



# EPA needs to reinstate a critical environmental tool scrapped by Trump

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In its first year in office, the Biden administration has, to its credit, reversed a number of anti-environmental policies initiated by former President Donald Trump.

Gone is the previous administration's infamous "two-for-one" policy, under which federal agencies had to eliminate two regulatory requirements for every new regulation they proposed. Numerous Trump-era initiatives that cut back needed air and water quality protections have also been rescinded. And, thankfully, the U.S. Environmental Protection Agency (EPA) and other federal agencies are once again focused on responding to the mounting dangers posed by the climate crisis.

Given these steps forward, it is perplexing that the current administration has not yet restored a critical environmental tool that has proven workable and highly beneficial in past years: EPA's Supplemental Environmental Projects (SEPs).

SEPs are environmentally beneficial projects, undertaken by environmental law violators in settlement agreements with EPA or a state environmental agency, usually in exchange for some reductions in monetary penalties. They benefit industry as well as the environment since they allow violators to present an environmentally friendly face to the community. They may also allow defendants to gain state and federal tax advantages not otherwise available to them. At the same time, violators commit to improving and protecting the environment using funds that would, through ordinary penalties, merely be absorbed into the federal or a state treasury.

Under policies established by EPA and many states, settlement agreements that establish a SEP must adhere to a number of legal guidelines. The most important is the requirement that the project have an adequate "nexus" — in other words, a relationship with the violation in question. That relationship may only be established if the project will reverse the adverse impact or the overall risk to public health that the violation created, or the project will reduce the likelihood that similar violations will occur in the future.

Beyond this, the project must fall into one of several specific categories. These include projects that prevent or remediate the adverse public health impacts of the company's pollution, restore or protect human-created environments, conduct an environmental compliance program, or assist a local emergency response or planning program.

Certain types of projects are not acceptable as SEPs. These include contributions to environmental research at a college or university, public educational or environmental public awareness programs, as well as projects such as charitable contributions which, though beneficial to a community, are unrelated to environmental protection.

Beyond this, violators who undertake SEPs must pay at least some monetary penalties related to either the gravity of their environmental violations or the economic benefit they obtained by violating environmental laws.

The SEPs program was started by EPA and most states in the mid-1990s. Until it was suspended during the Trump administration, the program was widely implemented and enjoyed outstanding success. In fiscal year 2006, for example, EPA settled 220 cases requiring environmental defendants to implement SEPs. Those cases had a value of over \$78 million. Although not all polluters chose to enter into settlements featuring SEPs, enough did so that the program was widely viewed as a win-win-win for government, industry and the public.

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Given its significant past achievements and its widespread popularity, it is surprising and distressing that neither EPA nor the U.S. Department of Justice have revived the SEPs program yet. Perhaps this situation will change for the better when — after a long delay — David Uhlmann, the administration's nominee to be EPA's next assistant administrator for enforcement and compliance assurance, is confirmed by the U.S. Senate.

In the meantime, EPA's continuing failure to resume the SEPs program is an anomalous and troubling feature of its renewed enforcement efforts.

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