



HOW THE MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE COPIED FROM THE US LAW IN ORDER TO PROVIDE AN ESCAPE ROUTE FOR VIOLATORS

**ANALYSIS BY EIA RESOURCE AND RESPONSE CENTRE AND LEGAL INITIATIVE FOR FOREST AND
ENVIRONMENT**

The U.S. Environmental Protection Agency passed the Supplemental Environmental Policy (SEP), 2015 Update in order to make certain changes to the environmental regime in the US and to bring “defendants” back to compliance by entering into a settlement with the US Government. The EPA has described the same as “not required by law”, but as something which the defendant agrees to undertake as part of a settlement. Therefore, essentially, the SEP is a settlement that is an escape route for violators of environmental laws to come back to compliance. The end result is that there will be irreversible environmental damage as violators will be allowed to go scot free by merely implementing an SEP.

EIA Resource and Response Centre (ERC India) did a comparative analysis of the US law and the new draft Notification and the table below is self explanatory. It reveals how the MOEF&CC in order to circumvent the Judgment of the National Green Tribunal, copied the provisions of the US law and made only cosmetic changes and if notified, will allow violators to get environmental clearance.

The SEPs as prescribed by the EPA are to be structured so as to help to further the EPA’s mission and involve activities such as children’s health, ensuring public health, promoting pollution prevention, encouraging the development of innovative technologies that protect human health and the environment and addressing climate change.

The Ministry of Environment, Forests and Climate Change passed a similar draft notification on 10th May, 2016, which seeks to bring into force the concept of an Environmental Supplemental Plan (ESP) which seeks to bring violators of the EIA Notification, 2006, back to compliance. The concept is that in the event that a project proponent circumvents the EIA Notification, 2006 and goes ahead with construction activities in violation of the Notification of 2006, he can be brought back to compliance by taking up an ESP, the definition of which is very vague and will not undo the irreversible environmental damage caused by the project proponent. The essence of the ESP is the same as that of an SEP under US law. Thus, an ESP is essentially a settlement that allows the violator to get away with undertaking construction activities in violation of the EIA Notification, 2006 without having to face any severe consequences.

On a bare perusal of the notifications issued by the Governments of the United States and India, the striking similarities are hard to miss. A large chunk of the Indian Notification has been copied verbatim from the one issued by the United States. Both the Supplemental Plans mention clearly that the intention is not to amend the main Act, but is merely to bring the violator back to compliance by prescribing a set of conditions with which the project proponent would have to comply. The extent of similarity between the two laws has been displayed in the table below:

Clause	United States - SEP	Clause	India – ESP
Introduction	A Supplemental Environmental Project (SEP) is an environmentally beneficial project or activity that is not required by law, but that a defendant agrees to undertake as part of the settlement of an enforcement action. SEPs are projects or activities that go beyond what could legally be required in order for the defendant to	Clause 1	An Environmental Supplemental Plan (ESP) is an environmentally beneficial project or activity that is not required by law, but that an alleged violator of Environmental Impact Assessment Notification, 2006 agrees to undertake as part of the process of environmental clearance... The primary purpose of the Environmental Supplemental Plan

	<p>return to compliance, and secure environmental and/or public health benefits in addition to those achieved by compliance with applicable laws.</p> <p>The primary purpose of the SEP Policy is to encourage and obtain environmental and public health protection and benefits that may not otherwise have occurred in the settlement of an enforcement action.</p>		<p>is to discourage violations of the Environment Impact Assessment Notification, 2006, and to obtain environmental and public health protection and benefits that may not otherwise have occurred.</p>
Introduction B	<ol style="list-style-type: none"> 1. Ensure that the project conforms to the basic definition of a SEP (Section III); 2. Ensure that all legal guidelines are satisfied (Section IV); 3. Ensure that the project fits within one (or more) of the designated categories of SEPs (Sections V and VI); 4. Determine the appropriate amount of penalty mitigation to reflect the project's environmental and/or public health benefits using the evaluation criteria (Sections VIII and IX); and 	Section 3(ii), (2)(i-v)	<ol style="list-style-type: none"> (i) Ensure that the project conforms to the basic definition of an Environmental Supplemental Plan; (ii) Ensure that all legal guidelines are satisfied; (iii) Ensure that the project fits within one (or more) of the designated categories of Environmental Supplemental Plans; (iv) Determine the appropriate cost of remedying the ecological damage and amount of undue economic gain to the proponent due to violations or non compliance; and (v) Ensure that the project

	5. Ensure that the project satisfies all of the EPA procedures, settlement requirements and other criteria (Sections X-XII).		satisfies all of the procedures, and requirements of the Environment Impact Assessment Notification, 2006.
II (B)	<p>The EPA defines “environmental justice” (EJ) as the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations and policies...</p> <p>SEPs can help ensure that residents who spend significant portions of their time in, or depend on food and water sources located near the areas affected by violations will be protected....In some situations, members of a community impacted by an environmental violation may feel that they lack meaningful involvement in the enforcement process, including the selection of a SEP.</p>	Clause 4 (i)	<p>The “environmental justice” (EJ) will be defined as the fair treatment and meaningful involvement of all people, caste, colour, creed or income, with respect to the development, implementation, and enforcement of environmental laws, regulations and policies.....</p> <p>Environmental Supplemental Plan can help ensure that residents who spend significant portions of their time in, or depend on food and water sources located near the areas affected by violations will be protected.... In some situations, members of a community impacted by an environmental violation may feel that they lack meaningful involvement in the enforcement process, including the selection of an Environmental Supplemental Plan.</p> <p>The Ministry strongly encourages the Expert Group and proponents to reach out to the community for</p>

	<p>While members of an impacted community ordinarily would not be part of settlement negotiations, the EPA strongly encourages defendants to reach out to the community for SEP ideas and prefers SEP proposals that have been developed with input from the impacted community.</p>		<p>Environmental Supplemental Plan ideas and prefers Environmental Supplemental Plan proposals that have been developed with input from the impacted community.</p>
<p>II (C)</p>	<p>identifies an environmental management hierarchy in which pollution “should be prevented or reduced at the source whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other release into the environment should be employed only as a last resort”</p> <p>Selection and evaluation of proposed SEPs should be conducted in accordance with</p>	<p>Clause 4 (ii)</p>	<p>The Pollution Prevention identifies an environmental management hierarchy in which pollution shall be prevented or reduced at the source whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other release into the environment should be employed only as a last resort.</p> <p>Selection and evaluation of proposed Environmental Supplemental Plan should be conducted in accordance with this hierarchy of environmental</p>

	<p>this hierarchy of environmental management (e.g., SEPs that utilize techniques or approaches to prevent the generation of pollution are preferred over other types of pollution reduction or control strategies). Projects that prevent the generation of pollution often provide the chance to utilize new and innovative technologies. Pollution prevention is one of the listed SEP categories. Effectiveness in developing and implementing pollution prevention techniques and practices is also a factor in evaluating a SEP,</p>		<p>management (e.g., Environmental Supplemental Plan that utilize techniques or approaches to prevent the generation of pollution are preferred over other types of pollution reduction or control strategies). Projects that prevent the generation of pollution often provide the chance to utilize new and innovative technologies, effectiveness in developing and implementing pollution prevention techniques and practices is also a factor in evaluating an Environmental Supplemental Plan.</p>
<p>II (D)</p>	<p>Innovative Technology: SEPs provide defendants with an opportunity to develop and demonstrate new technologies that may prove more protective of human health and the environment than existing processes and procedures.</p> <p>SEPs also provide the EPA with a unique opportunity to observe and evaluate new technologies which might,</p>	<p>Clause 4 (iii)</p>	<p>Innovative Technology: Environmental Supplemental Plan will provide the proponent and the Expert Group with an opportunity to develop and demonstrate new technologies that may prove more protective of human health and the environment than existing processes and procedures.</p> <p>Environmental Supplemental Plan also provide the Expert Group or</p>

	<p>should they prove effective and efficient, lead to better standard industry practices.</p> <p>Technology innovations may also be a means to assure that future industry and other commercial practices are sustainable, reflect the best available technology, and lead to continued long-term pollution reductions and improved public and environmental health. Innovative technology can take a variety of forms and may be applied broadly across environmental media and commercial, industrial and municipal activities, processes and practices.</p> <p>...e monitors, e-reporting, web posting of data and independent third-party audits, may be appropriate for consideration as SEPs</p>	<p>Expert Appraisal Committee and State Expert Appraisal Committee with a unique opportunity to observe and evaluate new technologies which might, should they prove effective and efficient, lead to better standard industry practices.</p> <p>Technology innovations may also be a means to assure that future industry and other commercial practices are sustainable, reflect the best available technology, and lead to continued long-term pollution reductions and improved public and environmental health. Innovative technology can take a variety of forms and may be applied broadly across environmental media and commercial, and industrial activities, processes and practices.</p> <p>Innovative enforcement tools, such as automatic monitors, e-reporting, web posting of data and independent third-party audits, may be appropriate for consideration as Environmental Supplemental Plan</p>
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<p>II (E)</p>	<p>The Earth's climate is changing. Temperatures are rising, snow and rainfall patterns are shifting, and more extreme climate events – such as increased floods and droughts, coastal storms, and record high temperatures – are already taking place. These observed changes are linked to the climbing levels of carbon dioxide and other greenhouse gases in our atmosphere.</p> <p>Reducing greenhouse gas emissions through, for example, energy efficiency projects that reduce emissions by reducing energy demand can contribute to reducing climate change. Projects that address the causes of climate change and reduce or prevent emissions of climate change pollutants and greenhouse gases, such as carbon dioxide, may qualify as SEPs. In addition to working to curb climate change by reducing emissions, community members are taking action to make their communities more resilient in the face of climate impacts.</p>	<p>Clause 4(iv)</p>	<p>The Earth's climate is changing. Temperatures are rising, and rainfall patterns are shifting, and more extreme climate events such as increased floods and droughts, coastal storms, and record high temperatures are already taking place. These observed changes are linked to the increasing levels of carbon dioxide and other greenhouse gases in our atmosphere.</p> <p>Reducing greenhouse gas emissions through, for example, energy efficiency projects that reduce emissions by reducing energy demand can contribute to reducing climate change. Projects that address the causes of climate change and reduce or prevent emissions of climate change pollutants and greenhouse gases, such as carbon dioxide, will qualify as Environmental Supplemental Plan. In addition to working to curb climate change by reducing emissions, action by community members for adaptations to make the communities more resilient in the face of climate impacts will also qualify as ESPs.</p>
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	<p>Preparing infrastructure and natural ecosystems for the changes that will occur with a changing climate can help communities adapt to climate change and be more resilient in avoiding or recovering from events resulting from a changing climate..</p> <p>Projects that address the impacts of climate change and that help increase a community's resilience in the face of these impacts on ecosystems or infrastructure, may qualify as SEP.</p>		<p>Preparing infrastructure and natural ecosystems for the changes that will occur with a changing climate can help communities adapt to climate change and be more resilient in avoiding or recovering from events resulting from a changing climate</p> <p>Projects that address the impacts of climate change and that help increase a community's resilience in the face of these impacts on ecosystems or infrastructure, will qualify as Environmental Supplemental Plan</p>
IV (A) (III)	<p>The project must demonstrate that it is designed to reduce:</p> <p>a. The likelihood that similar violations will occur in the future;</p> <p>b. The adverse impact to public health and/or the environment to which the violation at issue contributes;</p> <p>or</p> <p>c. The overall risk to public health and/or the environment potentially affected by the violation at issue.</p>	Clause 5	<p>The project must demonstrate that it is designed to remediate the ecological damage caused due to violations and it will reduce,</p> <p>(a) The likelihood that similar violations will occur in the future;</p> <p>(b) The adverse impact to public health and the environment to which the violation at issue contributes;</p> <p>(c) The overall risk to public health and the environment potentially affected by the violation at issue.</p>
IV	The evaluation of whether a	Clause	The proposed Environmental

	<p>proposed SEP is within the EPA's authority and consistent with all statutory and constitutional requirements may be a complex task.</p>	6	<p>Supplemental Plan should be consistent with all statutory and Constitutional requirements</p>
IV (A) 3&4	<p>....primary impact of the project is at the site where the alleged violation occurred, at a different site in the same ecosystem, or within the immediate geographic area. SEPs may have nexus even if they address a different pollutant in a different medium, provided the project relates to the underlying violation(s).</p> <p>..to properly evaluate a SEP's characteristics (the "what, where, when" of the SEP), and establish the connection to the underlying violation being resolved, the type and scope of each project must be specifically described and defined. Without a well-defined project with clear environmental or public health benefit, the EPA cannot demonstrate nexus.</p>	Clause 7	<p>.....primary impact of the project is at the site where the alleged violation has occurred, at a different site in the same ecosystem, or within the immediate geographic area. Environmental Supplemental Plan may be related even if they address a different pollutant in a different medium, provided the project relates to the underlying violation(s).</p> <p>...to properly evaluate an Environmental Supplemental Plan characteristics (the "what, where, when" of the Environmental Supplemental Plan), and establish the connection to the underlying violation being resolved, the type and scope of eachproject must be specifically described and defined. Without a well-defined project with clear environmental or public health benefit, the Expert Group cannot demonstrate inter-relatedness.</p>

V (A)	<p>Public health projects include those that provide diagnostic, preventative and/or health care treatment related to the actual or potential harm to human health caused by the violation. 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 and rehabilitation therapy. Examples of public health SEPs include blood lead level testing, asthma screening and treatment and mobile health clinics. Public health SEPs may also include projects such as mosquito eradication programs or donation of antimicrobial products to assist in natural disaster situations. Public health SEPs are acceptable only where the primary beneficiary of the project is the population that was harmed or put at risk by the violations.</p>	Clause 8 (i)	<p>Public Health: Public health projects include those that provide diagnostic, preventative and health care treatment related to the actual or potential harm to human health caused by the violation. This includes, but is not limited to, epidemiological data collection and analysis, medical examinations of potentially affected persons, collection and analysis of blood or fluid or tissue samples, medical treatment and rehabilitation therapy. Examples of public health Environmental Supplemental Plan include blood lead level testing, asthma screening and treatment and mobile health clinics. Public health Environmental Supplemental Plan may also include projects such as mosquito eradication programs or donation of antimicrobial products to assist in natural disaster situations. Public health Environmental Supplemental Plan are acceptable only where the primary beneficiary of the project is the population that was harmed or put at risk by the violations.</p>
V (B)	A pollution prevention project	Clause	Pollution Prevention: A pollution

	<p>prevents pollution at its source, before it is generated. It 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 (i.e., pollution reduction). Source reduction projects may include equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, inventory control, or other operation and maintenance procedures. Pollution prevention also includes any project which protects natural resources through conservation or increased efficiency in the use of energy, water, or other</p>	8(ii)	<p>prevention project prevents pollution at its source, before it is generated. It includes any practice that reduces the quantity and 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 (i.e., pollution reduction). Source reduction projects may include equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, inventory control, or other operation and maintenance procedures. Pollution prevention also includes any project which protects natural resources through conservation or increased efficiency in the use of energy, water, or other materials, as well as “in-process recycling” wherein waste materials produced during a manufacturing process are</p>
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<p>materials, as well as “in-process recycling” wherein waste materials produced during a manufacturing process are returned directly to production as raw materials on-site. Projects that replace or reduce the use of traditional energy sources with alternative energy sources or that implement energy efficiency activities, potentially reducing air pollutants associated with electric power generation and greenhouse gases that contribute to climate change, may qualify as pollution prevention SEPs.</p> <p>In all cases, for a project to meet the definition of pollution prevention, there must be an overall decrease in the amount and/or toxicity of pollution produced and released into the environment, not merely a transfer of pollution among media. This decrease may be achieved directly or through increased efficiency and conservation in the use of energy, water, or other materials.</p>	<p>returned directly to production as raw materials on-site. Projects that replace or reduce the use of traditional energy sources with alternative energy sources or that implement energy efficiency activities, potentially reducing air pollutants associated with electric power generation and greenhouse gases that contribute to climate change, may qualify as pollution prevention Environmental Supplemental Plan.</p> <p>In all cases, for a project to meet the definition of pollution prevention, there must be an overall decrease in the amount and/or toxicity of pollution produced and released into the environment, not merely a transfer of pollution among media. This decrease may be achieved directly or through increased efficiency and conservation in the use of energy, water, or other materials.</p>
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V (C)	<p>If the pollutant or waste stream already has been generated or released, a pollution reduction approach which employs recycling, treatment, containment or disposal techniques may be appropriate. A pollution reduction project is one which results in a decrease in the amount and/or toxicity of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise being released into the environment by an operating business or facility by a means which does not qualify as “pollution prevention.” This type of SEP may include the installation of a more effective end-of-process control or treatment technology, improved containment, or safer disposal of an existing pollutant source. Pollution reduction also includes “out-of-process recycling,” wherein industrial waste collected after the manufacturing process and/or consumer waste materials are used as raw materials for off-</p>	Clause 8 (iii)	<p>Pollution Reduction: If the pollutant or waste stream already has been generated or released, a pollution reduction approach which employs recycling, treatment, containment or disposal techniques may be appropriate. A pollution reduction project is one which results in a decrease in the amount and toxicity of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise being released into the environment by an operating business or facility by a means which does not qualify as “pollution prevention.” This type of Environmental Supplemental Plan may include the installation of a more effective end-of-process control or treatment technology, improved containment, or safer disposal of an existing pollutant source. Pollution reduction also includes “out-of-process recycling,” wherein industrial waste collected after the manufacturing process and consumer waste materials are used as raw materials for off-site production.</p>
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	site production.		
V (D)	<p>An environmental restoration and protection project is one which enhances the condition of the ecosystem or immediate geographic area adversely affected by the violation.¹⁹ These projects may be used to restore or protect natural environments and address environmental contamination and similar issues in man-made environments, and may include any project that protects the ecosystem from actual or potential damage resulting from the violation or that improves the overall condition of the ecosystem. Examples of such projects include: restoration of a wetland in the same ecosystem along the same avian flyway in which the facility is located, or purchase and management of a watershed area to protect a drinking water supply where the violation (<i>e.g.</i>, a reporting violation) did not directly damage the watershed but potentially could lead to damage due to unreported discharges. This category also</p>	Clause 8 (iv)	<p>Environmental Restoration and Protection: An environmental restoration and protection project is one which enhances the condition of the ecosystem or immediate geographic area adversely affected by the violation. These projects may be used to restore or protect natural environments and address environmental contamination and similar issues in man-made environments, and may include any project that protects the ecosystem from actual or potential damage resulting from the violation or that improves the overall condition of the ecosystem. Examples of such projects include: restoration of a wetland in the same ecosystem along the same avian flyway in which the facility is located, or management of a watershed area to protect a drinking water supply where the violation (<i>e.g.</i>, a reporting violation) did not directly damage the watershed but potentially could lead to damage due to unreported discharges. This category also includes projects which provide for the</p>

	<p>includes projects which provide for the protection of endangered species (e.g., developing conservation programs or protecting habitat critical to the well-being of a species endangered by the violation).</p>		<p>protection of endangered species (e.g., developing conservation programs or protecting habitat critical to the well-being of a species endangered by the violation). In projects where the restoration work has been done, the Environmental Supplemental Plan may, under certain circumstances, include the creation or maintenance of certain recreational improvements.</p>
V (E)	<p>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. To be eligible as SEPs, such assessments must be conducted using a recognized pollution prevention assessment or waste minimization procedure.</p> <p>Pollution prevention assessments are acceptable as SEPs without an</p>	<p>Clause 8 (v) (a)</p>	<p>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. To be eligible as Environmental Supplemental Plan, such assessments must be conducted using a recognized pollution prevention assessment or waste minimization procedure.</p> <p>Pollution prevention assessments are acceptable as Environmental Supplemental Plan without an implementation commitment by the proponent where the Expert</p>

	implementation commitment by the defendant where the case team determines that the SEP delivers other benefits worthy of SEP credit		Group determines that the Environmental Supplemental Plan delivers other benefits.
V (E) (2)	Environmental quality assessments are investigations of: the condition of the environment at a site not owned or operated by the defendant; the environment impacted by a site or a facility regardless of whether the site or facility is owned or operated by the defendant; 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 defendant. 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 Certain federal agencies have explicit statutory authority to accept	Clause 8 (v) (b)	Environmental quality assessments are investigations of the condition of the environment at a site not owned or operated by the proponent; the environment impacted by a site or a facility regardless of whether the site or facility is owned or operated by the proponent; 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 proponent. 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 over-burdened communities, and inform and enhance efforts to reduce potential environmental risks and

	<p>gifts such as land, money, or in-kind services. All projects benefitting these federal agencies must be reviewed and approved in advance by the office of the chief legal counsel of the recipient agency for consistency with statutory authority activities are important as the data can empower over-burdened communities, and inform and enhance efforts to reduce potential environmental risks and hazards. To be eligible as SEPs, such assessments must be conducted in accordance with recognized protocols, if available, applicable to the type of assessment to be undertaken</p>		<p>hazards. To be eligible as Environmental Supplemental Plan, such assessments must be conducted in accordance with recognized protocols, if available, applicable to the type of assessment to be undertaken.</p>
V (F)	<p>Environmental Compliance Promotion An environmental compliance promotion project provides training or technical support to other members of the regulated community in order to: (1) identify, achieve, and maintain compliance with applicable statutory and regulatory requirements or (2) go beyond compliance by reducing the generation,</p>	<p>Clause 8 (vi)</p>	<p>Environmental quality assessments are investigations of the condition of the environment at a site not owned or operated by the proponent; the environment impacted by a site or a facility regardless of whether the site or facility is owned or operated by the proponent; or threats to human health or the environment relating to a site or a facility regardless of whether the site or</p>

	<p>release, or disposal of pollutants beyond legal requirements. For these types of projects, the defendant may lack the experience, knowledge, or ability to implement the project itself and, if so, the defendant should be required to contract with an appropriate expert to develop and implement the compliance promotion project. Acceptable projects may include, for example, producing a seminar directly related to correcting widespread or prevalent violations within the defendant's economic sector. Environmental compliance promotion SEPs are acceptable only where the primary impact of the project is focused on the same regulatory program requirements that were violated and where the EPA has reason to believe that compliance in the sector would be significantly advanced by the proposed project.</p>		<p>facility is owned or operated by the proponent. 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 over-burdened communities, and inform and enhance efforts to reduce potential environmental risks and hazards. To be eligible as Environmental Supplemental Plan, such assessments must be conducted in accordance with recognized protocols, if available, applicable to the type of assessment to be undertaken.</p>
VII	<p>In appropriate cases, the EPA should encourage input on</p>	9	<p>Community Involvement: The Expert Group should encourage</p>

<p>project proposals from the local community that may have been adversely impacted by the violations.... If a case team is aware of community interest in particular SEPs, the case team should feel free to share that information with the defendant. Soliciting community input during the SEP development process can: result in SEPs that better address the needs of the impacted community; promote environmental justice; produce better community understanding of EPA enforcement; and improve relations between the community and the violating facility..... Community involvement in SEPs may be most appropriate in cases where the range of possible SEPs is great and/or multiple SEPs may be negotiated. Involving communities in consideration of SEPs enables the EPA and defendant to focus on the particular environmental priorities and concerns of a community, which is especially important</p>	<p>input on project proposals from the local community that may have been adversely impacted by the violations. If the Expert Group is aware of community interest in Particular Environmental Supplemental Plan, the Expert Group should feel free to share that information with the proponent. Soliciting community input during the Environmental Supplemental Plan development process can result in Environmental Supplemental Plan that better address the needs of the impacted community; promote environmental justice; produce better community understanding of environmental laws; and improve relations between the community and the proponent's facility. Community involvement in Environmental Supplemental Plan may be most appropriate in cases where the range of possible Environmental Supplemental Plan is great and multiple Environmental Supplemental Plan, may be formulated. Involving communities in consideration of Environmental Supplemental Plan will enables</p>
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	<p>if several different SEPs are being considered. The community also can be a valuable source of SEP ideas, including ideas that result in creative or innovative SEPs that might not otherwise have been considered.</p>		<p>the Expert Group and the proponent to focus on the particular environmental priorities and concerns of a community, which is especially important if several different Environmental Supplemental Plan are being considered. The community also can be a valuable source of Environmental Supplemental Plan ideas, including ideas that result in creative or innovative Environmental Supplemental Plan that might not otherwise have been considered.</p>
IX, IX A	<p>In settling enforcement actions, the EPA requires alleged violators to promptly cease the violations and, to the extent feasible, remediate any harm caused by the violations...</p> <p>Penalties promote environmental compliance and help protect public health by deterring future violations by the same violator and other members of the regulated community. Penalties help maintain a national level playing field by ensuring that violators do not obtain an</p>	Clause 10	<p>In cases of violations the primary requirement is that the alleged violators promptly cease the violations and, to the extent feasible, remediate any harm caused by the violations. The purpose is also to deter non-compliance. Environmental Supplemental Plan should promote environmental compliance and help protect public health by deterring future violations by the same violator and other members of the regulated community. Environmental Supplemental Plan should also help maintain a level</p>

	<p>unfair economic advantage over their competitors who made the necessary expenditures to comply on time.</p> <p>IX(A) In calculating an appropriate penalty, the EPA considers factors such as the economic benefit associated with the violations, the gravity or seriousness of the violations and the violator’s prior history of noncompliance. Settlements that include a SEP must always include a settlement penalty that recoups 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 caused by the violation(s). SEPs</p>		<p>playing field by ensuring that violators do not obtain an unfair economic advantage over their competitors who made the necessary expenditures to comply on time. In designing an Environmental Supplemental Plan, the Expert Group should consider factors such as the economic benefit associated with the violations, the gravity or seriousness of the violations and the violator’s prior history of noncompliance. Environmental Supplemental Plan must always recoups the economic benefit a violator gained from noncompliance with the law, as well as an appropriate gravity-based component reflecting the environmental and regulatory harm caused by the violation(s).....</p>
X (A)	<p>The settlement agreement must accurately and completely describe the SEP. It must describe the specific actions to be performed by the</p>	<p>Clause 11</p>	<p>The Environmental Supplemental Plan must describe the specific actions to be performed by the project proponent, and should include a completion deadline</p>

	<p>defendant, and should include a completion deadline and, where appropriate, interim milestones for long-term or complex SEPs, as well as a detailed cost estimate..... For complex or long-term SEPs, including a requirement for the defendant to submit periodic status reports is recommended.</p>		<p>and, where appropriate, interim milestones for long-term or complex ESPs.... For complex or long-term Environmental Supplemental Plans, including a requirement for the proponent to submit periodic status reports along with six monthly compliance status of Environmental Clearance should be done.</p>
<p>X (B)</p>	<p><i>With regard to the SEP, Defendant certifies the truth and accuracy of each of the following:</i></p> <p><i>a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Defendant in good faith estimates that the cost to implement the SEP[, exclusive of ____ costs,] is \$_____;</i></p> <p><i>b. That, as of the date of executing this Decree, Defendant is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant,</i></p>	<p>Clause 12</p>	<p>With regard to the Environmental Supplemental Plan, the project proponent shall certify the truth and accuracy of each of the following:</p> <p>(a) That all cost information provided to the Expert Group in connection with the Environmental Supplemental Plan is complete and accurate and that the proponent in good faith estimates that the cost to implement the Environmental Supplemental Plan is Rs. ----- ;</p> <p>(b) That on the date of executing this Environmental Supplemental Plan, the proponent is not required to perform these tasks by any Central, State, or local laws;</p> <p>(c) That the proponent will not receive reimbursement for any</p>

	<p><i>or as injunctive relief awarded in any other action in any forum;</i></p> <p><i>c. That the SEP is not a project that Defendant was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;</i></p> <p><i>d. That Defendant has not received and will not receive credit for the SEP in any other enforcement action;</i></p> <p><i>e. That Defendant will not receive reimbursement for any portion of the SEP from another person or entity;</i></p>		<p>portion of the Environmental Supplemental Plan from another government institution or entity;</p> <p>(d) That for income tax purposes, the proponent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the Environmental Supplemental Plan.</p>
X (D)	<p>The settlement agreement should require submission of a final SEP completion report from the defendant. This report should be certified by an appropriate corporate official acceptable to the EPA. At a minimum, the report should provide evidence of SEP completion (which may include, but is not limited to, photos, vendor invoices or receipts, correspondence from SEP recipients, etc.) and document all SEP</p>	Clause 13	<p>Environmental Supplemental Plan Completion Report: The project proponent will be required to submit final Environmental Supplemental Plan completion report. This report should be signed by the company's officer heading the Environmental Cell and certified by a chartered accountant. The report should provide evidence of Environmental Supplemental Plan completion (which may include, but is not limited to, photos, vendor invoices or receipts,</p>

	<p>expenditures. To the extent feasible, defendants should be required to quantify the benefits associated with the project and provide the EPA with a report setting forth how the benefits were measured or estimated. Additional requirements may be necessary, depending on the nature of the SEP.</p>		<p>correspondence from Environmental Supplemental Plan recipients, etc.) and document all Environmental Supplemental Plan expenditures. To the extent feasible, the proponent should be required to quantify the benefits associated with the project and provide the authority with a report setting forth how the benefits were measured or estimated. These reports will be filed with the Regional Office of the Ministry.</p>
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