

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



Emmett Environmental
Law & Policy Clinic
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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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Supplemental Environmental Projects



ECOS Compliance Committee and EJ
Workgroup Joint Meeting
September 20, 2023



COLORADO
Department of Public
Health & Environment

Elizabeth Scherer - Colorado SEP Coordinator

What are Supplemental Environmental Projects?

Projects that benefit the environment or public health & safety, funded through environmental enforcement actions.

SEPs cannot be projects that a SEP Administrator has previously initiated, budgeted for, committed to or is legally required to implement.

Supplemental Environmental Projects

First-Party

Funding a project within the regulated entity's facility that goes above and beyond compliance

- Cannot benefit regulated entity
 - Mitigation ratio

Third-Party

Funding a project operated by a nonprofit or governmental organization

(or a community organization with a nonprofit fiscal sponsor)

Funding process



1. A regulated entity has an inspection, or a complaint was investigation, and violation(s) are found.



1. Enforcement actions are pursued by CDPHE, sometimes with the Attorney General's office.



1. The entity can choose to offset their penalty with a SEP.



1. If doing a third-party SEP, the entity pays the SEP money directly to the third-party.

Funding Differences - EJ Grants & SEPs

EJ Grant Program

- Funded from the Community Impact Cash Fund (CICF)
 - The CICF is funded by penalties collected from entities that violate air pollution control laws, rules, and permits
 - Each fiscal year the amount of APCD enforcement dollars going into the CICF increases by 20% until reaching 100%
The remaining dollars go into the general fund
 - Money remains in the fund year to year
- The Environmental Justice Advisory Board selects grants to fund
 - Regulated entities do not choose what projects get funding

Supplemental Environmental Projects

- Funded from any environmental enforcement action (APCD, WQCD, HMWMD)
 - SEPs do not have a fund held by CDPHE
 - Each enforcement action funds a specific project(s) and the regulated entity distributes the money
- Most regulated entities can offset up to 80% of their penalty with a SEP
 - Government agencies and small businesses may offset up to 100% of the penalty with a SEP
- Voluntary - the regulated entity in enforcement chooses whether to do a SEP.
 - A regulated entity can choose to do:
 - first-party SEP internally or externally*
 - third-party SEP with eligible organizations

SEP Categories & Examples

Pollution Prevention

- renewable energy
- process change - material substitution
- waste minimization
- conservation and efficiency

Pollution reduction

- household hazardous waste collection
- improved operating and maintenance
- reducing pollutant discharge

Environmental restoration

- restoration of a wetland
- protection of critical habitat
- planting native species/removal of invasive species

Environmental education

- training restoration leaders and volunteers
- greenhouses at school

Public health & safety

- mitigation of lead-based paint, radon, etc.
- community-based monitoring

*The website highlights [successful SEP projects](#)

SEP selection requirements & preferences

Required

- Third-party recipients must be a government agency, nonprofit, or nonprofit fiscal sponsor
- Geographic nexus
- Voluntary
- Cannot reward the regulated entity
- Creates a measurable impact

Additional preferences

- Community support
- Benefits health equity and environmental justice, climate change, pollution prevention
- Cross-media impacts

Other differences - EJ Grants & SEP

Differences Categories	EJ Grant Program	Supplemental Environmental Projects
Geographic Nexus	Grant projects can take place throughout the state of Colorado	SEP must be in the same county or closely adjacent community to the violation
Benefit/Support for DI Communities	Grant projects must take place or benefit a disproportionately impacted (DI) community	Preference, not a requirement, to support a DI community
Project Requirements/Guidelines	<p>Eligible projects must adhere to statutory and Request for Application (RFA) requirements</p> <p>Can fund environmental or public health projects or participation in rulemakings or permitting proceedings</p>	<p>SEPs usually adhere to the requirements within the SEP Policy</p> <p>Funds environmental or public health and safety projects.</p>
Eligible Organizations	All organizations are eligible for grant funding (<i>for year 1 grant funding</i>)	Government agencies, nonprofits, and organizations with a nonprofit fiscal sponsor
Project Duration	1 Year (in first grant cycle); duration may increase in future grant cycles	Can fund projects up to 3 years

Benefits of SEPs

KWhs renewable energy produced annually

1.1 mil

Trees/shrubs planted

32,267

Gallons of water saved annually

41 mil

GHGs reduced annually (MTCO₂Eq)

50.5 mil

Tons of CO reduced annually

907

KWhs saved annually

10.4 mil

Pounds of material cleaned, collected, recycled

25.5 mil

Acres of habitat restored

18,124

Feet of trail and stream banks restored/repared

353,441

*Estimates from 2002-present

SEP Ideas

Companies can either present project ideas or look at our SEP idea library

SEP idea library

The screenshot displays the SEP idea library interface. On the left, there is a sidebar with a 'Download data' button, a 'Service Area (County)' dropdown menu set to '(All)', and a 'SEP Types' section with checkboxes for '(All)', 'Environmental education', 'Environmental restoration', 'Pollution prevention', 'Pollution reduction', and 'Public health and safety'. The main area features a map of Colorado with county boundaries and names. Below the map is a table of project ideas.

Name of Project	Non-profit/Government Agency	Budget	Type of SEP
Addressing food waste & insecurity in DI communities	Kaizen Food Rescue	\$228,000 - \$242,000	Environmental education Pollution prevention Pollution reduction Public health and safety
Campbell Creek Restoration	Wildlands Restoration Volunteers	\$30,000 - \$115,000	Environmental education Environmental restoration
Charge Ahead Colorado	Colorado Energy Office	\$9,000 and up	Pollution prevention Pollution reduction

On the SEP website as a searchable [map](#) or [spreadsheet](#)

Policy Revision 2023

Major Changes

- Added language addressing environmental justice and disproportionately impacted communities
- Added community-based air and water monitoring projects
 - Multiple requirements including: action component, collected and shared via CPDHE and EPA standards, data availability to CDPHE and public in near real-time
- Simplified language
- Added helpful links and definition of DI Community

Thank you!

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