

**State EE/RE Technical Forum
Supplemental Environmental Projects
Call #5 - February 28, 2005**

A. Background

EPA and state environmental agencies offer Supplemental Environmental Projects (SEPs) as an option for partial settlement of violations of environmental regulations. An SEP allows the regulated entity to develop an environmentally beneficial project in lieu of part of its fine.¹ In this overview, "SEP" refers to supplemental environmental projects, not to be confused with State Energy Programs,² which are also abbreviated as "SEPs." (Section C below offers a scenario in which the two kinds of SEPs can work together.)

EPA SEP Guidelines

State SEP programs vary, and states are not bound by federal EPA SEP policy. Some states follow the EPA policy, while others are more or less restrictive.

Key points in federal SEP guidelines:

- Federal SEPs require a relationship, or nexus, between the violation and the project. In addition to reducing the possibility of similar future violations and reducing adverse health or environmental impacts and/or risks from the violation, the nexus has a geographic element as well. Federal SEPs must benefit the ecosystem or immediate geographical area where the violation occurred.
- Primary benefits must be to public health or the environment -- although the violator is not prohibited from receiving profits or other secondary benefits.
- The project must not already be required for compliance purposes.
- The SEP must be consistent with all provisions of the statute(s) underlying the enforcement action and must advance at least one of the statute(s)' objectives.
- The type and scope of SEP projects should be defined in the settlement document.
- Settlements involving an SEP still require a minimum penalty amount.
- Funds related to the SEP must not violate the Miscellaneous Receipts Act (MRA). This Act places a number of restrictions on the designation of funds for federal SEPs.
- The value of federal SEPs is calculated through a software tool called PROJECT.³

¹ US EPA web page on SEPs <http://www.epa.gov/compliance/civil/programs/seps/>

² U.S. Department of Energy - Energy Efficiency and Renewable Energy State Energy Program, 2002
http://www.eere.energy.gov/state_energy_program/feature_detail_info.cfm/fid=2?print

³ PROJECT software is available at:
<http://www.epa.gov/compliance/resources/policies/civil/caa/stationary/penpol.pdf>

EPA SEP Categories

EPA has set out eight categories of projects that can be acceptable federal SEPs. To qualify, an SEP must fit into at least one of these categories.

- Public Health
- Pollution Prevention
- Pollution Reduction
- Environmental Restoration and Protection
- Emergency Planning and Preparedness
- Assessments and Audits
- Environmental Compliance Promotion
- Other Types of Projects

B. State Energy Offices and SEPs

Awareness of SEPs as an environmental agency settlement option offers State Energy Offices another avenue to promote energy efficiency and renewable energy EE/RE projects that might not otherwise occur. These projects can also:

- Build ties between energy and environmental officials and programs;
- Expand energy source options;
- Boost local EE/RE markets;
- Raise public awareness; and
- Add to local experience with EE/RE technology.

C. SEP Benefits and State Environmental Agency/Energy Office Collaboration

EE/RE SEPs are intended to provide a mechanism for funding projects that might not have otherwise occurred. These projects open up an opportunity for state energy and environmental officials to collaborate in meeting the objectives of both offices. They may also expand the universe of EE/RE projects beyond those which the agencies could support separately. For example, state energy programs may be able to fund educational and research expenses that are necessary for project success but that are not allowed in an SEP, while the SEP may support capital expenses that cannot be funded by the energy office.

D. Examples of EE/RE SEPs⁴

Maryland – A utility installed photovoltaic cells (solar electricity generation) at two schools and a local environmental center - \$75,000.

Colorado – A manufacturer installed motion detectors and energy efficient lights - \$55,400. Another manufacturer purchased a 5 yr contract for wind power - \$303,000.

New Jersey – An oil refinery partially funded the installation of electrical hookups to eliminate diesel emissions from idling trucks - \$1 million.

⁴ From: (MD, CO, NJ) Edgar Mercado presentation and (TX, CO) Jerry Kotas presentation, and (NY, SC) Art Diem - EPA SEP Toolkit

Texas – State SEPs resulted in purchases of:

- Vehicles for Brazoria County and Freeport Head Start programs - \$217,000.
- Alternative fuel buses in Odessa - \$70,000.
- Alternative fuel vehicles for Houston - \$26,000.

South Carolina – A utility implemented an energy efficiency program that reduced energy demand - \$1 million.

New York – Utility installed photovoltaic cells - \$2.1 million.

Utah – Purchase of renewable energy certificates

E. Discussion Questions

1. What are the major drivers for incorporating EE/RE in SEP agreements?
2. What are the major hurdles in advancing EE/RE projects as an element of SEPs?
3. In what ways has the state made the connection between the violation and the remedy when it involves EE/RE projects?
4. What process do you use to identify the appropriate EE/RE project?
5. What factors are most important in negotiation with violators to lead to successful incorporation of EE/RE in SEP agreements?
6. How do you quantify the benefits of EE/RE compared to alternative settlement options?
7. Are there legal or institutional issues that prevent support of EE/RE projects as part of an SEP? (E.g., uninformed officials, transaction costs, legal boundaries for how and where penalty money may be spent, or the perception that the need for revenue from fines outweighs the benefits of SEPs.)
8. How has coordination (or lack of coordination) between environmental and energy offices on SEPs affected the outcomes? How is the energy agency kept apprised of environmental enforcement cases?

F. SEP Resources

A Toolkit for States: Using Supplemental Environmental Projects to Promote Energy Efficiency and Renewable Energy (EPA 430-K-04-001, January 2005)

http://www.epa.gov/cleanenergy/pdf/sep_toolkit.pdf

(This document and other background information is available on the Keystone Center website:

http://keystone.org/Public_Policy/Energy_Program/State_EE_RE_Forum/state_ee_re_forum.html)

Supplemental Environmental Projects

<http://www.epa.gov/compliance/civil/programs/seps/>

SEPs Policy and Guidance

<http://cfpub.epa.gov/compliance/resources/policies/civil/seps/>

[Supplemental Environmental Projects Model Consent Agreement and Order](http://www.epa.gov/compliance/resources/policies/civil/rcra/sepmodcao-rpt.pdf) - (1/1/99)
<http://www.epa.gov/compliance/resources/policies/civil/rcra/sepmodcao-rpt.pdf>

[Supplemental Environmental Projects \(SEP\) Policy](http://www.epa.gov/compliance/resources/policies/civil/seps/sepguide-mem.pdf) - (3/22/02)
<http://www.epa.gov/compliance/resources/policies/civil/seps/sepguide-mem.pdf>

[Project Ideas for Potential Supplemental Environmental Projects](http://www.epa.gov/compliance/resources/policies/civil/seps/projectsideas42004.pdf) - (4/20/04)
<http://www.epa.gov/compliance/resources/policies/civil/seps/projectsideas42004.pdf>

[Beyond Compliance: Supplemental Environmental Projects](http://www.epa.gov/compliance/resources/publications/civil/programs/sebrochure.pdf) (01/01) (EPA 325-R-01-001)
<http://www.epa.gov/compliance/resources/publications/civil/programs/sebrochure.pdf>

Using Environmental Penalty Funds to Capitalize Clean Energy Projects (DOE
November-December 2002)
http://www.eere.energy.gov/state_energy_program/feature_detail_info.cfm/fid=2?print

Information on SEPs in concluded federal settlements is now publicly available on Enforcement and Compliance History Online (ECHO). This site now allows users to search specifically for SEPs using a variety of search fields.
<http://www.epa.gov/echo/>

EPA Region 1 maintains a "library" for SEP proposals that might be appropriate for implementation in the settlement of a case and is actively seeking SEP ideas.
<http://www.epa.gov/NE/enforcement/sep/index.html>

EPA Region 3 SEP Index
<http://www.epa.gov/region03/enforcement/sepindex.htm>

EPA Region 5 lists Annual Reports of SEPS on the following page.
<http://www.epa.gov/reg5oorc/reports.htm>

Region 6 has an SEP library and is actively seeking SEP project ideas.
<http://www.epa.gov/Arkansas/6en/6en-sep.htm>

Illinois has an SEP idea bank.
<http://www.epa.state.il.us/enforcement/sep/>