

SEPs 101

An introduction to
"EPA Supplemental Environmental
Projects Policy"
(May 1, 1998)

Definition of SEP

"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"

"Environmental beneficial"

- SEP must improve, protect or reduce risks to public health or the environment at large
- SEP may also provide the alleged violator with benefits, but primary benefit must be to public health or environment

“In settlement of an enforcement action”

- EPA has the opportunity to shape the project before it is implemented
- The project is not commenced until after the Agency has identified a violation (e.g., issued notice of violation, order or complaint)

“Not otherwise legally required to perform”

- Project or activity is not required by any federal, state or local law or regulation
- SEPs cannot include actions which (1) the defendant/respondent is likely to perform as injunctive relief in this case or another legal action that EPA or another agency could bring, (2) as part of an existing settlement in another action or (3) by a state or local requirement

Five Legal Guidelines (1 of 3)

- Cannot be inconsistent with any provision of the underlying statutes
- EPA may not play any role in managing or controlling funds set aside or escrowed for performance of the SEP (but may perform oversight)
- Type and scope of each project is defined in the settlement (“what, where & when”)

Five Legal Guidelines (2 of 3)

- Project cannot be used to satisfy statutory obligation of EPA or another federal agency's to perform a particular activity
 - Project may not provide EPA or another federal agency with additional resources to perform an activity for which Congress has appropriated funds
 - Project may not provide additional resources to support activities performed by EPA employees or EPA contractors
 - Project may not provide a federal grantee with additional funds to perform a specific task

Five Legal Guidelines (3 of 3)

- Must advance at least one of the objectives of the environmental statute and must have adequate nexus
 - Reduce the likelihood that similar violations will occur in the future,
 - Reduce the adverse impact to public health or the environment to which the violation at issue contributes, or
 - Reduce the overall risk to public health or the environment potentially affected by the violation

Nexus is easier to establish if the primary impact is at the site where the violation occurred or at a different site in the same ecosystem or immediate geographic area

SEP Categories

- Public health
- Pollution prevention
- Pollution reduction
- Environmental restoration and protection
- Assessments and audits
- Environmental compliance promotion
- Emergency planning and preparedness

SEP Categories

- Public health
 - Provides diagnostic, preventative and/or remedial components of human health care related to the damage caused by the violations
 - Only acceptable where the primary benefit is the population harmed or at risk by the violations

SEP Categories

- Pollution prevention
 - Reduces the generation of pollution through "source reduction"
 - May include equipment or technology modifications; process modifications; substitution of raw materials; improvements in housekeeping, maintenance, training, or inventory control; conservation; increased efficiency; etc.
 - Must result in decrease in pollution, not media transfer

SEP Categories

- Pollution reduction
 - Recycling
 - Treatment
 - Containment or disposal techniques
- Decreases amount or toxicity by a means which does not qualify as pollution prevention

SEP Categories

- Environmental Restoration and Protection
 - Enhances the condition of the ecosystem or immediate geographic area, protects the ecosystem from potential damage, or improves the overall condition of the ecosystem
 - Costs of recreational improvements may be included but must constitute only an incidental portion of the total expenditures

SEP Categories

- Assessments and audits
 - Pollution prevention assessments – systematic, internal review of processes and procedures; are acceptable SEPs even without an implementation commitment
 - Environmental quality assessments – investigations of the condition of the environment at a site not owned or operated by the defendant/respondent; certain sites are not eligible (e.g., NPL)
 - Environmental compliance audits – independent evaluations of a defendant/respondent's compliance status; credit is given only for the cost of the audit, not for correction of violations

SEP Categories

- Assessments and audits: Jan. 10, 2003 "Clarification and Expansion" Guidance
 - Retains general rule limiting audits for small companies, but allows some larger companies to qualify with approval by Director of the Multimedia Enforcement Division
 - Expands use to state and local governments

SEP Categories

- Environmental Compliance Promotion
 - Provides training or technical support to other members of the regulated community to (1) identify, achieve and maintain compliance or (2) go beyond compliance
 - Only acceptable where primary impact of the project is focused on the same regulatory program requirements which were violated
 - Subject to HQ approval

SEP Categories

- Emergency planning and response
 - Provides assistance (e.g., equipment, training, computers, etc.) to a responsible state or local emergency response or planning entity
 - Acceptable where the primary impact of the project is within the same emergency planning district or state affected by the violations
 - Allowable only where the SEP involves non-cash assistance and there are violations of EPCRA, CERCLA 103, CAA 112r or other emergency planning, spill or release requirements alleged

SEP Categories

- "Other"
 - Projects that do not fit the categories, but otherwise consistent with all other provisions
 - Requires OECA approval

Projects that are not acceptable as SEPs

- General public educational or environmental awareness projects
- Contributions to environmental research at a college or university
- Conducting a project, which, though beneficial to the community is unrelated to environmental protection (e.g., contribution to charitable organization, donating playground equipment)

Projects that are not acceptable as SEPs

- Studies or assessments without a requirement to address the problems (except for "assessments and audits")
- Projects which will be undertaken with low-interest federal loans, federal grants, etc.

Community input for SEPs

- Interim EPA Guidance for Community Involvement in Supplemental Environmental Projects (June 17, 2003)
 - Recognizes community involvement is not possible in all settlements involving SEPs
- Recommends use of SEP Library (formerly called SEP Bank) - an inventory of potential SEPs that can be consulted in individual cases where the defendant requests assistance in identifying appropriate SEPs

Recommended ideas for SEPs

- Health clinics – mobile health unit for asthma screening and treatment; blood lead level testing for children in public housing; testing for baseline medical markers in migrant workers
 - Possible nexus – CAA emissions violations, TSCA lead-based paint disclosure violations, pesticide misuse violations
- Diesel retrofits or retiring emission credits
 - Possible nexus - violations of CAA requirements for SOX, NOX or particulate matter
- Projects that create, restore and/or preserve threatened aquatic resources, including wetlands
 - Possible nexus – CWA 402 or 404 violations; improper disposal of hazardous waste in a wetlands

Source: "Recommended Ideas for Supplemental Environmental Projects" (Jan. 5, 2004)

Recent Subject-Specific SEP-related memos

- "Using Supplemental Environmental Projects to Facilitate Brownfields Redevelopment" (Sept. 1998)
- "Clarification and Expansion of Environmental Compliance Audits under the Supplemental Environmental Projects Policy" (Jan. 10, 2003)
- "Supplemental Environmental Projects: Green Building on Contaminated Properties" (July 2004)

Recent SEP related memos

- "Expanding the Use of Supplemental Environmental Projects" (June 11, 2003)
- "Guidance for Demonstrating Whether a Project is Profitable, When to Accept Profitable Projects as Supplemental Environmental Projects, and How to Value Such Projects" (Dec. 5, 2003)
- "Guidance Concerning the Use of Third Parties in the Performance of Supplemental Environmental Projects" (Dec. 15, 2003)
- "Recommended Ideas for Supplemental Environmental Projects" (Jan. 5, 2004)

Guidance Memos Regarding the SEP Policy

- HQ has a website which includes the full text of the SEP Policy and related memos
- There are 20 additional guidance memos regarding the SEP Policy
- These memos cover topics including retrofit of diesel school buses, green buildings, and Brownfield sites
- <http://cfpub.epa.gov/compliance/resources/policies/civil/seps/>

SEP Contacts

- Region IX SEP coordinator
 - Allan Zabel, ORC, 2-3902
- HQ contacts in general
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