

Policy Principles For Supplemental Environmental Projects

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ITEM 7

NOVEMBER 14, 2019

Definition of a SEP

- **Environmentally beneficial**, meaning it improves, protects, or reduces risks to public health of the environment
- **In settlement of an enforcement action**, meaning that it is not commenced until after the violation is identified and it is included in an enforceable settlement document
- **Voluntarily undertaken**, meaning it is not an action, process or product that the respondent is required to undertake or that is proposed as mitigation to offset the impacts of the respondent's project(s).
- **To offset a portion of a civil penalty**, meaning that it allows the settling party to satisfy up to an established percentage of the monetary assessment imposed in a complaint.

SEPs generally must have a nexus to the violation

- Must advance at least one of the objectives of the statute that is the basis of the enforcement action
 - Reduces the likelihood that similar violations will occur
 - Reduces the adverse impact to the environment

There are monetary limitations for SEPs

EPA: Monetary penalty amount should recoup the economic benefit a violator gained from noncompliance with the law, as well as an appropriate gravity-based penalty reflecting the environmental and regulatory harm

CalEPA: Pub Res. Code § 71118 – Up to 50%

SWRCB: Pub Res. Code § 71118 – Up to 50% AND

Water Code § 13385(/) – 50% + \$15,000 for certain violations involving mandatory minimum penalties

QUESTIONS

- Should BCDC develop guidance on the use of SEPs?
- If so, what should be included?
 - Legal requirements (e.g. nexus between the violation and proposed project)?
 - Types or categories of projects?
 - Limitations on the monetary penalty amount to be mitigated through a SEP?

OTHER QUESTIONS?