

# **California Environmental Protection Agency**

## **Supplemental Environmental Project Guidance**

### **Introduction**

When California businesses, institutions or individuals violate environmental laws, they may face an enforcement action by one of the California Environmental Protection Agency's (CalEPA's) boards or departments. These actions are often resolved through a consent order or settlement agreement that requires the payment of penalties. While imposition of penalties plays an important role in deterring environmental violations and provides a level playing field for industry participants who comply with environmental laws, penalties do not address the environmental harms that communities suffer as a result of legal violations. To address environmental harms, violators can voluntarily agree to fund a Supplemental Environmental Project (SEP) in lieu of part of the penalty that they would otherwise be required to pay for the violations.

This CalEPA guidance provides the definition and key characteristics of SEPs, along with general legal and community participation requirements for SEPs. It also includes examples of projects that are appropriate to become SEPs.

### **Definition and Key Characteristics of SEPs**

A SEP is “an environmentally beneficial project that a person subject to an enforcement action voluntarily agrees to undertake in settlement of the action and to offset a portion of a civil penalty.” (Pub. Resources Code, § 71118 (a) (3).) The three key characteristics of a SEP are:

1. A SEP must be environmentally beneficial, which means that it must improve, protect or reduce risks to public health or the environment.
2. A SEP is voluntarily undertaken by an individual, business or other entity that has been accused of violating an environmental law in an enforcement action. A SEP cannot consist of actions that an entity accused of an environmental violation is legally required to perform as a result of a violation or of actions that were commenced or have been completed before becoming the subject of an enforcement action. Examples of projects that an entity charged with an environmental violation may be legally required to perform that do not qualify as SEPs include:
  - Projects undertaken to satisfy the requirements of a settlement or order in another legal action
  - Projects that could be ordered as injunctive relief to restore the pre-violation status quo in the enforcement proceeding or in another legal proceeding concerning the same violation;
  - Projects that consist of the performance of actions that are required by federal, state or local law.

3. A SEP, when successfully completed, will result in a reduction of the civil penalty imposed for the alleged violation.

### **Legal Requirements for SEPs**

As set forth in a legal opinion by the California Attorney General in 2000, California law allows administrative agencies to settle cases on terms that could not be imposed if the case proceeded to trial or a hearing. (Attorney General Opinion No. 00-510, July 25, 2000.) However, the terms and provisions included in an administrative agency settlement cannot violate public policy and must be related to the regulatory enforcement responsibilities of the agency entering into the settlement. These threshold legal requirements mean:

1. A SEP cannot be inconsistent with any provision of the statutes being enforced by the agency or any other laws.
2. A SEP must be related to at least one of the declared objectives of the environmental statutes that are the basis of the enforcement action.
3. A SEP should be clearly defined in the settlement agreement in order to assure that it is related to the regulatory enforcement responsibilities of the agency entering into the settlement.

In addition to these threshold legal requirements, SEPs must have a nexus to the alleged environmental violation or violations that are being resolved in a settlement. A nexus, or relationship to the underlying violation(s), is important in order to support that the agency has discretion to reduce the legislatively authorized civil penalty for the violation.

A nexus to an environmental violation exists if a SEP meets one of the following criteria:

1. It reduces the likelihood that similar violations will occur in the future.
2. It reduces the adverse impact, including cumulative impacts, to public health or the environment to which the violation being resolved contributes

Public Resources Code section 71118, subdivision (b)(4), requires CalEPA's boards and departments to consider the relationship between the location of an environmental violation and the location of a proposed SEP. While the relationship between the location of a violation and a proposed SEP should factor into the nexus evaluation, geography alone does not create or destroy a nexus between an environmental violation and a SEP. For example, a SEP that provides training to environmental regulators on better detection of and monitoring for a particular type of pollutant may meet the nexus criterion because it is designed to reduce the likelihood that similar violations will occur in the future. The training does not need to be performed at or near the location of the violation. Similarly, the mere fact that a SEP is beneficial to a community in the area of an environmental violation, such as the installation of new

traffic lights, does not by itself create a nexus between the SEP and the environmental violation.

### **SEPs and Disadvantaged Communities**

In 2015, the California Legislature recognized that SEPs are valuable tools to implement projects that provide environmental and public health benefits in disadvantaged California communities that are disproportionately impacted by multiple sources of pollution. ([Assembly Bill 1071](#) (2014-2015 Reg. Sess.) The Legislature directed each board and department within CalEPA to develop a SEP policy that benefits disadvantaged communities, include a public process to solicit potential SEPs from disadvantaged communities and maintain a list of approved SEPs that can be incorporated into enforcement settlements. The Legislature also directed that SEP policies allow up to 50 percent of an enforcement penalty to be discharged through performance of a SEP. (*Ibid*; Public Resources Code § 71118, subd. (b).) The SEP policies of CalEPA's boards and departments and the SEP list are posted on the [CalEPA SEP webpage](#), under the Enforcement tab.

### **Community Involvement in Development of SEPs**

CalEPA's boards and departments should consider ways to involve communities directly affected by environmental violations in the development of SEPs. Community involvement in the development of SEPs promotes restorative justice for communities harmed by environmental violations, enhances relations between enforcement agencies and the communities affected by environmental violations, and can help improve relations between a violating facility and the community in which it is located.

The Legislature has directed CalEPA's boards and departments to actively solicit SEP proposals from disadvantaged communities. That solicitation should occur on a regular basis and may be coordinated with environmental justice staff within CalEPA and within each of the boards and departments. When SEP proposals are received from a disadvantaged community and approved as a qualifying SEP, they should be placed on a list that is routinely referred to by enforcement staff when negotiating settlements in enforcement actions.

Because SEPs are voluntary and settlement discussions are typically confidential, enforcement staff cannot require that violators solicit community input on development of a SEP. However, enforcement staff can and should encourage violators to solicit community input on an appropriate SEP to address the violation. Enforcement staff can also assist a violator in locating appropriate community organizations and other resources that can assist in the development and implementation of a SEP.

## Categories of Acceptable SEPs

The following are categories of acceptable SEPs, with examples of acceptable SEPs for each category:

**Public Health:** Public health projects include those that provide diagnostic, preventative, or health care treatment related to actual or potential harm to human health caused by a violation.

Examples of public health SEPs include:

- Providing funds for asthma treatment and health education programs;
- Providing funds for lead health screening, including funds to purchase lead health screening equipment,
- Purchasing equipment to provide safe drinking water in field worker and other disadvantaged communities;
- Providing funds for epidemiological data collection and studies related to the type of pollution that is the basis of the violation; and
- Providing funds for medical exams and treatment of individuals affected by the type of pollution that is the basis of the violation.

**Pollution Prevention:** A pollution prevention project prevents pollution at its source, before it is generated.

Pollution prevention projects may include new equipment or modifications to existing technology, processes, procedures, formulations or product designs. Pollution prevention projects may include improvements in housekeeping, maintenance, training, inventory control or other operational procedures. Pollution prevention projects may also include projects that protect natural resources through conservation or increased efficiency in the use of energy, water or other materials.

Examples of pollution prevention projects include:

- Replacement of a solvent-based cleaning system with a water-based system;
- Substituting less hazardous raw materials to replace use of hazardous materials in a manufacturing process;
- Funding for commuter carpooling programs and commuter bicycle programs; and
- Funding for the purchase of zero emission vehicles and charging stations for zero emission vehicles.

**Pollution Reduction:** Pollution reduction projects address pollutants or waste streams that have been or are being released into the environment. Pollution reduction projects reduce the amount and/or toxicity of hazardous substances, pollutants or contaminants that are released through treatment, containment, filtration, recycling, or disposal techniques.

Examples of pollution reduction projects include:

- Installation of air and water filtration devices;
- Installation of end-of-process controls or treatment technologies that reduce the amount of pollutants released into the environment; and
- Funding for diesel retrofits of school buses and other fleet vehicles.

**Enforcement Projects:** Enforcement projects may include contributions that support effective enforcement of environmental laws.

Examples of enforcement projects include:

- Contributions to enforcement, investigation and training programs, including to the Penal Code section 14300 account administered by CalEPA for training environmental regulators;
- Contributions to the California District Attorneys Association to support the prosecution of violations of environmental laws;
- Contributions to community organizations to educate community residents in the identification and documentation of environmental violations.

**Environmental Restoration and Protection:** An environmental restoration and protection project is one that goes beyond repairing the damage caused by the violation and enhances the condition of the ecosystem or geographic area adversely affected by the violation.

Examples of environmental restoration and protection projects include:

- Removal of materials that are contaminated with toxins, such as lead and asbestos, that are a continuing source of health threats to individuals in the geographic area of the violation;
- Purchase and management of a watershed area to protect a drinking water supply;
- Remediation of a contaminated brownfield site to restore a wetland area, and
- Planting of protective tree canopies in the same ecosystem in which the violation occurred.

**Environmental Education, Training and Compliance Assistance:** An environmental compliance project provides education, training and technical support, to identify, achieve and maintain compliance with applicable regulatory requirements, avoid legal violations and go beyond compliance by reducing the generation, release or disposal of pollutants beyond legal requirements. The project can include members of a regulated community.

Examples of acceptable environmental education, training and compliance assistance projects include:

- Sponsoring a seminar directed to correcting widespread environmental violations within the economic sector in which the violation occurred; and

- Donating funds to non-profits, schools or CalEPA's [Environmental Justice Small Grants Program](#) for environmental education and outreach activities related to the pollutant that is the subject of the violation.

**Emergency Planning and Response:** An emergency planning and response project provides assistance to support effective responses to environmental emergencies, including natural disasters, that will result in environmental contamination and emergency releases of toxic and harmful materials into the environment.

Examples of emergency planning and response projects include:

- Funding for a community education project regarding protective measures during an environmental emergency;
- Funding for training of emergency personnel and entities regarding environmental contaminants; and
- Funding of training for health care professionals in treatment of exposure to chemical spills or release of other toxic contaminants.

**Other:** Other types of projects that do not fit within the above categories may be acceptable SEPs if they are consistent with the general requirements for SEPs and with the SEP policy of the board or department that is entering into the settlement.

### **Projects that are Not Acceptable SEPs**

The following are examples of projects that are not acceptable SEPs. This list is not exhaustive.

- Projects that, while beneficial to a community, lack a relationship to the regulatory enforcement responsibilities of the board or department entering into the settlement. Examples include donations to a community fund that are not targeted to a particular environmental project or financial support for a general community improvement project, such as enhanced street lighting, that does not relate to the enforcement responsibilities of the settling board or department.
- Projects that are submitted with incomplete paperwork.
- Projects that are not adequately and specifically described in the settlement agreement, such as setting aside funds for a project that is to be selected or defined in the future.
- Projects that do not comply with the particular SEP policy of the board or department entering into the settlement.