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# EPA Revises its Supplemental Environmental Project – SEP Policy

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On March 10, 2015, EPA issued a new revised 2015 Update to its Supplemental Environmental Project (SEP) Policy , thereby superseding prior SEP policies.

A SEP is an environmentally beneficially project that a party agrees to undertake in conjunction with the settlement of an enforcement action, usually in return for penalty mitigation. As noted by EPA in the policy, "a violator's commitment to perform a SEP is a relevant factor for the EPA to consider in establishing an appropriate settlement penalty. All else being equal, the final settlement penalty will be lower for a violator who agrees to perform an acceptable SEP, compared to the violator who does not."

To be clear, however, EPA does not typically allow dollar-for-dollar offsets as part of the penalty mitigation. Indeed, the SEP Policy clarifies that the amount of penalty mitigation should not exceed eighty percent (80%) of the estimated cost to implement the SEP. Equally important, a penalty may not be fully offset by the SEP as EPA notes that all settlements that include a SEP must always include a penalty component that "must equal or exceed either: a. The economic benefit of noncompliance plus ten percent (10%) of the gravity component; or b. Twenty-five percent (25%) of the gravity component only; whichever is greater."

SEPs are projects that are not legally required to obtain compliance but that secure environmental or human health benefits that otherwise would not occur. EPA's 2015 Update identifies eight categories of projects that may qualify as SEPs, including public health, pollution prevention, pollution reduction, environmental restoration and protection, assessments and audits, environmental compliance promotion, emergency planning and preparedness, and other projects that are fully consistent with the SEP Policy. The specific SEP chosen must have a specific nexus to the violation and must relate to the underlying violation.


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