



DEPARTMENT POLICY AND PROCEDURE

04-002 Supplemental Environmental Projects for Penalty Mitigation

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ISSUE

A Supplemental Environmental Project (SEP) is an environmentally beneficial project that is not required by state or federal law, but an alleged violator agrees to undertake as part of a settlement of an enforcement action. These projects go beyond what is legally required to return to compliance with applicable state and federal laws. The Department of Environment, Great Lakes, and Energy (EGLE) has revised this policy and procedure to better accommodate the consideration of SEPs in settlements.

This policy and procedure has been developed to further EGLE's goal of protecting public health and the environment via the implementation of high quality SEPs approved by EGLE. Properly developed and administered SEPs have the potential to secure significant improvements in environmental quality and public health for Michigan citizens and can promote an atmosphere of cooperation between the alleged violator and the affected community benefiting from the projects.

The primary purpose of this policy and procedure is to facilitate consideration of environmental and public health protections and benefits that may not otherwise have occurred in the settlement of an enforcement action. In these settlements, EGLE requires alleged violators to achieve and maintain compliance with applicable state and federal laws, to take action to cease the activities contributing to or causing the alleged violations, and to abate any harm caused by the violations and pay monetary fines. In lieu of payment of a portion of the monetary fines, an alleged violator may propose a SEP as part of the settlement. Although a settlement may include a SEP, monetary fines are a necessary and important part of any settlement.

DEFINITIONS

For the purposes of this policy and procedure, the following terms will be defined as follows:

Economic benefit - An economic or monetary gain. It may be the economic gain accrued to the violator due to noncompliance or it may be the economic gain accrued to the violator due to the implementation of a SEP. Economic benefit from noncompliance may be accrued by delaying necessary pollution control expenditures, by avoiding necessary pollution control expenditures, and/or by gaining an illegal competitive advantage during the period of noncompliance (via selling banned products or capturing extra market shares through selling products at a lower cost than complying competitors). Economic benefit from a SEP due to implementation of the SEP may include tax relief accrued, reduced material costs, and/or reduced disposal costs accrued to the violator.

Monetary fine - An administrative, civil, or statutory fine.

Mitigation - The reduction of the amount of monetary fine assessed in resolution of alleged violations in consideration of the performance of an EGLE-approved SEP pursuant to the terms of the settlement.

Nexus - Means the relationship between the violation and the proposed project and may exist if:

- The proposed SEP is designed to reduce the likelihood that similar violation(s) will occur in the future;
- The proposed SEP reduces the adverse impact to public health or the environment to which the violation(s) at issue contributes; or
- The proposed SEP reduces the overall risk to public health or the environment potentially affected by the violation(s) at issue.

Supplemental Environmental Project (SEP) - An environmentally beneficial project that an alleged violator agrees to undertake as part of a settlement of an enforcement action, but which the alleged violator is not otherwise legally required to perform.

Settlement - A legally binding civil or administrative agreement entered into by EGLE and the alleged violator for the purpose of resolving the alleged violations of state and federal law.

POLICY

EGLE Discretion and Effect of Policy

This policy and procedure establishes a framework for EGLE to use in exercising enforcement discretion in determining appropriate settlements and the review and approval of a SEP. EGLE retains the ability to approve or deny any SEP proposal at any time for any reason, including SEP proposals that otherwise meet the requirements of this policy and procedure.

All proposed SEPs will be evaluated for the following:

1. The project meets the definition and criteria of a SEP and all legal guidelines are satisfied.
2. The project fits at least one designated SEP category.
3. The project meets the minimum SEP quality rating.
4. The project satisfies all submittal and implementation requirements.

This policy and procedure creates no rights, substantive or procedural. This policy and procedure pertains solely to the inclusion and use of SEPs in settlements and is not intended for use by EGLE, alleged violators, or judges during administrative hearings or court proceedings. Further, this policy and procedure is not intended to provide policy guidance for assessing natural resource damages or for the selection of a natural resource damage mitigation project. This policy and procedure is not intended to supersede any state or federal law.

SEP Criteria

Proposed projects must meet the criteria outlined below and any other criterion or requirement set forth in this policy and procedure before EGLE may consider it for approval.

1. The project is consistent with any provision of the underlying state statutes. The project may not in any way allow for an activity that is otherwise prohibited under state or federal law.
2. The project advances at least one of the objectives of the underlying environmental statutes that are the basis of the enforcement action and has an adequate nexus. The project may have an adequate nexus even if the project addresses a different pollutant in a different medium. The project must take place within the state of Michigan. EGLE will give strong preference to a project that has geographic proximity¹ to the violation(s).
3. The project must be environmentally beneficial in that the project will improve, protect, or reduce risks to public health or the environment.
4. The project cannot be an activity or project that the alleged violator is otherwise legally required to perform pursuant to any local, state, or federal law or regulation. The project cannot include actions that the alleged violator is likely to be required to perform:
 - a) As injunctive relief in the current settlement;
 - b) As injunctive relief in another legal action brought or which could be brought against the alleged violator by another state or federal agency;
 - c) As part of an existing settlement order in another legal action; or
 - d) By a local, state, or federal law or regulation or as a requirement of a permit issued by EGLE or any other unit of government or federal agency.

However, activities for which the alleged violator will become legally obligated to undertake in two or more years in the future may be included as a SEP if the project will result in the facility coming into compliance earlier than the regulatory deadline.

5. Implementation of the project shall not have commenced prior to EGLE's identification of the alleged violations and EGLE review and approval of the project.
6. The project must not fulfill an EGLE statutory obligation or activity that EGLE is mandated to perform that is funded, or expected to be funded, by a state and/or federal appropriation. Similarly, a project may not provide EGLE with additional resources to perform activities mandated by state or federal law.
7. EGLE may not manage the project nor control any funds that may be set aside or escrowed for the performance of a SEP unless specifically authorized by statute.
8. Project proposals shall be submitted within 30 days following the EGLE proposal of a monetary fine during the settlement negotiations, unless an extension is granted by EGLE. Project proposals and requests for additional information must be made on a timely basis to ensure the settlement negotiations are not unduly delayed. Project proposals must follow the SEP submittal guidelines in Appendix A, which provides guidelines for the format and required information that must be submitted to EGLE staff for the SEP proposal to be considered.

¹ Geographic proximity is established if the project is located on site where the violation(s) occurred; a different site within the same ecosystem; or a different site within the immediate geographic area.

9. The type and scope of the project(s) must be defined in the settlement. Specifically, the settlement must identify what is to be performed, where, by when, and by whom. A settlement that includes provisions for the alleged violator to spend a certain sum of money on a project to be defined after the settlement is executed is not acceptable. The final proposal must be included as an attachment to the settlement.

SEP Categories

Proposed projects must be consistent with one or more of the following SEP categories:

Pollution Prevention

These projects prevent pollution at its source, before it is generated, thereby substantially reducing or preventing the generation or creation of pollutants. This includes any practice that reduces the quantity and/or toxicity of pollutants entering a waste stream prior to recycling, treatment, or disposal. After the pollutant or waste stream has been generated, pollution prevention is no longer possible, and the waste must be handled by appropriate recycling, treatment, containment, or disposal methods and the project may fall under the pollution reduction category.

These projects must have an overall decrease in the amount and/or toxicity of pollution released to the environment, not merely a transfer of pollution among environmental media. The decrease may be achieved directly or through increased efficiency and conservation in the use of energy, water, or other materials.

These projects may include, but are not limited to:

- a) Source reduction projects that will result in eliminating the source of pollution by changing industrial processes or substituting fewer polluting fuels or less toxic raw materials in existing processes.
- b) Renewable energy or energy efficiency projects that will reduce or replace traditional energy sources that include, but are not limited to, wind, solar, biomass, geothermal-powered generation of electricity, and ethanol-based (E-85) or biodiesel fuels for vehicles.
- c) Waste minimization projects that will conserve materials that are sources of pollution that include, but are not limited to, the application of closed-loop processes or other resource-efficiency measures.
- d) In-process recycling projects that will return waste materials produced during a manufacturing process immediately and directly to production within the same manufacturing process using dedicated, fixed, and physically integrated equipment so that no releases, including fugitive releases, occur.
- e) Innovative recycling technology projects that will substantially reduce the discharge of generated pollutants through innovative recycling technologies that keep the pollutants out of the environment in perpetuity.
- f) Conservation projects that will protect natural resources through conservation or increased efficiency in the use of energy, water, or other materials.

An example project is an up-front capital investment in energy-efficiency improvements and reinvestment of the resulting cost savings into a long-term, green energy program either on-site or in a community-based program or a combination of both.

Pollution Reduction

These projects go substantially beyond compliance with permit or regulatory requirements to further reduce the amount of pollution released into the environment. Where a pollutant or waste stream already has been generated or released, a pollution reduction project (recycling, treatment, containment, or disposal techniques) may be appropriate, if it does not create an increased or adverse cross-media impact on public health or the environment. These projects result in a decrease in the amount or toxicity of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise being released into the environment, by means which do not qualify for pollution prevention.

These projects may include, but are not limited to:

- a) Reducing the discharge of pollutants through more effective end-of-pipe or stack control or treatment technologies.
- b) Improving operation and maintenance.
- c) Improving containment or safer disposal of an existing pollutant source.
- d) Recycling of residuals for use as raw materials in production off-site, thereby reducing the need for treatment, disposal, or consumption of energy or natural resources.
- e) Sponsoring a community household hazardous waste collection and disposal event.

Environmental Restoration and Protection

These projects enhance, protect, or repair damage done to the environment beyond the need to remediate the damage done by the alleged violation.

These projects may include, but are not limited to:

- a) A reduction in discharges/emissions of pollutants that are not the subject of the violation or the subject of other regulatory requirements within an affected air basin or watershed.
- b) Restoration of environmentally sensitive areas and/or habitat types, including, but not limited to, wetlands, streams, floodplains, dunes, etc.
- c) Development of a conservation program or protection of habitat critical to the well-being of a species or ecosystem.
- d) Purchase and management of a watershed area as an open-space buffer zone to protect sensitive species or a drinking water supply.
- e) Conservation easements.

Environmental restoration projects could include, in appropriate circumstances, projects that involve the remediation of facilities and buildings, provided such activities are not otherwise legally required. This includes the removal/mitigation of contaminated materials, such as contaminated soils, asbestos, and leaded paint, which are a continuing source of releases and/or threats to individuals.

Preference will be given to projects that benefit the same community or ecosystem that was affected by the alleged violation, for example, the air basin or watershed in which the alleged violation(s) occurred or if the alleged violations are in an environmentally sensitive area that has unique plant, animal life, or physical characteristics, or the same geographic region or alternate

region that has or is capable of having a similar homogeneous ecological character as the area affected by the alleged violation(s).

Public Health

These projects include those that provide abatement of toxic pollutants, such as lead or asbestos; diagnostic, preventative, or health care treatment; or other projects related to preventing or addressing actual or potential harm to human health. This includes, but is not limited to, epidemiological data collection and analysis, medical examinations of potentially affected persons, collection and analysis of blood/fluid/tissue samples, medical treatment, rehabilitation therapy, blood level testing, and asthma screening, prevention, or treatment. The primary beneficiary of the project is the affected community harmed or put at risk by the alleged violations.

Environmental Assessments

The following types of projects are acceptable:

1. Pollution prevention assessments are systematic, internal reviews of specific processes and operations designed to identify and provide information about opportunities to reduce the use, production, and generation of toxic and hazardous materials and other wastes. The following may be evaluated: manufacturing processes; operational procedures; energy consumption; raw materials; toxins; waste streams; or handling and disposal costs. They may be of an entire facility or a specific process. An assessment can also be described as an action taken toward the following pollution prevention goals: cleaner production; energy efficiency; lean manufacturing; preferred purchasing; product design; material substitution; source reduction; sustainability; waste minimization; or waste reduction. Assessments can identify cost-saving energy conservation and pollution prevention technologies that enhance a facility's performance.
2. The first-time development and implementation of a comprehensive Environmental Management System (EMS) that has the principal objectives of ensuring compliance and preventing and/or reducing pollution may be acceptable as a SEP. The major components of an EMS are the development of an environmental policy; identification of significant environmental aspects and impacts of the operations with defined objectives and specific targets for those impacts; reporting and record-keeping; emergency preparedness and response; staff training; internal and external communication; and environmental compliance and EMS auditing. Expenses directly related to the first-time development and implementation of the EMS, including developing and delivering training, equipment purchases directly related to the EMS, and staff solely dedicated to developing and/or implementing the EMS may be included in the project cost, provided they are properly documented. In contrast, the cost of employee time spent in environmental compliance training or in learning about the new EMS or compliance expenses, including operating and maintaining pollution control equipment with properly trained and equipped staff, may not be included as part of the SEP.
3. Environmental quality assessments are investigations of: the condition of the environment at a site not owned or operated by the alleged violator; the environment impacted by a site or a facility regardless of whether the site or facility is owned or operated by the alleged violator; or threats to human health or the environment relating to a site or a facility regardless of whether the site or facility is owned or operated by the alleged violator. Environmental quality assessments include, but are not limited to, investigations of levels or sources of contamination in any environmental media at a site and monitoring of the air, soil, or water quality surrounding a site or facility. Such monitoring activities are important as the data can empower communities and inform and enhance efforts to reduce potential environmental

risks and hazards. To be eligible as a project, such assessments must be conducted in accordance with recognized protocols, if available, applicable to the type of assessment to be undertaken. An assessment without a commitment to address the findings of the assessment are permissible where EGLE determines that the project delivers environmental and public health benefits worthy of SEP credit. Expanded sampling or monitoring by an alleged violator of its own emissions or operations does not qualify as a project to the extent the sampling or monitoring is otherwise required by state or federal law or regulation. Environmental quality assessment projects may not be performed at sites that are on the National Priority List under Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9605, and 40 CFR Part 300 and at specific sites that EGLE or the United States Environmental Protection Agency (USEPA) has determined to be eligible for a Brownfields assessment grant under CERCLA Section 104(k)(2), 42 U.S.C. § 9604(k)(2).

Environmental Awareness

These projects provide publications or seminars that underscore the importance of complying with environmental laws or disseminates technical information about the means of complying with environmental laws. These projects provide necessary training and technical support to identify, achieve, and maintain compliance with applicable regulatory requirements; avoid violations; and go beyond compliance by reducing the generation, release, or disposal of pollutants beyond legal requirements.

These projects may include, but are not limited to:

- a) Sponsoring industry-wide seminars directly related to correcting widespread or prevalent violations within an industry;
- b) Organizing a conference on pollution prevention solutions for compliance in a particular sector; or
- c) Community projects that encourage/promote good environmental stewardship, such as participation in recycling and conservation efforts.

The alleged violator must contract with an appropriate expert to develop and implement the project if they lack the necessary expertise to perform the project.

Emergency Planning and Preparedness

These projects provide assistance, such as computers and software, communication systems, chemical emission detection and inactivation equipment, HAZMAT equipment, or training, to a responsible state or local emergency response or planning entity. This is to enable these organizations to fulfill their obligations under the Emergency Planning and Community Right-to-Know Act (EPCRA) to collect information to assess the dangers of hazardous chemicals present at facilities within their jurisdiction, to develop emergency response plans, to train emergency response personnel, and to better respond to chemical spills. The primary impact of the project must be within the same emergency planning district or state affected by the violations, and the project must be an additional unfunded resource necessary to implement the emergency plan in accordance with EPCRA.

Climate Change Mitigation and Preparedness

The projects address the causes of climate change by reducing greenhouse gas emissions through energy efficiency projects, reducing energy demand, preventing emissions of climate change gases, and reducing or eliminating damage caused by climate change. Examples of climate mitigation projects include, but are not limited to, the installation of solar panels on a school or

community center, installation of a wind turbine, flood mitigation, electric vehicle charging stations, and replacing inefficient diesel engines and/or vehicles with energy efficient (electric) vehicles. A climate change preparedness project could include projects preparing ecosystems, infrastructure, and communities for climate change impacts.

Other

The alleged violator may propose other types of projects, which will be considered on a case-by-case basis. These projects will require the approval of the appropriate EGLE Division Director or his/her designee and must be consistent with this policy and procedure.

SEPs That Are Not Acceptable

Except for projects that meet the specific requirements of the categories above, the following are examples of the types of projects that are not acceptable:

1. Conducting a project that, though beneficial to a community, is unrelated to environmental protection, e.g., making a contribution to a charity or donating playground equipment.
2. Projects that were commenced, or the funding source was identified, before the violation was alleged by EGLE.
3. Projects that are being funded in whole or part by low-interest local, state, or federal loans or grants. Projects that are partially funded by low-interest local, state, or federal loans may be eligible if EGLE determines that the funding from the alleged violator for the SEP project is not a condition of the loan or grant (e.g., a required match) and the activities in the project expand beyond the scope of the activities funded by the loan or grant.
4. Projects that create significant market advantage for the alleged violator or are expected to become profitable within the lifetime of the project or equipment/process, except those that have substantial quantifiable environmental benefits and provide significant environmental or public health benefits to the nearby affected community.

Community Input

EGLE encourages community input on project proposals from the local community that may have been adversely affected by the alleged violations. Soliciting community input during the SEP development process can better address the needs of the affected community, promote environmental justice, produce better community understanding of the resolution of the alleged violations, and foster partnership with the community members.

Seeking community input early in the SEP development process is beneficial for developing a SEP that addresses the needs and concerns of the affected community and environment. Both EGLE staff and the alleged violator can seek community input on SEP ideas collaboratively. If EGLE staff are aware of community interest in a particular SEP, that information should be shared with the alleged violator early in the SEP development process.

The extent of community input and participation in the SEP development process will vary with each settlement. Given the wide range of settlements, types of violations, and communities, the following factors may be considered regarding whether community input is appropriate in a particular case:

- a) Willingness of the alleged violators to respond in a meaningful way to community input;
- b) The impacts the alleged violations had on the community; and

- c) The potential interest of the community in the alleged violations and desire for a potential SEP.

Appropriate outreach to affected communities can be beneficial to better inform settlement negotiations. EGLE may seek community input on a SEP when appropriate. EGLE staff must carefully consider how to provide information to the public to facilitate community input during the SEP development process without undermining the non-public nature of settlement negotiations or sharing privileged information. Also, representatives from the community groups may not participate directly in settlement meetings with EGLE and the alleged violator due to the non-public nature of settlement negotiations.

Calculating the Final Monetary Fine and SEP Mitigation Amount

A primary incentive for an alleged violator to propose a SEP is the potential mitigation of its monetary fine. Penalty mitigation for the performance of a SEP is considered only after all other mitigation factors in the applicable penalty policies have been applied to the agreed upon settlement amount. SEPs are not monetary fines. The cost of a SEP cannot be included in evaluating statutory maximum penalty limits. The project cannot mitigate stipulated penalties that have been agreed to in a current civil or administrative agreement.

Although a settlement may include a SEP, monetary fines are necessary and serve as deterrence to the regulated community. Violators should not gain an economic advantage over their competitors who complied. As a result, settlements that include a SEP must always include a monetary fine that recoups the economic benefit the alleged violator has gained from noncompliance as well as an appropriate gravity-based penalty reflecting the environmental and regulatory harm caused by the violations.

Step 1: Minimum Penalty Amount with SEP

In settlements in which alleged violators commit to conducting a SEP, the agreed upon settlement amount, unless otherwise specified under applicable state or federal laws, must equal or exceed:

1. The economic benefit of noncompliance, plus ten percent (10%) of the gravity component of the monetary fine; or
2. Twenty-five percent (25%) of the gravity component of the monetary fine only, whichever is greater.

Step 2: SEP Costs

The net present after-tax cost of the SEP (SEP COST) is the maximum amount that may be considered in determining an appropriate penalty offset for performance of a SEP. The SEP COST is calculated using the PROJECT model², which is a USEPA model that calculates the real cost of a proposed SEP.

There are three types of costs that may be associated with performance of a SEP that are to be entered into the PROJECT model to determine the SEP COST and appropriate monetary fine mitigation:

1. Capital costs (e.g., equipment or buildings);
2. One-time non-depreciable costs (e.g., removing contaminated materials, purchasing land, or developing a compliance promotion seminar); and

² Additional information about the PROJECT model can be found at: <https://www.epa.gov/enforcement/penalty-and-financial-models>.

3. Annual operation costs and savings (e.g., labor, chemicals, water, power, or raw materials).

The PROJECT model calculated SEP COST is a reasonable estimate of the net present after-tax cost of the SEP to the alleged violator. It is not an exact, after-tax calculation because the PROJECT model does not evaluate the potential for market benefits that may accrue with the performance of a SEP (e.g., increased sales of a product, improved corporate public image, or improved employee morale) nor does it consider costs imposed on the government, such as the cost to EGLE for oversight of the SEP or the burden of a lengthy negotiation with an alleged violator who does not propose a SEP until late in the settlement process. Such factors should be considered when determining a mitigation percentage rather than calculating after-tax cost.

To use the PROJECT model, the alleged violator must provide, as part of the SEP proposal, reliable estimates of the costs associated with an alleged violator's performance of a SEP, as well as any savings due to such factors as energy efficiency gains, reduced materials costs, reduced waste disposal costs, or increases in productivity. For example, if the annual expenditures in labor and materials of operating a new waste recycling process is \$100,000 per year, but the new process reduces existing hazardous waste disposal expenditures by \$30,000 per year, the net cost of \$70,000 is entered into the PROJECT model (see variable 4 in the model). In the event reliable cost information is not provided by the alleged violator, the SEP proposal should be denied.

In order to run the PROJECT model properly and, thus, produce a reasonable estimate of the net present after-tax cost of the project, the number of years that annual operation costs or savings will be expended in performing the SEP must be specified. At a minimum, the alleged violator must be required to implement the project for the same number of years used in the PROJECT model calculation. For example, if the settlement requires the alleged violator to operate the SEP equipment for two years, two years should be entered as the input for number of years of annual expense in the PROJECT model. If certain costs or savings appear speculative, they should not be entered into the PROJECT model.

EGLE does not offer tax advice on whether an alleged violator may deduct SEP expenditures from its income taxes. If an alleged violator states that it will not deduct the cost of a SEP from its taxes and is willing to commit to this in the settlement and provide EGLE with certification upon completion of the SEP that it has not deducted the SEP expenditures, the PROJECT model calculation should be adjusted to calculate the SEP COST without reductions for taxes. This is a simple adjustment to the PROJECT model: just enter a zero for variable 7, the marginal tax rate. If a business is not willing to make this commitment, the marginal tax rate in variable 7 should not be set to zero, rather the default settings (or a more precise estimate of the business's marginal tax rates) should be used in variable 7.

If the PROJECT model reveals that a project has a negative cost during the period of performance of the SEP, this means that it represents a positive cash flow to the alleged violator and is a profitable project. Such a project is not acceptable as a SEP. If a project generates a profit, an alleged violator should, and probably will, based on its own economic interests, implement the project. While EGLE encourages regulated entities to undertake environmentally beneficial projects that are economically profitable, EGLE does not believe the alleged violators should receive a bonus in the form of penalty mitigation to undertake such projects as part of an enforcement action.

Step 3: Evaluation Criteria and Quality Factors

The amount of the SEP Cost to be applied as an offset against the agreed settlement amount is determined by evaluating the quality of the SEP.

1. Proposals should demonstrate that the project will effectively achieve or promote one or more of the following quality factors:
 - a. Significant Benefits to Public Health or the Environment – Projects that result in a quantifiable reduction in the release of a regulated pollutant or regulated toxic substance to the environment and reduction in risk to public health. Also, projects that involve the reduction of exposure to pollution or toxic substances in the community, climate change preparedness and/or promoting more resilient communities and infrastructure, and protecting and restoring ecosystems would fall under this quality rating factor. These projects result in significant environmental and public health benefit to the affected community and environment.
 - b. Innovative – Projects that further development, implementation, or dissemination of innovative processes, technologies, and/or methods that more effectively reduce the generation, release, or disposal of pollutants; conserve natural resources; restore or protect ecosystems; improve compliance; or improve climate change preparedness or resilience.
 - c. Pollution Prevention or Reduction – Projects that result in pollution prevention or reduction techniques and practices that reduce the generation of a pollutant, eliminate a waste or render it less hazardous or toxic, or further reduce the amount of pollution released into the environment.
 - d. Multimedia – Projects that reduce pollutants and/or toxic substances from more than one medium.
 - e. Environmental Justice – Projects that mitigate damage or reduce risk to an environmental justice community that may have been disproportionately exposed to pollution or are at environmental risk.
 - f. Community Input – Meaningful involvement and input from the affected community was solicited and considered in developing the project proposal.

The appropriate offset for the monetary fine related to a specific settlement will be determined by EGLE based on these factors and other case-specific circumstances.

2. Secondly, to be approved, all SEPs must be rated as Outstanding or High Quality as described below.
 - a. Outstanding SEPs may be given one hundred percent (100%) mitigation percentage in the following circumstances:
 - 1) The alleged violator is a small business, non-profit organization, or government entity;
 - 2) The pollution prevention SEP that will significantly and quantifiably reduce or eliminate the generation of a pollutant at its source;

- 3) The SEP was developed with community input and provides significant benefits to an environmental justice community; or
 - 4) The SEP addresses three (3) of the six (6) quality factors.
- b. High quality SEPs may be given seventy-five percent (75%) mitigation percentage if the SEP addresses at least two (2) of the six (6) quality factors. If a proposed SEP does not score at least a high-quality rating, it will not be approved.

Step 4: Mitigation Credit

Determine the amount of credit spent on the SEP that the alleged violator will receive as an offset to the initial agreed settlement amount:

1. Multiply the SEP cost by the mitigation percentage to get the mitigation credit.
2. Then subtract the mitigation credit from the agreed settlement amount to get the mitigated settlement amount.

Step 5: Final Settlement Monetary Fine

The final monetary fine is the greater of the gravity portion of the minimum monetary fine calculated in Step 1 and the mitigated settlement amount calculated in Step 4.

Settlement Agreement SEP Requirements

A settlement, under which the alleged violator is obligated to perform an approved SEP in lieu of paying monetary fines or a portion thereof, shall contain the following provisions and any other provision or requirement that EGLE determines is appropriate to ensure that the SEP will be conducted in accordance with the settlement and that the settlement is in the best interest of the State of Michigan:

1. A detailed scope of work of the approved SEP that identifies the activities or actions to be performed, the implementation schedule, and amount to be expended in performance of the SEP.
2. A reliable and objective means of verifying that the alleged violator has timely completed the project. This may require the alleged violator to submit periodic reports to EGLE and to submit the identity of persons involved in the implementation of the SEP (e.g., third-party auditors).
3. A statement identifying that the alleged violator remains responsible for the quality and timeliness of any actions performed or any reports prepared or submitted by an auditor.
4. A provision for, to the extent feasible, the alleged violator to quantify the benefits associated with the project and provide EGLE with a report setting forth how the benefits were measured or estimated.
5. A provision for the alleged violator to submit a final report certified by an appropriate corporate official, acceptable to EGLE, evidencing SEP completion and documenting SEP expenditures.
6. A provision for the assessment of stipulated penalties for failure to implement the approved SEP in accordance with the scope of work.
7. A provision for a statement identifying that the obligation to perform the SEP is not transferable to any other person.

8. A provision for a statement identifying that whenever the alleged violator publicizes a SEP or the results of a SEP, the alleged violator will state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action.

PROCEDURE

Step	Who	Does What
1	Division Enforcement Case Coordinator	The Division Enforcement Case Coordinator assigned to the case will share this SEP policy and procedure, if requested, with the alleged violator during the settlement negotiations.
2	Division Enforcement Case Coordinator	The Division Enforcement Case Coordinator assigned to the case will: <ul style="list-style-type: none"> • Review the proposed project according to the terms of this policy and procedure in a timely manner; • Share the proposed project with EGLE District staff and any other pertinent division staff; • Share the proposed project with EGLE’s Environmental Justice Public Advocate, where appropriate; • Coordinate any comments received from EGLE staff related to the proposed project; and • Share comments related to the proposed project with the alleged violator in a timely manner.
3	Division Enforcement Case Coordinator	The Division Enforcement Case Coordinator assigned to the case, in consultation with the Enforcement Supervisor, will approve or disapprove of the project pursuant to this policy and procedure and provide the appropriate monetary fine mitigation during the settlement negotiations. If approved, the Division Enforcement Case Coordinator will include the appropriate SEP language in the settlement terms and attach the final SEP to the settlement document.

APPROVING AUTHORITY



Liesl Eichler Clark, Director

HISTORY

Policy No.	Action	Date	Title
04-002	Original	11/10/1997	Supplemental Environmental Projects for Penalty Mitigation
04-002	Revision	04/15/2005	Same as Above
04-002	Revision	08/07/2020	Same as Above

CONTACT/UPDATE RESPONSIBILITY

Any questions or concerns regarding this policy and procedure should be directed to Jenine Camilleri, Enforcement Unit Supervisor, Air Quality Division, at 517-643-2612 or CamilleriJ@Michigan.gov.

APPENDIX

Appendix A – Supplemental Environmental Project Submittal Guideline

An EGLE policy and procedure cannot establish regulatory requirements for parties outside of EGLE. This document provides direction to EGLE staff regarding the implementation of rules and laws administered by EGLE. It is merely explanatory, does not affect the rights of or procedures and practices available to the public, and does not have the force and effect of law. EGLE staff shall follow the directions contained in this document.

APPENDIX A

SUPPLEMENTAL ENVIRONMENTAL PROJECT SUBMITTAL GUIDELINE

This submittal guideline is to be used by alleged violators seeking to mitigate monetary fines imposed by the Department of Environment, Great Lakes, and Energy (EGLE) in settlement of an enforcement action through the performance of a Supplemental Environmental Project (SEP). In order for enforcement staff to consider a SEP proposal, the following information is to be submitted within 30 days of the EGLE proposal of the monetary fine for settlement, unless an extension is granted by EGLE:

1. **Name and Location of Entity Subject to the Enforcement Action** – Identify the name of the entity and the location of the site associated with the enforcement action, including the city and county.
2. **Regulatory Information** – Summary of the violations to be resolved through the enforcement action, including relevant permit and account numbers.
3. **Project Name** – SEP title.
4. **Project Manager** – Name, mailing address, phone number, and email of project manager. This may also include the organization conducting the project (if different from the alleged violator) and the person who will be responsible for submitting status reports (if different from the project manager). If the project will be conducted by a third party to the EGLE enforcement action, the proposal should be accompanied by a letter or resolution from the appropriate board, governing body, or executive staff expressing the organization's commitment to the project if approved.
5. **Geographical Area to Benefit from the Project** – Identify the cities, counties, watersheds, etc., that would benefit from the project.
6. **SEP Categories** – Identify which of the following SEP categories the proposal meets:
 - a. Pollution Prevention
 - b. Pollution Reduction
 - c. Environmental Restoration and Protection
 - d. Public Health
 - e. Environmental Assessments
 - f. Environmental Awareness
 - g. Emergency Planning and Preparedness
 - h. Climate Change Mitigation and Preparedness
 - i. Other
7. **Project Description** – Describe, in detail, the project, including the following information: need for the project, detailed scope of the project, any environmental studies completed, availability of other similar services or projects in the area, and project implementation tasks such as technology, operation, or process changes.

8. **Expected Environmental Benefits** – Explain the expected environmental benefits of this project and quantify the environmental benefits to the greatest extent possible. For example, the amount of each pollutant that is expected to be reduced beyond the level required for environmental compliance; or participants, programs offered, sites cleaned, types of contamination contained/removed, acres restored or affected, etc.
9. **Project Budget** – Provide projected initial and annual project costs with specific line item expenditures. Costs must be clearly and solely attributable to the proposed SEP. Include the following information where applicable in the submittal:
 - a. Whether the company is a “C” corporation, an “S” Corporation, a partnership, a proprietorship, a municipality, or other entity for tax purposes.
 - b. Capital costs of project.
 - c. Useful life of capital equipment in years.
 - d. The one-time, non-depreciable costs and whether they are tax deductible.
 - e. Annual operation costs of the project.
 - f. Any savings generated as a result of the project.
10. **Project Schedule** – Provide a schedule that addresses project implementation, the submittal of status reports to EGLE, and the anticipated completion date. Project implementation must not commence until after EGLE has approved the SEP in a settlement. The schedule must provide sufficient detail for EGLE staff to monitor progress towards the completion of the SEP.
11. **Accounting** – Describe how SEP expenditures would be accounted for if a third party is the proposed project implementer.
12. **Reporting** – Describe the specific information and documentation to be included in project status reports. Project reports must provide enough information for EGLE to monitor the project implementation status, to verify and document the proper expenditure of SEP funds, and to evaluate the effectiveness and benefits of the SEP.
13. **Prior Commitments and/or Regulatory Requirements:**
 - a. Identify any applicable local, state, or federal regulations that would require implementation of this project or any part of this project.
 - b. Identify any binding private commitments to implement this project or any part of this project.
 - c. Identify any other requirement to implement this project or any part of this project.
 - d. Indicate the time frame for implementation of the project under any commitments.
14. **Certification of Expenditures by the Alleged Violator** – Provide a separate certification that the proposed SEP is solely attributable to the settlement of the current enforcement action and that no funding has been budgeted to the project prior to the approval of the project, nor is the proposed project funded by grants, donations, low interest loans, or other sources of funding not attributable to the alleged violator’s normal budgetary process. Also, certify that the proposed project is not being done, nor will receive credit, as part of an environmental incentive or awards program offered by local, state, or federal government, industry, etc.