

Federal Supplemental Environmental Projects (SEPs)

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What Is a SEP?

- ◆ A project that provides environmental or public health benefits to the community or environment harmed or potentially harmed as a result of a violation of environmental law;
- ◆ Undertaken voluntarily by defendant in settlement of an enforcement action;
- ◆ Project must go beyond what defendant is required to do under federal, state or local environmental requirements.

Federal SEPs Must Comply with the Miscellaneous Receipts Act (MRA)

- ◆ MRA requires that monies due and owing the federal government be placed in the U.S. Treasury.
- ◆ SEP must be related to or have a “nexus” to the underlying violation in that it is designed to:
 - 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 at issue.

SEP Policy Guidelines

- ◆ Nexus cannot be waived. There must be a relationship between the violation and the SEP in order for EPA to have the discretion to take the SEP into account when determining the ultimate penalty.
- ◆ EPA must collect a minimum penalty of at least 25% of the gravity-based penalty or 10% of the gravity-based penalty + economic benefit, whichever is greater.

Not Acceptable as SEPs

- ◆ General public education projects
- ◆ Projects already required to be performed
- ◆ Donations, including contributions to environmental research at colleges/universities
- ◆ Projects funded by federal loans or grants, particularly where there is a Congressional earmark for the particular activity
- ◆ Non-environmental projects
- ◆ EPA must not play any role in managing or controlling funds used to perform a SEP

SEPs Cannot Augment Congressional Appropriations

- ◆ Proposed SEP cannot be for an activity or project:
 - For which EPA or another federal agency has already received appropriated funds;
 - Which the federal government is required by law to carry out;
 - That provides additional resources to support activities performed by EPA employees or contractors; or
 - That provides additional resources to a federal grantee to perform specific task covered by grant.

Effect of Grants on Possibility of Federal SEP

- ◆ Project is acceptable as SEP if:
 - Different from grant (i.e., outside 4 corners of grant); and
 - There is no Congressional earmark.
- ◆ Example: EPA issued a grant to a municipality to reduce emissions from senior citizen shuttle vans; there is no earmark for the grant activity. EPA can agree to a SEP for such a project in *another* municipality.

Recent Earmarks Affecting EPA's Ability to Agree to Certain Emission Reduction SEPs

- ◆ EPA cannot use SEPs to provide the Agency with additional resources to perform a particular activity for which Congress has earmarked funds in an appropriations committee report.
- ◆ **STAG program for school buses:** In FY05 and FY06, EPA received authority and funding for a stand-alone grant program for school bus retrofit/replacement projects to reduce diesel emissions. As a result, EPA is no longer agreeing to school bus retrofit SEPs because it could be interpreted as augmenting EPA's appropriations.

Regarding the Use of Third Parties

- ◆ Violator may contract with a third party to perform SEP as long as the violator:
 - Remains obligated under the settlement to complete the project satisfactorily; and
 - Fully expends the amount of funds agreed to be spent in performance of the SEP.

Accessing SEP Information

- ◆ SEP Policy & Guidance Documents can be found at --

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

- ◆ Potential SEP Projects list maintained on-line (see website above).

- ◆ ECHO can be easily searched on a variety of fields for SEPs included in completed settlements.
(www.epa.gov/echo)

Highlights of Recent SEPs in CAA Settlements

- ◆ ExxonMobil SEPs:
 - \$1.3 million in diesel emission reduction projects
 - Demonstration of Smart LDAR imaging for VOCs
- ◆ Illinois Power/Dynergy Midwest Generation SEPs:
 - Mercury reduction project valued at \$26 M
 - Energy conservation project at schools and municipal buildings communities
 - Installation of truck stop electrification equipment

State SEPs May Be More Flexible

- ◆ The overwhelming majority of States have laws or policies allowing SEPs.
- ◆ Many States have fewer restrictions on SEPs than under federal law.
- ◆ Accordingly, States who are co-plaintiffs in federal enforcement settlements may have more flexibility than EPA in agreeing to certain SEPs.