

Supplemental Environmental Projects (SEPs) – Authorities and Opportunities

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Roadmap

- SEP Policies at the Federal and State Levels
 - Federal restrictions overview
 - Differences at the state level
 - Examples
- Environmental Justice & SEPs
 - What is Environmental Justice?
 - Why Environmental Justice in enforcement settlements?
 - Examples
- Harvard Law School Discussion



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Federal Requirements - EPA & DOJ

EPA: [2015 SEPs Guidance](#) (Update to 1998 Policy)

DOJ: [2022 interim final rule](#), [2022 memo](#)

- DOJ requirements apply to “third party payments” (including SEPs, mitigation, community service etc.)

See EELP’s Overview: [DOJ Revives Supplemental Environmental Projects \(SEPs\) as Part of EJ Agenda](#)

Federal Requirements - EPA & DOJ

Provision	DOJ (2022)	EPA (2015)
Scope	defined “with particularity”	“specifically described and defined”
Nexus	“strong connection”	“sufficient” nexus
Approved by	Dep. AG or AAG	No special approval required
Cash Donations	OK if restricted	Prohibited

Federal Requirements - EPA & DOJ

Provision	DOJ (2022)	EPA (2015)
3rd Party Selection	Agency can specify “type” but not propose/select party to receive \$ or implement SEP	
Decreased Penalty	Not addressed	Multi-factor test
Post-Settlement Control	None (oversight OK)	
Use for Agency Activities?	No. Can’t be used to satisfy “statutory obligation” or fund projects that get specific appropriations.	

EPA/DOJ Policies Respond to *Fed.* Restrictions

Miscellaneous Receipts Act (MRA)

Requires a federal official “receiving money for the Government” to deposit those funds in the Treasury “without deduction for any charge or claim.” 31 U.S.C. § 3302(b).

Anti-Deficiency Act (ADA)

Prohibits government officials from expending funds (or incurring debts) in excess of appropriations. 31 U.S.C. § 1341.

EPA SEPs Categories

- Public Health and Pollution Prevention/Reduction
- Environmental Restoration and Protection
- Assessments and Audits, Compliance Promotion
- Emergency Planning and Preparedness
- Other
- **Not allowed:** General education, \$ to colleges/universities, unrelated studies, projects that rely on fed. \$/loans, profit-generating activities etc.



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State Policy Differences

- General education SEPs allowed
- Agencies may recommend a third party recipient
- The funds may go to a state agency
- Project banks

California

Massachusetts

“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.”

“A **nexus** relationship can be shown where the proposed SEP: a) advances at least one of the declared objectives of the environmental statutes that form the basis of the underlying enforcement action, although a SEP can neither be inconsistent with, nor reduce the stringency or timeliness of requirements of environmental statutes and regulations; and either b) remediate’s or reduces the actual or probable overall environmental or public health impacts or risks to which the violation at issue contributes; or c) is designed to reduce the likelihood that similar violations will occur in the future.”



California SEP Guidance

- Typical requirements
 - Nexus to harm
 - Environmental benefit
 - Additional voluntary action
- Community involvement
- [CalEPA](#), [State Water Resources Board](#), [Department of Pesticide Regulations](#), [Air Resources Board](#), [CalRecycle](#)
- U.S. Department of Justice [SEP Guidance](#)

Environmental Justice & SEPs

- More focus on environmental health
- The benefits of empowering existing community-based organizations and existing networks
- Communities to know how to help themselves
- [EPA definition of environmental justice](#)
- [Columbia University environmental justice definition tracker](#)

Alameda County, California

- West Oakland has among the highest asthma rates in California and disproportionate pollution burden
- Schnitzer metal recycling facility releasing VOCs and metals into surrounding area
- *California v. Schnitzer Steel Industries*, No. RG21087468 (Cal. Super. Ct.) settlement secured by California Attorney General:
 - Civil penalties, changes to site and procedures
 - Funding to West Oakland Environmental Indicators Project, Prescott-Joseph Center, and Alameda County Fish and Game Commission
 - Investigation and enforcement reimbursement
- [Court Order](#) and [Press Release](#)

New Bedford, Massachusetts

- Bus company unnecessarily idling at schools in environmental justice communities
- AG reached a settlement with the bus company in 2021
- A portion of the settlement funds went to two community groups
 - Friends of Buttonwood Park
 - Greater New Bedford Community Health Center
- [Press Release](#)



State SEPs Survey



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- Legal Authorities
 - Statutes, case law, administrative decisions, guidance
- Definitions
 - Name of instrument, legal principles, categories
- Penalty calculation and purpose
 - percent mitigation allowed
 - limits on mitigation, penalties, support for existing programs
- Restorative and EJ provisions
 - Community Input
 - EJ preference
 - SEP idea banks
 - Other

Thank you!

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