

POLICY ON SUPPLEMENTAL ENVIRONMENTAL PROJECTS

Introduction

The following is a statement of policy under which the Rhode Island Department of Environmental Management ("DEM") will exercise its discretion in deciding whether to accept a Supplemental Environmental Project ("SEP") as part of the settlement of an administrative enforcement case.

This policy is limited to the settlement of administrative enforcement actions by consent agreement. DEM believes that these projects, if carefully crafted and executed, provide useful environmental benefits beyond what can be secured solely through administrative agreements. They can be a particularly useful vehicle in promoting pollution prevention and restoring damage to resource functions and values.

A. GUIDANCE FOR DISCRETION

The ultimate decision as to the settlement of an administrative enforcement case rests with the Director of DEM or his/her designee (hereinafter "the Director"). The policies and procedures in this document are intended solely for the guidance of employees of the DEM, but may be used as a reference for parties preparing a proposal for an SEP. They are not intended to, nor do they, constitute rulemaking for the agency, and they do not create a right or a benefit, substantive or procedural, enforceable at law or in equity by any person. The DEM may take an action that is at variance with the policies or procedures contained in this document if the Director considers it appropriate in a specific case.

B. DEFINITION AND KEY CHARACTERISTICS OF A SEP

An SEP is a project, beyond that required by law that produces environmental or public health and safety benefits that a respondent agrees to undertake in the settlement of an enforcement action. An acceptable SEP is also a project for which a credit may be granted by the DEM to offset a portion of the assessed penalty in the settlement of an enforcement action. The three key elements of this definition are further defined as follows.

"Produces environmental or public health and safety benefits" 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 respondent with certain benefits, there must be no doubt that the project primarily benefits the public health or the environment.

In order to be considered "In settlement of an enforcement action", the proposed SEP must: 1) provide DEM with the opportunity to help shape the scope of the project before it is implemented; and 2) not be funded or otherwise commenced until after the DEM has identified a violation (e.g., issued a notice of violation or a cease and desist order, or filed a complaint); and 3) be undertaken and/or funded for the purpose of expeditiously resolving the enforcement action taken by the DEM, committed to by the respondent and implemented through a schedule in an enforceable agreement.

"Beyond that required by law" means the SEP is not required by any federal, state, or local law or regulation. Further, SEPs cannot include actions that the respondent may be required to perform (injunctive relief, part of a settlement or agreement in another legal action,

pre-existing contractual obligations, or by state or local requirements). SEPs may include accelerated or early performance of activities that the 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 specifically sets forth a benefit (e.g., a higher emission limit) to the respondent for early compliance.¹

C. CRITERIA

Rhode Island General Law § 42-17.7-2 provides DEM with the discretion to settle enforcement cases through informal disposition pursuant to regulations promulgated by the Director. Section 11 of the DEM Rules and Regulations for Assessment of Administrative Penalties describes procedures to be followed by the DEM in resolving an administrative penalty assessed in enforcement actions prior to hearing. Section 11 also contains the basis to include SEPs as an appropriate part of the settlement. This Policy provides five guidelines to ensure that SEPs are appropriate for settlement of an administrative penalty.

1. **Nexus**: All projects must have adequate nexus. Nexus is the relationship between the violation and the proposed project. This relationship exists 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 area. Such SEPs may have sufficient nexus even if the SEP addresses a different pollutant in a different medium, or addresses problems similar to those alleged in the NOV that may be present at other facilities controlled, owned or operated by the respondent.
2. **Consistency**: A project cannot be inconsistent with any provision of law or regulation.
3. **Management/Oversight**: DEM, or any other state agency, may not play a role in managing or controlling funds that may be set aside or escrowed for performance of a SEP. This does not, of course, apply to state agencies that are carrying out their own SEP as a respondent in an enforcement action. DEM may, of course, provide oversight to ensure that a project is implemented pursuant to the provisions of the settlement and to have legal recourse if the SEP is not adequately performed and may require reimbursement of the costs of overseeing implementation of the project as a component of the SEP.
4. **Scope**: The nature and scope of each project are determined in the signed consent agreement or other settlement document. This means the "what, where, when and how" of a project are defined by the consent agreement or other settlement document. Settlements in which the respondent agrees to spend a certain sum of money on a project(s) to be determined later (after a consent agreement is executed) are not allowed.

¹ 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 DEM 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 respondent 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.

5. New Initiatives: SEPs should be projects that are innovative and/or new. As stated in this policy, SEPs cannot directly provide additional resources to DEM. SEPs may not provide materials for direct use by DEM staff (such as vehicles, computers, or equipment) or fund aspects of the baseline operation of existing DEM programs. An SEP may enhance the efforts of a DEM program if it is consistent with the criteria and guidelines in this policy; however, a project may not be something that DEM itself is required by law to do.

D. SUPPLEMENTAL ENVIRONMENTAL PROJECT BANK

The SEP Bank is a catalog, or inventory, of pre-evaluated and conceptually approved projects available for adoption for purposes of settlement.

Projects may be proposed for the SEP Bank by any program within DEM, or any other interested party provided that the party partners with a DEM program who will oversee the implementation of the project should it be adopted.

A review committee established by the Department will evaluate projects nominated for inclusion in the SEP BANK.

A list of projects in the SEP Bank will be maintained and made available by the Office of Compliance and Inspection and the Office of Legal Services.

E. CATEGORIES OF SUPPLEMENTAL ENVIRONMENTAL PROJECTS

DEM has identified eight categories of projects that may qualify as SEPs. For a proposed project, including SEP bank projects, to be accepted as a SEP it must satisfy the requirement of at least one category, plus all requirements established in other sections of this Policy.

1. Public Health

A public health project provides diagnostic, preventative and/or remedial components of human health care that is related to the actual or potential damage to human health caused by the violation. Public health SEPs must be coordinated with the Rhode Island Department of Health (interagency coordination will be facilitated by DEM) and 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 reductions 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 operation and maintenance procedures. Pollution prevention also includes protection of 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.

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 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, Protection, and Ambient Monitoring

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 affected². These projects may be used to restore, replace, 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 or within the watershed in which the facility is located; or purchase and management of a watershed area by the 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 threatened or endangered species (e.g., developing conservation programs or protecting habitat critical to the well-being of a species endangered by the violation).

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.

An ambient monitoring project is one that provides information on the condition of the natural environment through testing and analysis.

5. Assessments and Audits

² If DEM lacks authority to require repair, then repair itself may constitute a SEP.

Assessments and audits, if they are not otherwise required by law or regulation or available as injunctive relief are potential SEP's under this category. An independent third party must perform all assessments and audits. While the SEP should require all violations discovered to be promptly corrected, no credit is given for remedying the violation since the persons are required to achieve and maintain compliance with environmental requirements. There are five types of projects in the category: a. pollution prevention assessments; b. site assessments, including Brownfields Site Assessments and Landfill Assessments; c. environmental management system audits; d. watershed assessments and e. compliance audits.

The assessments/audits are allowable as SEPs without commitment by the respondent to address the findings and recommendations of the assessment or audit. Such a commitment 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 system audits, many of the implementation recommendations from these studies may constitute activities that are in the respondent's own economic interest.

- 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 as an SEP, such assessments must be conducted using a recognized pollution prevention assessment or waste minimization procedure acceptable to DEM to reduce the likelihood of future violations.
- b. Site assessments are investigations of the condition of the environment at a site or the environment impacted by a site, and/or investigation 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 as 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 that, at a minimum, meets the criteria set forth in RIGL 42-17.8-2. 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. Watershed assessments are investigations of the condition of the environment beyond a violation or the immediate environment impacted by a violation(s), and/or investigation of human health or the environment within a watershed impacted by a violation(s) or within which a violation(s) is located. These include but are not limited to: investigations of levels and/or sources of contamination in any environmental media within a given watershed within which a violation(s) is located; investigations of discharges or emissions of pollutants within a

watershed whether from active operations or through passive transport mechanisms; ecological surveys relating to a watershed; natural resource damage assessments within a watershed and risk assessments within a watershed. To be eligible as SEPs, such assessments must be conducted in accordance with recognized protocols, if available, applicable to the type of assessment to be undertaken.

- e. An environmental compliance audit is an independent evaluation of a respondent's compliance status with environmental requirements. Credit is only given for the costs associated with conducting the audit. Compliance audits are eligible as SEPs only when respondent currently does not have any audit procedures in existence at the company, is not required by any law, rule, permit, order, consent agreement or judgment and respondent attests to that fact. By agreeing to perform an environmental compliance audit as part of the settlement of an enforcement action, the respondent is not eligible for the benefits of the Rhode Island Environmental Compliance Act outlined in RIGL 42-17.8-3.

6. Environmental Compliance Promotion ("Mentoring")

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 statutory and regulatory requirements; or 3) exceed compliance by reducing the generation, release or disposal of pollutants beyond legal requirements. For these types of projects, the respondent may lack the experience, knowledge or ability to implement the project itself, and, if so, the respondent should be required to contract with an appropriate expert to develop and implement the compliance project. Eligible projects may include, for example, producing or sponsoring a seminar directly related to correcting widespread or prevalent violations within the respondent's economic sector or assisting a school or non-profit organization with environmental compliance.

Environmental compliance promotion SEPs are eligible generally where the primary impact of the project is focused on the same regulatory program requirements which were violated and where DEM has reason to believe that compliance in the regulatory area of concern would be significantly advanced by the proposed project. For example, if the alleged violations involved Clean Water Act pretreatment violations, the compliance promotion SEP should 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 local or state entity (other than DEM) responsible for emergency response or planning. 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 state 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 Rhode Island, preferably the same emergency planning district or municipality affected by the violation and the value of the project has been documented, in writing, by the beneficiaries of the project. Further, this type of SEP is allowable only when the SEP involves non-cash assistance.

8. Outreach and Education:

An outreach or education project provides assistance, either through direct contracting or through funding to an Interstate non-governmental organization, to prepare, publish, produce, and/or distribute outreach, training, or educational materials on environmental issues significant to Rhode Island. Products produced under an outreach or educational project become the property of DEM or the Interstate non-governmental organization.

F. PROJECTS WHICH ARE NOT ACCEPTABLE AS SEPs

Except for projects which meet the specific requirements of one of the categories enumerated in § E above, or are pre-approved DEM SEP bank projects, the following are examples of the types of projects that are not allowable as SEPs:

- a. General educational or public environmental awareness projects that do not address the regulations that were violated;
- b. Contribution to environmental research at a college or university;
- c. Conducting a project, which, though beneficial to a community, is unrelated to public health or environmental protection, e.g., making a contribution to charity, or donating playground equipment;
- d. Projects which were commenced, or for which the funding source was identified, before the violation was identified by the DEM;
- e. Projects which are being funded in whole or part by local, state or federal loans or grants;
- f. Projects that is likely to cause additional damage to the environment or public health if done poorly or if left uncompleted at any time during implementation.
- g. Projects that DEM has not had an opportunity to shape the scope of before implementation;
- h. Projects required by any Federal, State, or local law or regulation;
- i. Site assessments for properties where the Respondent is a responsible party.

G. OTHER CONSIDERATIONS

DEM will also consider the following issues when determining whether to allow a proposed SEP and the value to be attributed to the SEP.

1. Monetary Penalty Penalties are an important part of any settlement. A monetary penalty is necessary for legal and policy reasons. Without penalties there may not be deterrence, as regulated entities would have less incentive to comply. Penalties are necessary as a matter of fairness to those persons and 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 with environmental requirements. As part of any SEP agreement, the penalty at a minimum should recover the economic benefit of noncompliance, any costs incurred by the Department during the investigation and resolution of the alleged violation, plus some negotiated portion of the gravity component of the penalty based upon the impacts of the violation(s) and the scope of the SEP. The SEP will be added to the monetary penalty as part of the settlement. Availability of Resources

From the viewpoint of either the respondent or DEM, it is necessary to consider the availability of resources in deciding whether to accept a SEP:

- a. If DEM determines that the time and resources necessary to negotiate and oversee a SEP outweigh the benefit of the project, DEM will reject the proposal. An otherwise eligible SEP will not be allowed if it may be inconsistent with any of DEM's ongoing programs or if it would impose a burden on a DEM program which that program is unable to assume because of resource constraints.
- b. If DEM determines that the respondent does not have the technical or economic resources necessary to complete a SEP, DEM will reject the proposal.

2. Available Only If Violations and Pollution Corrected

A SEP may only be considered if all violations and all pollution created or threatened by the violations are fully corrected and abated or will be fully corrected and abated to the satisfaction of DEM in a timely manner under an enforceable consent agreement. A respondent will not be given additional time to correct the violation and return to compliance in exchange for conducting a SEP.

3. Initiation

The proposal to do a SEP may be initiated by either the respondent through the submission of a proposal that follows the format specified in Appendix A of this policy or, by DEM, however, the initiation by DEM must be with the approval of the review committee established by the Department. A SEP proposal may be made at any time during settlement of an enforcement action, although DEM should consider both the status of the action and the resources that have been committed to the action before deciding whether to accept a SEP.

4. Compliance History

The respondent's compliance history and capability to successfully and promptly complete the project should be examined during evaluation of a proposed SEP. A respondent who is a repeat offender may be a less appropriate candidate for a SEP than a first-time offender, since a repeat offender has already demonstrated an inability or unwillingness to meet environmental requirements. Any respondent cited by the Department in a formal enforcement action within two (2) years from the date of a prior formal enforcement action may not offset penalties utilizing an SEP. Any

exception must be specifically authorized by the Director in the event such a decision would be in conflict with other matters pending before the DEM.

5. Third Party Oversight

Supplemental Environmental Projects may require third-party oversight. In such cases, these oversight costs must be borne by the respondent, and he or she must agree as a part of the settlement to pay for an independent, third-party auditor acceptable to DEM to monitor the status of the supplemental project. The respondent will be required by the settlement to assure that the third-party submits specific periodic reports directly to DEM (without prior review by the respondent), including a final report evaluating the success or failure of the supplemental project.

6. Compliance With A SEP

The consent agreement shall specify overall timeliness and milestones to be met in implementing the supplemental project. If the respondent does not comply satisfactorily with the terms of the supplemental project, he or she shall be liable for the amount by which the assessed penalty was reduced (with interest) and will remain responsible for fulfilling the terms of the consent agreement. The consent agreement must contain a mechanism for assuring prompt payment, e.g., through stipulated additional penalties for non-payment of the amount of the penalty reduction or the posting of a letter of credit or other acceptable financial security (in the amount by which the assessed penalty was reduced) to be forfeited if the supplemental project is not fully implemented as approved. Financial security is particularly appropriate when the DEM believes the respondent might use a SEP commitment to delay the payment of a penalty until after the respondent has inadequate reachable assets or dissolves.

The respondent should agree that whenever it publicizes a SEP or the results of the SEP, it will state in a prominent manner that DEM is a co-sponsor of the project and the project is being undertaken as part of the settlement of an enforcement action.

7. Main Beneficiary of a SEP

The State's interest in considering supplemental environmental projects is to ameliorate the adverse public health and/or environmental impacts of violations. Projects are not intended to reward respondents for undertaking activities which are in their economic self interest (e.g., update or modernize a plant to become more competitive). Therefore, a project will not be approved when the respondent, rather than the public, is likely to receive the substantial share of the benefits of the project. However, an otherwise eligible SEP will not be disapproved simply because it contains ultimate economic benefits to the respondent. Indeed, a legitimate purpose of a SEP may be to provide economic incentives to prevent pollution. If DEM believes that a respondent may get a significant economic benefit from a proposed SEP, the respondent must demonstrate to DEM's satisfaction that the public health and environmental benefits are substantial and that the public interest would be best served by providing this additional incentive.

Over time, the Department will need to reevaluate whether the additional incentive afforded by including a particular type of SEP in enforcement settlements is still appropriate. For example, certain measures may have met the criteria in this policy for a SEP, but the benefits of such measures to users have become so well-

recognized and the use of such measures has become so common, even when not specifically required, that they are no longer meeting the definition of a SEP.

8. Tax Benefits For The Respondent

The Department may also reduce the value of the SEP by the amount of any tax benefit that may be obtained by the respondent by performing a SEP.

9. Benefit To DEM Programs

SEP's shall not be used for the primary purpose of obtaining additional DEM resources (e.g., hiring staff or buying equipment) or funding activities that have otherwise been committed to by DEM in work plans, grants, contracts, agreements, or final budget documents. However, an otherwise eligible SEP will not be disallowed simply because it has the incidental effect of supplementing DEM's resources (e.g., respondent funding an environmental enhancement project which is consistent with the goals of a DEM program but beyond the ability of DEM to fund or perform, and which meets the other criteria in this policy).

10. Level Of Approval

A SEP may not be allowed without the specific approval of the Director of DEM or his/her designee. The approval of an SEP shall be incorporated into an enforceable consent agreement.

11. Burden

The burden to show that an SEP meets all criteria in the SEP policy rests with the Respondent in the enforcement action.

APPLICABILITY

This Policy is effective immediately. This Policy is for the use of DEM personnel in settling administrative enforcement actions taken under the authority of the environmental statutes and regulations that DEM administers. This Policy applies to all such actions taken after the effective date of this Policy, and to all pending cases in which DEM has not reached agreement in principle with the alleged violator on the amount of the administrative penalty.

Director
Department of Environmental Management

Date

Appendix A

SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEP)

GUIDELINES FOR PROPOSALS

Any SEP proposal must be in writing and include the following information:

1. Description of the Project

A written, detailed description of the project, including identification of the affected process, media, waste stream or discharge, as well as a technical description of the work to be performed and benefits to be produced. Include detailed information describing how, by whom, and when the project will be completed. Specific dates and milestones must also be included.

2. Conception of Project

Information pertaining to when the project was first conceived by the company, as well as why the SEP was proposed. This information is not necessary if the project was selected from DEM's pre-approved SEP bank. If research was conducted, or a pilot project undertaken prior to DEM's enforcement action, provide a description of such research or pilot project and state when the work was performed and why the currently proposed SEP was not then implemented.

3. Nexus

A presentation by the respondent of the nexus between the proposed project and the violations subject to the settlement.

4. Certification

A certification by the respondent that the proposed project is, to the best of their knowledge, beyond that required by law as defined in this policy.

5. Itemized Costs

A detailed estimate of the cost of the project, including a specific breakdown of equipment and other capital costs, as well as labor costs. (A proposal from a supplier or consultant will, eventually, be required in order to confirm the estimated cost of the project). Identify consultant(s) who will perform the work, if any, and include any allocation of labor costs between consultant and company employees, if applicable. Generally, there are three types of costs that may be associated with performance of a SEP: capital costs (e.g., equipment, buildings); one-time non-depreciable 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).

If DEM approves the proposal, DEM may require a more detailed work plan to be submitted, including a scope of work and a schedule of implementation. If the project will take more than (6) months to complete the work plan should include interim reporting deadlines, as well as milestone events.

6. Quantifying the Environmental Benefit

A statement detailing the environmental benefit(s) of the SEP including, if applicable, an estimation of project percentage and quantity of reduction of pollutant, expressed in pounds/year, resulting from the project or a description of the benefit to the

general public or the environment (e.g., expanded capacity for local bodies to do hazardous materials emergency response by contributing to a Local Emergency Planning Commission (the "LEPC"); eliminating Two Thousand Five hundred [2,500.00 lbs.] Pounds of emissions by replacing a solvent). The statement must specify what procedures will be used to verify the amount of pollutants reduced [e.g., stack test, sampling, monitoring data, etc.].

7. Other Laws Affected

A written statement specifying and/or certifying consistency with any other permits that may be necessary to implement the SEP and any other laws (e.g., federal, state or municipal) that may be applicable to the project. An opinion letter from an attorney may be required to support this statement.

8. Confidentiality

Information submitted by a respondent to DEM may be claimed confidential. To assert a claim of confidentiality, the information must be marked "**CONFIDENTIAL BUSINESS INFORMATION**" or with a similar designation, and must bracket all text so claimed. The information must set forth the section of the Rhode Island Public Records Act (R.I. Gen. Laws § 38-2 et seq.) under which the exemption is claimed.

DEM cannot guarantee that information submitted and claimed as confidential will be immune from disclosure to a request under the Freedom of information Act (the "FOIA"), and the Rhode Island Public Records Act. However, information which is commercial or financial in nature and which is voluntarily submitted to DEM may be protected as confidential if it is of the type that would not customarily be disclosed to the public by the submitter and no statute required its public availability.