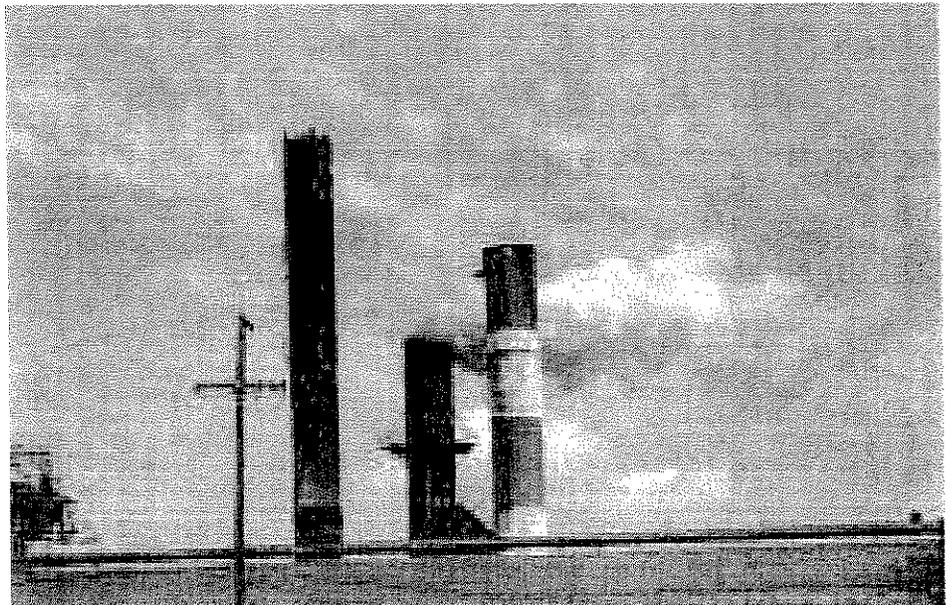


Division of Air Pollution Control

**GUIDANCE ON THE USE OF VOLUNTARY
SUPPLEMENTAL ENVIRONMENTALLY
BENEFICIAL PROJECTS (SEPs) IN
MITIGATING CIVIL PENALTIES IN AIR
POLLUTION CONTROL ENFORCEMENT
ACTIONS**



February 2004

Bob Taft, Governor
Christopher Jones, Director

GUIDANCE ON THE USE OF VOLUNTARY SUPPLEMENTAL ENVIRONMENTALLY BENEFICIAL PROJECTS (SEPs) IN MITIGATING CIVIL PENALTIES IN AIR POLLUTION CONTROL ENFORCEMENT ACTIONS

The purpose of this document is to provide the regulated community with convenient and concise guidance on the use of voluntary SEPs in mitigating air civil penalties in enforcement actions initiated by Ohio EPA's Division of Air Pollution Control (DAPC). In preparing this document, DAPC's goal was to create a brief fact sheet that could be distributed during settlement negotiations to entities interested in pursuing mitigation of portions of a negotiated civil penalty. This will allow the regulated entity to easily determine if it wishes to pursue such mitigation.

In general, SEPs are voluntary environmentally beneficial actions undertaken by violators as part of the settlement of an enforcement action. The goal of the program 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 program. SEPs involving pollution prevention are the most preferred type of project and, at minimum, pollution prevention studies are strongly encouraged. Recycling programs are given the next highest priority, followed by treatment programs.

All proposed SEPs will be evaluated through a five-step process. First, the project must meet the definition of a SEP. Second, all legal guidelines must be satisfied. Next, the project must be found to fit into at least one of the designated categories of SEPs. Fourth, the appropriate amount of penalty mitigation must be determined. Finally, the project must satisfy all implementation and other criteria. Acceptance of any SEP is within Ohio EPA's discretion, even if the SEP meets all of the criteria set out below.

To be acceptable to DAPC, a SEP must meet the following criteria - which is a combination of U.S. Environmental Protection Agency (USEPA) SEP criteria and additional DAPC criteria:

Penalty Credit Criteria:

- The SEP may only be applied where the violator(s) agree(s) to pay in cash at least the economic benefit due to the violation(s) plus 10% of the amount of the gravity component, or, if there is no economic benefit, 25% of the amount of the gravity component (as adjusted by any augmentation and/or mitigation), whichever is greater.*
- The total cost of the SEP must be equal to or greater than the penalty credit given;
- The violator(s) must agree to immediately pay the penalty credit given for any SEP that is not fully implemented.
- If the payback period of the money spent on implementing the SEP is short or if the

violator will incur an economic gain as a result of implementing the SEP, penalty credit will not be given for a proposed project.*

- The SEP must be employed indefinitely in the future except for the shutdown of the applicable emissions unit(s) or facility.

Pollutant Reduction Criteria:

- There must be quantifiable environmental benefits (i.e., actual reductions in pollutant emissions or discharges, in tons per year).* Pollutant reduction(s) must be calculated. Air pollutant reductions are favored, but may be in terms of any, or any combination of, media (air, wastewater, solid waste, etc.).
- The pollutant reduction(s) must be valued at a reasonable level (e.g., in terms of annual dollars per ton of pollutant removed, a number that is established by DAPC).
- The pollutant reduction(s) must not be required by any other law, regulation, order or decree.*
- Enforceable terms and conditions that specify the reduction(s) that will be achieved by the SEP must be included in the operating permit(s) for the affected emissions unit(s) at the facility or in the administrative orders or consent orders.

Miscellaneous Criteria:

- Implementation of the SEP must not have begun prior to the date of issuance of a Notice of Violation for the violation(s) penalized.
- Priority must first be given to a SEP that involves pollution prevention, then recycling, and then treatment.
- Record keeping and reporting provisions must be required to verify that pollution reduction(s) are being met.*
- Valuations of the costs associated with a SEP must be performed using USEPA's PROJECT model that takes tax effects, if applicable, into account.*
- SEPs may involve accelerated compliance projects for future regulation deadlines, except those that obtain a benefit for early compliance.

Acceptance of any SEP is within Ohio EPA's discretion even if it meets the above criteria.

*** Criteria taken from USEPA's SEP Policy**

EXAMPLES OF APPROVED SEPs

Date of Order: August 30, 2000

Approved SEP:

This SEP required Respondent to implement a SEP that consisted of upgrading a coating line to improve atomization and paint solids transfer efficiency and reduce VOC emissions. The SEP entailed installing new atomization equipment to allow the application of only one coat of paint rather than two coats. Further, Respondent was required to achieve a minimum VOC reduction per calendar year of 1.71 tons of VOC by January 2001. Respondent was required to collect and record certain information to demonstrate the SEP was operating correctly. Respondent also was required to submit annual reports that documented the annual VOC emission reduction from prime coating usage.

Date of Order: December 28, 2000

Approved SEP:

The primary requirements of this SEP involved Respondent agreeing to reformulate 7 coatings employed at the facility by lowering the VOC content below 4.5 pounds per gallon within 180 days. Also, beginning in the year 2001, the reformulation needed to reach a minimum VOC reduction per calendar year of 12.28 tons of VOC. Respondent also agreed to collect and record certain information every month to demonstrate a VOC emission reduction once the SEP was implemented. In addition, Respondent needed to submit reports documenting any exceedance of the VOC content limit of 4.50 lbs/gal and an annual VOC emissions reduction from the facility, along with a summary of the information used to calculate such reduction.

Date of Order: December 28, 2001

Approved SEP:

Respondent was required to implement a SEP that consisted of purchasing, installing, and operating a Polyurethane ("PUR") Hotmelt Filling Machine at the facility. The PUR Hotmelt Filling Machine was to be used to package a non-VOC polyurethane-based sealant. This PUR sealant was intended to replace a portion of the VOC-based sealants that Respondent already was using. Beginning with calendar year 2002 and continuing each year thereafter, Respondent was to reduce VOC by a minimum of 15 tons. Respondent was required to collect and record information to ensure compliance with the SEP. Respondent was also required to submit annual reports documenting the VOC

emission reductions.

Date of Order: December 28, 2001

Approved SEP:

Respondent agreed to complete 5 projects for its SEP.

Project one required Respondent to lower VOC content and employ low-hazardous air pollutant ("HAP") adhesive or any equivalent adhesive containing 5% by weight or less of combined HAP compounds and VOC content equal to or less than 4.6 pounds per gallon of adhesive. Respondent was to maintain monthly records identifying adhesives employed at the facility, its combined HAP content in percent by weight and VOC content in pounds per gallon.

Project two required Respondent to employ high velocity and low pressure ("HVLP") spray guns, which have a minimum transfer efficiency per gun of 32.5%. Respondent was to maintain readily accessible records at the facility documenting its compliance with this SEP.

Project three required Respondent to employ Denray downdraft tables with filtration capability to 0.5 micron particle size and a portable Eurovac industrial vacuum machine with filtration capability to 0.3 micron particle size. Project three also required Respondent to employ six Seco Model # UFO-103B dust collectors in its woodworking area to augment the existing control devices for the collection of sawdust emissions in its woodworking area.

Project four required Respondent to employ a non-VOC hot melt adhesive process for endcapping laminated countertops in lieu of the use of spray guns in its standard laminating operation.

Finally, Project five required Respondent to install covers on all holding buckets employed at the mixers at its facility, and to maintain such covers thereafter. Within 30 days of installing the covers, Respondent was to submit a progress report.

For all these projects, if Respondent deviated from the SEP, it was to report the deviation and identify the time the deviation occurred.