

DRAFT for Stakeholder Comment----

Plain Language Overview of the California Environmental Protection Agency Supplemental Environmental Projects Policy

The California Environmental Protection Agency (Cal/EPA) issued its “Recommended Guidance on Supplemental Environmental Projects (SEP)” in October of 2003. This Guidance noted that, “Although SEPs may not be appropriate in all instances, they can play an important [role in] . . . an effective enforcement program.”

The Guidance:

- **defines** the term “SEP”;
- lists **legal guidelines** for and **categories** of SEPs;
- discusses the **proper ratio** between **SEP funds** and penalty funds in settlements; and,
- counsels that all SEPs should be **well-defined** and **implementable**.

SEPs are “environmentally beneficial projects that [an alleged violator] agrees to undertake in settlement of an enforcement action, but which the [alleged violator] is not otherwise legally required to perform.” For example, the funds an alleged violator expends to come into compliance are not properly considered part of a SEP, but funds the same entity might expend to reduce emissions below regulatory requirements could be considered a SEP.

Guidelines for SEPs

ARB has broad discretion in settling cases, including the discretion to include SEPs as part of its settlements. Nevertheless, SEPs must further the statutory

goals of ARB and cannot violate public policy. The Cal/EPA SEP Guidance contains the following elements to ensure that these requirements are met.

- SEPs must be **consistent** with ARB's underlying statutes and **advance** at least one of the objectives of the statutes involved in the enforcement action.
- SEPs must have an adequate **nexus** with ARB's enforcement responsibilities, i.e., reduce the environmental or health impact of the violation or the likelihood that such a violation will reoccur.
- SEPs must be **clearly defined**.
- SEPs should **not directly benefit the alleged violator**. For example, a SEP that funds the purchase of products manufactured by the alleged violator would be inappropriate.

Categories of SEPs include: environmental compliance promotion, enforcement projects, emergency planning, pollution prevention/reduction, environmental restoration/protection, public health or any other projects that are consistent with the Guidance. Two types are not allowed: general educational or public environmental awareness projects and projects unrelated to environmental protection. Such projects lack a nexus with the laws involved in ARB enforcement actions, would not advance the goals of ARB's programs and may directly benefit the alleged violator.

Proper Ratio of SEP Funds to Penalty Funds

In general, a SEP should constitute no more than 25 percent of the total settlement. For example, if a settlement is reached for a total of \$1,000,000, it

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should include a payment of at least \$750,000 in penalty funds and any SEP should not exceed \$250,000.

Note: This summary is only informational and does not modify the Cal/EPA “Recommended Guidance on Supplemental Environmental Projects” dated October 2003.