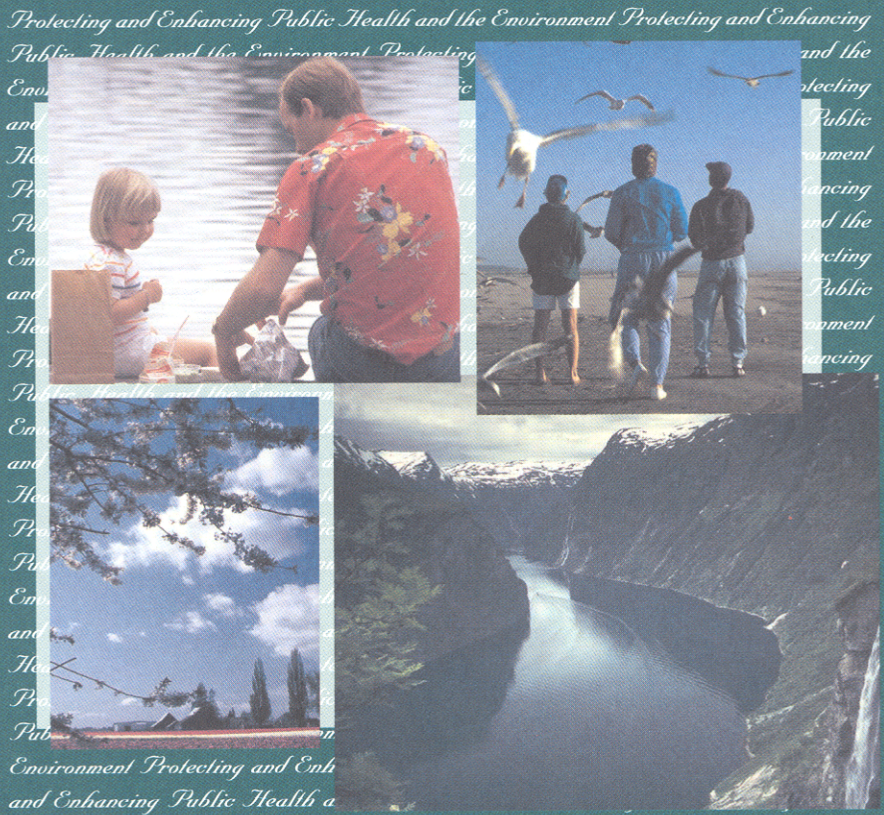
United States Environmental Protection Agency

Office of Enforcement and Compliance Assurance (2248A)

EPA-300-B-98-001
October 1998

EPA

Supplemental Environmental Projects



"Protecting and Enhancing Public Health and the Environment"

Published by the Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, Washington, D.C. 20460

Supplemental Environmental Projects

Americans have the right to air that is clean, water that is safe to drink, food that is free from dangerous pesticides residues, and communities that are free of hazardous wastes.

The Environmental Protection Agency (EPA) helps protect these rights, fairly and effectively enforcing federal environmental laws, such as the Clean Air Act, Clean Water Act, Safe Drinking Water Act, Resource Conservation and Recovery Act, and Toxic Substances Control Act, against those who violate them. If the Agency believes that an individual or company has failed to comply with environmental laws, EPA, working with state, local or tribal governments, may respond in a number of ways to bring about compliance. Responses range from a warning letter to filing a lawsuit in federal court.

As part of an enforcement settlement, a violator voluntarily may agree to do a "Supplemental Environmental Project" (SEP). A SEP furthers EPA's goal of protecting and enhancing the public health and the environment, and does not include the activities a violator must take to return to compliance with the law.

This guide will explain more about Supplemental Environmental Projects and the opportunities available for public involvement in the SEP process.

What is a Supplemental Environmental Project?

A Supplemental Environmental Project (SEP) is an environmental project that a violator voluntarily agrees to perform as part of the settlement of an enforcement action. Although the violator is not legally required to perform a SEP, his cash penalty may be lower if he chooses to perform an acceptable SEP. An acceptable SEP must improve, protect or reduce risks to public health or the environment. When a company volunteers to do a SEP, it must show that it can and will complete the project. EPA does not manage or control the money for the project. EPA only provides enough oversight to ensure that the company does what it promises to do.

The Legal Requirements for a SEP

Because SEPs are part of an enforcement settlement, they must meet certain legal requirements. One important requirement is that a relationship between the SEP and the violation must exist.

For example, a company violates the Clean Water Act by discharging polluted water into a river. As part of a settlement, the company proposes to reduce the amount of pollutants it discharges into the river to an amount below what the law allows. Such a project would have the necessary relationship between the project and the violation because the project will reduce the harm caused by the violations. In determining whether or not to accept a SEP, EPA will consider how the surrounding community can benefit from the project.

Other important legal requirements must be met. For example, a company must agree to perform a specific project by doing the work itself or by hiring others to do the work. A company cannot simply donate money to a charity. Donating money would not qualify as SEP.

in Oklahoma...

To resolve allegations that it polluted the groundwater of Oklahoma's Sac and Fox Nation due to years of faulty oil drilling and production practices, the Tenneco Oil Company agreed to build a new water system for the Nation. The new system will deliver a permanent supply of potable water for the tribe and includes a water recovery system to irrigate the land and promote a farming economy.

Categories of Acceptable SEPs:

EPA has set out eight categories of projects that can be acceptable SEPs. To qualify, a SEP must fit into at least one of the following categories:

1. **Public Health:** Such SEPs may include examining residents in a community to determine if anyone has experienced any health problems because of the company's violations.

2. **Pollution Prevention:** These SEPs involve changes so that the company no longer produces some form of pollution. For example, a company may make its operation more efficient so that it avoids making a hazardous waste along with its product.

3. **Pollution Reduction:** These SEPs are like pollution prevention projects. Instead of eliminating a source of pollution, these projects reduce the amount and/or danger presented by some form of pollution, often by providing better treatment and disposal of the pollutant.

4. **Environmental Restoration and Protection:** These SEPs improve the condition of the land, air or water in the area damaged by the violation. For example, by purchasing land or developing conservation programs for the land, a company could protect a source of drinking water.

5. **Emergency Planning and Preparedness:** These SEPs provide technical assistance and training to state or local emergency planning and response organizations to help them better respond to chemical emergencies.

6. **Assessments and Audits:** A violating company may agree to examine its operations to determine if it is causing any other pollution problems or can run its operations better to avoid violations in the future. These audits go well beyond standard business practice.

7. **Environmental Compliance Promotion:** These are SEPs in which the violator helps other companies achieve compliance and reduce pollution. For example, the violator may train other companies on how to comply with the law.

8. **Other Types of Projects:** Other acceptable SEPs would be those that have environment merit but do not fit within the categories listed above. These types of projects must be fully consistent with all other provisions of the SEP Policy and be approved by EPA.

Opportunities to Participate in the SEP Process?

As a rule, enforcement settlement negotiations in legal actions are confidential. Nevertheless, in some cases, a violator who has agreed to perform a SEP as part of a settlement may also agree to have community input on the nature of the SEP. EPA believes that this input is particularly valuable if the SEP affects the community and surrounding environment. However, not all SEPs may affect the community.

EPA strongly encourages your participation in the SEP process. Once an appropriate opportunity for community involvement is identified, EPA will typically hold a public meeting. At that meeting, EPA will provide your community with information about SEPs and the limitations on any proposed projects. EPA will seriously consider your views and suggestions. In addition, in certain cases, once EPA and the violator reach an agreement on a SEP but before it becomes legally effective, EPA will publish the proposed settlement in the Federal Register and seek public comment. Serious consideration is given to all comments on proposed settlements, including comments on any SEPs.

Although SEPs are a relatively new aspect of environmental settlements, SEPs proposed by communities already have been adopted as part of final settlement agreements while other SEP ideas have been modified to accommodate community priorities.

in Georgia...

The City of Atlanta agreed to carry out a $27.5 million SEP for violations of the Clean Water Act. The city will create a Greenway corridor and clean-up selected streams. The SEPs also provide for the creation of a citizen advisory committee to guide acquisition and development of the Greenway and clean-up program.

To Learn More About Supplemental Environmental Projects

This booklet is a brief summary of EPA's Supplemental Environmental Projects Policy. All projects being considered as SEPs must be consistent with that Policy. Copies of the SEP Policy may be found at www.epa.gov/oeca/sep. In addition, a data base of SEPs completed in past EPA cases can be found on the Internet at: www.epa.gov/oeca/sep/searchsep.html.

For more information, contact: