermeasure Plan will aid parks who are making adjustments to their hazardous-materials management programs in order to adapt to the requirements of these new systems. Further, wherever possible the Service is attempting to substitute alternative fuel systems in place of fuel oil systems. This is consistent with the new Executive Order 13031, signed December 13, 1996, entitled "Federal Alternative Fueled Vehicle Leadership." The model Fuels Management Plan will help parks identify opportunities to transition and plan for transition to alternative fuels. Switching from gasoline fueled cars to fuels such as propane lessens the possibility of spills and lessens worker contact with hazardous products.

5. Geographic Nexus

The proposed SEP meets the geographic nexus requirement because the SEP will directly benefit Hawaii Volcanoes National Park and other parks in the Pacific Islands. Of all the national parks in the Pacific islands, Hawaii Volcanoes is the park with the most hazardous materials and hazardous waste management issues. Because Hawaii Volcanoes will be one of the eight parks to receive an in-depth review of its hazardous waste and hazardous materials management plans and their implementation, the SEP will provide a significant benefit to the area in which the alleged violations occurred. Another benefit to the Pacific Islands area is that a member of the Pacific Islands Cluster will serve on the SEP Steering Committee. This person will work closely with Pacific Island park hazardous waste coordinators to ensure that proper hazardous materials and waste management practices become routine practice in these parks. This in turn will help to dramatically reduce the possibility that parks in Hawaii or the Pacific Islands will have future RCRA violations.

The benefits of the SEP will extend to the mainland as well. The NPS has designed the SEP to apply to all parks. Therefore, parks in Pacific West Region (California, Nevada, Hawaii, Idaho, Oregon, Washington, and the Pacific Trust Territories) and service-wide will be able to adopt the model plans to improve their management of solid and hazardous wastes and materials.

B. RELATIONSHIP TO RCRA'S GOALS AND REQUIREMENTS

As the forgoing discussion affirms, the proposed SEP directly advances the goals and objectives of the Resource Conservation and Recovery Act, particularly generator management of hazardous wastes, worker protection, waste minimization, solid waste management, underground tank management, and general environmental protection. The SEP promotes the protection of health and the environment by, inter alia: 1) assuring that hazardous and solid waste management practices are conducted in a manner which protect human health and the environment; 2) requiring that solid and hazardous waste be properly managed in the first instance thereby reducing the need for corrective action in a future date; and 3) minimizing the generation of solid and hazardous waste and the land disposal of such wastes.

Nothing contained in the proposed SEP will conflict with any provision of RCRA or any other environmental law.

C. MANAGEMENT AND CONTROL OF SEP

EPA will play no role in managing the funds for this SEP nor will EPA be required to manage or administer the SEP. However, EPA will be given copies of invoices, expenditure reports, quarterly reports and other special reports so that EPA can monitor NPS's progress. Quarterly reports of the SEP's progress will be provided by the SEP Coordinator with a submittal schedule of May 1 for the previous January 1 through March 31 quarter; on August 1 for the previous April 1 through June 30 quarter; on November 1 for the previous July 1 through September 30 quarter; and on February 1 for the previous October 31 through December 31 quarter. Special reports will be provided for the following items: SEP Steering Committee Minutes; Model Plans; Website Design Report; In-Park Review Schedules; and Integrated Environmental Systems Management Plans.

D. SETTLEMENT AGREEMENT

The SEP will be outlined in a settlement agreement between the NPS and EPA. The settlement agreement will detail the types of projects NPS will undertake and contain milestones for completion including submission of reports identified in the immediately preceding subsection.

E. EPA FUNDING AND RESPONSIBILITY

This SEP does not call upon the NPS to undertake any EPA responsibility, nor will any funding be provided to EPA under this SEP. The SEP will not supplement or expand an existing EPA program.

V. SEP CATEGORIES

EPA has identified seven categories of projects that may qualify as SEPs. Interim Revised EPA SEP Policy, pages 6-10 (May 1995). The SEP proposed by the NPS meets the following categories of projects.

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A. PUBLIC HEALTH

Federal, state and local regulations for hazardous materials and hazardous wastes are designed to protect public health by regulating the use, storage, labeling, and transportation of hazardous materials and by regulating the management and disposal of hazardous wastes. The National Park Service employs approximately 8,000 employees in the Pacific West Region (during peak season including temporary employees) and serves 69 million visitors annually (nation-wide). One of EPA's primary reasons for issuing the Notice of Violation to Hawaii Volcanoes was the risk that improper storage of hazardous wastes posed to the health of park employees and visitors. This SEP seeks to address that risk. The implementation and in-park-review of the model plans described in this SEP will benefit public health (including NPS staff, volunteers, contractors, concessioners, and the visiting public) by significantly reducing the possibility that parks will improperly manage hazardous materials or wastes and expose park employees and/or visitors to those materials. One of the parks whose plans will be thoroughly reviewed is Hawaii Volcanoes. Therefore, the public health benefits of this SEP will be experienced in the area in which the alleged violations occurred.

B. POLLUTION PREVENTION

Opportunities for pollution prevention (inventory control, product standardization, product substitution, and process reengineering) will be a common theme promoted in all of the model plans. Examples of successful pollution prevention efforts will be highlighted in the SEP Internet Webpage. Through the development of the Integrated Environmental Management Systems Plan and the in-park review process, parks will be aided in setting waste diversion and pollution prevention goals and tracking progress toward those goals.

C. POLLUTION REDUCTION

This SEP furthers the NPS's efforts at pollution reduction. Specifically, certain model plans will aid the National Park Service in reducing the volume and toxicity of hazardous wastes where waste generation is unavoidable. For example, weapons can not be issued to law enforcement personnel unless they can practice and become certified in weapon use. Maintaining a shooting range in many rural parks is necessary because there are no commercial ranges either in the vicinity of the park or with ranges large enough to certify rifles. The model Shooting Range Management Plan will reduce the pollution generated by this unavoidable activity. Similarly, the model Stormwater Management Plan will help the National Park Service reduce the pollution generated in its vehicle fleet management areas.

D. ENVIRONMENTAL RESTORATION AND PROTECTION

This SEP will aid the National Park Service in increasing the level of protection and restoration of natural resources under its stewardship in many ways. One example: within the Integrated Environmental Management Systems Plan, areas of environmental concern within the park will

be identified (i.e., historic trash dumps, shooting ranges, washracks, etc.), prioritized and scheduled into a five-year workplan for evaluation and/or remediation. Currently, planning for such restoration activities are highly dependent upon the ability of park staff to recognize sites that require attention. Within some projects, there have been many projects identified and acted upon. There are other parks where hardly any restoration issues have been raised. The park review process called for in Phase III will address potential contaminated lands. This will allow for a "second opinion" to be offered on whether a site is or is not of environmental concern and will enhance NPS's effort to inventory sites toward the goal of a comprehensive inventory. Without the benefit of a comprehensive inventory for each park and without the benefit of this larger planning window, the opportunities for pursuing these restoration activities may not be seized due to lack of project identification and planning.

E. ASSESSMENTS AND AUDITS

The in-park reviews to be performed at six parks in Phase III of this SEP will entail comprehensive assessments of each park's environmental systems. The analysis and interpretations that will be used to formulate the Integrated Environmental Systems Management Plan are inherently "systems management" assessments; the resultant recommendations from this analysis being focused affirmatively into integrated management plans. The reviews will be "independent" in that they will be done by a team from outside the particular park. Also, the reviews will highlight areas in which the park needs improvement, (eg., training, labeling, etc.).

The SEP also includes pollution prevention assessments. These assessment procedures are modeled on a Cooperative Agreement between U.S. EPA Region 8 and the NPS. In Phase III of the SEP, parks' Pollution Prevention Plans and their implementation will be reviewed and opportunities not otherwise identified and realized by park staff will be the subject of recommendations by the Review Team. Follow-up actions and benefits from these reviews and assessments will be the subject of articles posted on the SEP website.

F. ENVIRONMENTAL COMPLIANCE PROMOTION

This SEP will promote compliance with RCRA and other environmental laws within the National Park Service, including compliance by park concessioners and other cooperators. The SEP will also benefit compliance in other sectors of the regulated community because the model plans developed under this SEP will be available through an Internet Webpage. NPS will advertise the availability of the Webpage and the model plans in appropriate venues so that the model plans are available to parks in other NPS Regions, authorized concessioners, other DOI Bureaus, and other public agencies with a similar mission and scope of responsibility (such as departments managing state and county parks). The dissemination of these model plans to other members of the regulated community will help these parties identify, achieve, and maintain compliance with RCRA and other applicable statutes; help them to avoid committing violations of these statutes and regulations; and to go beyond compliance by

reducing the generation, release or disposal of pollutants. The latter goal is particularly achieved through the plans with pollution prevention elements (Hazardous Materials Management Plan; Shooting Range Pollution Prevention Plan; and the Stormwater Management Plan).

G. EMERGENCY PLANNING AND PREPAREDNESS

One of the plans to be developed will be an Integrated Contingency Plan, following guidance put forth by EPA and published in the Federal Register on June 5, 1996. This model plan will help a park integrate all of the contingency planning requirements applicable to its facilities and operations, rather than continuing with a fragmented approach of having many separate plans for different types of contingencies. For example, a park may have contingency planning to perform due to the presence a natural gas pipeline easement, or an above-ground tank, or because of the quantity of chlorine gas stored on site. Or, it may be that a park has special contingency planning needs as a result of transportation corridors or exposed coastline that is in proximity to shipping channels. The model contingency plan will have chapters that address all these various contingency planning needs. The users of the model plan will be free to pick and choose which chapters to develop.

The contingency planning will also help the National Park Service fulfill its obligations under the Emergency Planning and Community Right-to-Know Act by helping parks collect information to assess dangers of hazardous chemicals present in parks or that could impact parks, to develop emergency response plans, to train emergency response personnel, and to better respond to chemical spills.

The benefits of the model Integrated Contingency Plan will be realized at Hawaii Volcanoes National Park specifically. There are frequent vehicle accidents along Highway 11. There is often confusion regarding proper response and cleanup procedures and regarding jurisdiction. Contingency response is often complicated by multiple and overlapping jurisdictions. Some parks are within four different counties. Some counties lack contingency response capabilities or find the park too remote to respond to adequately. In such instances, the model Integrated Plan will help parks and counties identify the probable hazards, discuss any obstacles to response, and devise an appropriate response plan.

VI. CALCULATION OF THE FINAL PENALTY

Description of how the project meets the criteria below the numbered list:

A. PENALTY - EXCEPTION.

For government agencies, smaller penalty may be allowed pursuant to applicable penalty policy.

B. SEP COST.

The estimated cost of the SEP is being refined and rechecked. This will be provided at a later date. The cost of the SEP will be calculated using PROJECT computer model.

C. PENALTY MITIGATION.

The percentage of SEP Cost that may be applied as mitigation against penalty is determined by examining whether and how effectively project achieves following:

1. Benefits to the Public or Environment at Large.

Yes. This SEP will benefit the public and the environment by directly preventing the accidental mishandling of hazardous wastes and hazardous materials within units of the National Park System. The pollution prevention assessment and implementation planning afforded by this SEP also will result in additional protections to the public and environment. Measurable and deliberate progress toward identification, evaluation, and restoration will be made in managing contaminated federal lands within National Parks will be promoted as well through the establishment of "5 Year Workplans" for each park. This concept is similar to a management schema recently developed for the Lawrence National Laboratories. These benefits will be significant, although these measures cannot be quantified precisely at this time. To the extent that the 5 Year Workplans (developed as a part of Phase III of this SEP at six parks) are successful in aiding NPS in its on-going effort to address the hazards and mitigate the hazards associated with contaminated lands, the public and the environment will benefit.

2. Innovativeness.

Yes. The model plans will become benchmarks for hazardous waste and hazardous materials management within the National Park Service: they will establish the standard for planning and procedures which parks can use to gauge their own performance in this area. Such a benchmark has not previously been promoted within NPS. Further, this SEP is innovative in the development of an Integrated Environmental Management Systems Plan (IEMSP). The IEMSP will incorporate many of the strategic environmental management concepts that are currently being promoted in the private sector through the new ISO 14000 standard for corporate environmental management and EPA's recently published guideline on Code of Environmental Management Principles which is recommended for federal facilities (Federal Register October 16, 1996). The IEMSP incorporates the innovative concepts of these two approaches: strategic objectives, organization, planning, evaluation, and documentation. These are essentially business planning concepts that are now applied to enhancing the overall management and performance of pollution prevention and compliance systems. Nowhere in the National Park System has such an integrated or strategic approach to environmental management been promoted. Further, NPS will particularly benefit from such an approach because high job turn-over is part of the culture of the Service; individuals are encouraged to gain experience at many sites within the Service. This innovative plan, the IEMSP, will help

retain the continuity in the hazardous waste and hazardous materials within a particular park management programs despite such transitions.

3. Environmental Justice.

Yes. Tribal nations exist in close proximity to or actually within the boundaries of many National Parks. For example, the members of the Shoshone Tribe occupy an in-holding within Death Valley National Park. Kalauapapa National Historic Site on the Island of Molokai'i is actually leased by the National Park Service from the Hawai'i Department of Hawai'ian Homelands (DHHL). DHHL serves to hold and manage lands on behalf of Native Hawaiians. The parks are very often home to either lands that are currently occupied or ritually used or culturally significant for tribal peoples. There are too many instances of such significance, use, proximity or co-location that to inventory comprehensively here. To the extent that contingency planning and hazardous waste management practices are improved within units of the National Park System, then economically less advantaged Native American populations will be better protected as will the cultural sites of significance to these groups.

4. Multimedia Impacts.

Yes. This SEP will impact positively the multiple media within the jurisdiction and management of the National Park Service through the development and distribution of model management plans that recommend procedures to minimize emissions from park operations to these media. The impact on soil media will be significant: through the model Shooting Range Management Plan, lead contamination of soils and wetlands will be cleaned up and prevented. Improved Shooting Range Management at Hawaii Volcanoes National Park will lead to greater protection of the Known's habitat, an endangered bird species. Impacts to surface water media will be significant: through the use of the model Stormwater Management Plan, runoff from parking lots and vehicle fleet management areas will be mitigated. The impacts to air will be very significant: through the model Fuels Management Plan, Parks will have the opportunity to take a strategic look at their gasoline combustion engines (boilers and vehicles) and potentially find cleaner alternatives such as electric or propane. Such transitions, which can positively impact air quality in National Parks, take a few years of planning in order to prepare the necessary infrastructure for powering (fueling) and maintenance of these alternative fuel vehicles. Although many have discussed and studied such transitions, no one has yet affirmatively given parks recommended planning procedures that they can use to make such transitions.

5. Pollution Prevention.

Yes. Pollution prevention opportunities and techniques will be promoted in the model plans to be developed under this SEP. Through the in-park reviews, methodologies of pollution prevention will be observed and recommendations for further measures of prevention. Due to the improved management of hazardous wastes and hazardous materials achieved through the training, planning, and in-park reviews, spills of hazardous materials and improper disposal of

hazardous wastes will be prevented. Waste generation and waste disposal quantities will be reduced.

VII. OVERSIGHT AND DRAFTING

Description of how the oversight and drafting of the agreement will be handled by National Park Service and DOI:

This SEP will include NPS providing a draft agreement describing: the procurement of a new Architect/Engineers contract; hiring of a new term employee (GS12 - Environmental Protection Specialist); and the estimated times for completion of required items and reports.