

SEP Guidance for Solid Waste Local Enforcement Agencies

Introduction

A Supplemental Environmental Project (SEP) is utilized to address environmental and health impacts to communities that may have resulted directly or indirectly from the violations addressed in an enforcement order. [Assembly Bill 1071 \(Atkins, Chapter 585, Statutes of 2015\)](#) directed each board, department, and office within CalEPA, that has enforcement authority, to establish a specified policy on SEPs that would benefit disadvantaged communities. CalRecycle adopted a SEP Policy in 2016 which can be viewed at the [SEP overview webpage](#).

A SEP is an environmentally beneficial project(s) that a respondent agrees to voluntarily undertake or fund as part of the settlement of an enforcement action to offset some of the penalties. Before a discussion with a respondent regarding the use of a SEP, an enforcement action must be in place, and the respondent must confirm if they would like to voluntarily participate. Consideration of a SEP on a case-by-case basis may be included as part of a settlement if it is compliant with the Enforcement Agency's (EA) Enforcement Program Plan (EPP). An EA wishing to include SEP procedures should include the procedures in the Inspection, Investigation, Compliance Assurance, Enforcement Procedures Manual, and Hearing Panel/Hearing Officer Procedures Section of their EPP.

The below guidance provides EAs with a template for preparing and utilizing their own SEP procedure in settlements, and will assist the EA in the following ways:

- Define Key Terms
- Identifying Criteria for SEP Proposal & Application
- Identifying Criteria & Evaluation for Inclusion in a Settlement Agreement
- Identifying Criteria for Payment, Tracking, Reporting, & Oversight Provisions
- Identifying Categories and Examples of SEP Projects
- Updating the Enforcement Program Plan with a SEP Procedure

Key Terms

[Public Resources Code, Section 71118](#) defines a “**Supplemental Environmental Project**”, or SEP, as an environmentally beneficial project that a person subject to an

enforcement action voluntarily agrees to undertake in settlement of the action and to offset a portion of a civil penalty. The main components of this definition are outlined below.

“Environmentally beneficial” means a SEP must improve, protect, or reduce risks to public health or the environment at large. While in some cases a SEP may provide a respondent with certain benefits, the project must primarily benefit public health or the environment.

“Disadvantaged community” is a community identified by the California Environmental Protection Agency, as required by [California Health and Safety Code, Section 39711](#), based on geographic, socioeconomic, public health, and environmental hazard criteria.

“Respondent” is the defendant of an administrative enforcement action. The respondent may be an individual, a company, or an entity.

“Enforcement Action” is a legal action taken against violators of environmental laws.

Understand the SEP Nexus

To utilize a SEP, there must first be an enforcement action issued to an operator/owner of a permitted solid waste facility or illegal site resulting in penalties. The use of a SEP should be one that furthers the EA’s goal of reducing the risks posed to public health and the environment from solid waste management activities. One way to do this is to look for a nexus between the compliance issue being addressed and the SEP to be used.

A nexus exists if the project remediates or reduces the overall environmental or public health impacts or risks to which the violation at issue contributes, or if the project reduces the likelihood that similar violations will occur in the future.



SEP Proposal Guidance

The EA may wish to use the following for establishing a list or set of SEPs. To facilitate the use of SEPs, it is advised that an EA have several potential SEPs defined and available for use. Proposed SEPs should include the following:

- A scope of work, including a budget.
- Periodic reporting to the EA on the performance and final completion of the SEP, by the entity implementing the SEP or a third party that is implementing the SEP for an entity.

SEP Criteria & Evaluation for Inclusion in a Settlement Agreement

The EA should consider the following when developing the settlement agreement that will include a SEP:

- Include a time schedule for implementation with single or multiple milestones, and identify the amount of the penalty that will be permanently suspended or excused upon the timely and successful completion of each milestone. Except for the final milestone, the amount of the penalty suspended for any portion of a SEP should not exceed the projected cost of performing that portion of the SEP.
- A SEP must go above and beyond the otherwise applicable obligations of the respondent. The SEP should not require something that is already required of the respondent by existing law or is proposed as mitigation to offset impacts of the respondent's project(s).

SEP Payment, Tracking, Reporting, & Oversight Provisions

The EA should consider the following to establish payment requirements, tracking and reporting methods, and oversight provisions once a SEP has been deemed part of a settlement agreement:

- The EA should not directly manage or administer the SEP. The respondent or the contracted third party will manage and administer the SEP.
- The EA should not manage or administer the suspended penalty funds to a third party performing or administering the SEP. The respondent is responsible for spending the suspended penalty funds for the competition of the SEP, as appropriate.
- Based on its resource constraints, the EA may require the respondent to select and hire an independent management company or another third party, which

reports solely to the EA, to oversee implementation of the SEP in lieu of oversight by EA staff. If no arrangement for the payment for necessary oversight can be made, the SEP will not be approved, except under extraordinary circumstances. As a general rule, such oversight costs are not costs that should be considered part of the direct cost of the SEP for settlement purposes unless the EA expressly finds that such costs should be considered part of the SEP.

- If the respondent hires a third party to perform the SEP, the third party will provide the EA with a written acknowledgement that any SEP funds it receives from the respondent will be spent in accordance with the terms of the order. The third party performing the SEP must agree to an audit of its SEP expenditures, if requested by the EA. The third party performing the SEP must agree to an audit of its SEP expenditures, if requested by the EA.
- The respondent must provide the EA with a final completion report, submitted under penalty of perjury, declaring the completion of the SEP and addressing how the expected outcome(s) or performance standard(s) for the project were met. If a third party performed the SEP then that entity may provide the report.
- The respondent must provide the EA a final, post-project accounting of expenditures, unless the EA determines that such an audit is unduly onerous and the EA has other means to verify expenditures for the work. Such accounting must be paid for by the respondent and must be performed by an independent third party acceptable to the EA.
- Where appropriate, it is permissible for a SEP funding agreement between a respondent and a third party to require pre-approval of invoices or confirmation of completed work by the EA before escrowed or set-aside funds are disbursed to the party performing the work.

Categories and Examples of SEP Projects

CalRecycle completed community outreach workshops in 2016 to discuss SEPs with the public and community-based organizations. From those conversations, CalRecycle identified 5-potential categories SEP projects for its use. Below are descriptions of what these SEPs might include.

Waste Reduction Projects

A waste reduction project is one that results in a decrease in the amount of any substance entering any waste stream or otherwise being released into the environment by an operating business facility. A waste reduction approach is appropriate if a waste stream already exists. These projects employ recycling, treatment, containment, or disposal techniques. Projects may include the installation of more effective end-of-process control or treatment technology.

Example

- 1) Implement an organic material reduction program, to divert organic materials from disposal.
- 2) Establish a convenient collection location for household hazard waste such as paint, electronics devices, used motor oil, batteries, and mercury-containing thermostats.

Community Environment Restoration and Protection Projects

A community environment restoration and protection project is one that goes beyond repairing the damage caused by the violation to enhance the condition of the immediate geographic area adversely affected. These projects may be used to restore or protect natural or man-made environments. This includes the removal or mitigation of waste materials that continue to be a burden to individuals and communities.

Example

- 1) Plant trees or other vegetation that can mitigate dust or other air emissions.
- 2) Cleanup and proper disposal of illegally dumped waste tires, and/or electronic waste that would otherwise become a public health hazard.

Environmental Compliance Promotion Projects

An environmental compliance promotion project may include training or technical support to members of a regulated community or the public to identify, achieve, or maintain compliance with applicable statutory and regulatory requirements or to reduce the generation, release, or disposal of waste beyond legal requirements. An environmental compliance promotion project may also involve the promotion of environmental literacy and environmental stewardship.

Example

- 1) Establish an organic material reduction training program for the solid waste facility staff.
- 2) Establish an outreach program to educate the public on the acceptable materials accepted at a solid waste facility.
- 3) Provide gas monitoring in structures outside the permitted boundary of a landfill, through a third party, to further ensure the health and safety of the public living near the landfill.

Projects that should not be considered as a SEP

Below are examples of projects that should not be considered a SEP. This list is not exhaustive.

- Projects that, while beneficial to a community, lack a relationship to the regulatory enforcement responsibilities of the EA entering into the settlement. Examples include donations to a community fund that are not targeted to a particular environmental project or financial support for a general community improvement project, such as enhanced street lighting, that does not relate to the enforcement responsibilities of the EA.
- Projects that are submitted with incomplete paperwork.
- Projects that are not adequately and specifically described in the settlement agreement, such as setting aside funds for a project that is to be selected or defined in the future.
- Projects that are not consistent and do not comply with the particular SEP procedure.

Updating the Enforcement Program Plan with a SEP Procedure

The EPP is documentation that CalRecycle uses to ensure the EA is meeting all of its responsibilities under the Public Resources Code and Title 14, California Code of Regulations (14 CCR). Per 14 CCR, Section 18081(e)(4), the components of the EPP shall be reviewed and amended by the EA annually, or more frequently as determined by CalRecycle, to reflect any changes. The amended components shall be submitted to CalRecycle for approval. If an EA wishes to include a SEP procedure as part of their enforcement procedures, it should be included in the EPP.

The Inspection, Investigation, Compliance Assurance, Enforcement Procedures Manual, and Hearing Panel/Hearing Officer Procedures Section of the EPP will need to be updated to reflect changes associated with the inclusion and implementation of a SEP procedure. Please view CalRecycle's webpage, [EPP Toolbox](#), for guidance on updating the EPP.

Steps to take to begin a SEP

- Before implementation of a SEP procedure, the EA shall:

- Revise the EPP to include the SEP process, and
- Submit the revised EPP to EA Evaluation staff by the annual EPP submittal deadline.
- If an SEP is used, the EA should:
 - Verify if all appropriate enforcement steps have been taken and documented leading up to settlement discussions.
 - Verify that there is adequate documentation of the request to settle and a request to include a SEP in the settlement discussions.
 - Ensure that the EPP's SEP procedures are followed.

Resources

Information regarding CalRecycle's SEP policy and procedures are found here:
<https://www.calrecycle.ca.gov/envjustice/sep>