

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

POLICY AND PROCEDURE

SUBJECT: STANDARD OPERATING PROCEDURES FOR INCORPORATING SUPPLEMENTAL ENVIRONMENTAL PROJECTS INTO SETTLEMENT AGREEMENTS AND ADMINISTRATIVE CONSENT ORDERS

EFFECTIVE DATE: February 15, 2024

ISSUED BY: 
Kimberly Cahall, Chief Enforcement Officer

Date: January 31, 2024

APPROVED BY:  **Date:** 2/7/24
Sean Moriarty, Deputy Commissioner

I. Scope

This policy shall be in effect for all organizational units of the Department of Environmental Protection (DEP or Department) when incorporating a Supplemental Environmental Project (SEP) into a settlement of an enforcement matter, including through settlement agreements and Administrative Consent Orders, or other appropriate forms of settlement. This policy supersedes the Department's 2011 Interim Standard Operating Procedures for Incorporating Supplemental Environmental Projects into settlement agreements and is effective immediately. This policy provides an overview of the conditions under which DEP enforcement programs may accept a SEP as part of the resolution of a pending enforcement matter and best practices for integrating the SEP into the settlement agreement.

II. Key Characteristics of SEPs

A SEP is an environmentally beneficial project that a respondent voluntarily agrees to perform as a condition of settling an enforcement action. To be approved by the Department, a SEP must be an activity that the respondent would not otherwise have been required to perform. Critically, a SEP must primarily benefit the public through concrete and measurable environmental benefits. In addition, a SEP must have a nexus to the alleged environmental violation being resolved in the settlement, as more specifically outlined below in Paragraph VII. For a SEP that addresses violations that have occurred in overburdened communities, as defined by New Jersey's Environmental Justice Law at N.J.S.A. 13:1D-158 and implementing regulations, the strong preference is for a project completed in or directly benefitting members of the overburdened community. The cost of a SEP may be used to offset a portion of a penalty, or under certain circumstances, the full amount of the penalty.

While punitive penalties play an important deterrent role, a SEP that supplements a reduced penalty at cost to the respondent can have a similar effect, while playing an additional role in securing significant health or environmental protection, improvement, or enhancement for the members of the public impacted by environmental violations. When used appropriately, a SEP allows the Department to offset the negative effects of violations more directly, remedy harms to communities most directly affected by violation of the environmental laws the Department is responsible for enforcing and deter future violations. Inclusion of a SEP in a settlement agreement is an opportunity to maintain deterrence for noncompliance while encouraging regulated entities to take actions that achieve direct environmental improvement that would not have occurred otherwise. For this reason, SEPs can be powerful tools for advancing the Department's overarching goals, particularly in furthering environmental justice.

Any settlement agreement shall define with particularity the nature and scope of the specific project or projects that the respondent has agreed to undertake or fund and how the project meets the requirements of this policy. During settlement discussions, enforcement program staff are encouraged to communicate with regulated entities about SEPs and their benefits.

Staff must follow the same delegation of authority for approval of settlement agreements including a SEP as they would for settlement agreements not incorporating a SEP. Deviation from this policy may be considered for good cause on a case-by-case basis and must be approved by the program's Assistant Commissioner, with concurrence by the Chief Enforcement Officer. Questions regarding appropriateness of SEPs or compliance with this policy shall be directed to the Office of Enforcement Policy.

The Department reserves the right to amend this policy at any time. This policy does not create any substantive rights, duties, or obligations, implied or otherwise in any third persons or parties. This is a settlement policy and is not intended for use by the Department, defendants, courts, or administrative law judges at a hearing or in a trial.

This policy does not address settlement of violations for which there is a Final Agency Order or for which a court order has already been entered. While this policy does not address such violations, the Department maintains its discretion to evaluate the appropriateness of a SEP on a fact-specific case-by-case basis and, as necessary or appropriate, upon advice of counsel.

III. General SEP Requirements

The threshold requirements for an acceptable SEP proposal are as follows.

1. The project must provide concrete and measurable environmental benefits.
2. The project must have a nexus to the alleged environmental violation being resolved in the settlement, as more specifically outlined below in Paragraph VII. For SEPs that address violations that have occurred in overburdened communities, the strong preference is for projects completed in or directly benefiting members of the overburdened community.
3. A SEP shall not allow for potential further harm to the environment.
4. A SEP must be a voluntary activity and shall not include activities that the respondent had previously planned, initiated, budgeted for, or completed and shall not include actions required by law or regulation or part of activities required to return to compliance. Examples of projects that a respondent may be legally required to perform that do not qualify as SEPs include:
 - Projects undertaken to satisfy the requirements of a settlement or order in any other administrative or judicial legal action;
 - Projects that could be ordered as injunctive relief to restore the pre-violation status quo in the enforcement proceeding or in another legal proceeding concerning the same violation; or
 - Projects that consist of the performance of actions that are required by federal, state or local law or are part of permitting requirements.
5. A SEP cannot be inconsistent with any provision of the environmental statutes or regulations being enforced or any other applicable requirements.
6. DEP encourages input on project proposals from members of the community where the violation(s) occurred and may have been adversely impacted by the violations. Respondents are strongly encouraged to incorporate community input into any SEP proposal.
7. A monetary donation to a charity, environmental organization, or other non-governmental organization is not an approvable SEP. However, a SEP may include payment to such entities, if the entity is acting as a third party for the purpose of completing a specific activity related to the

SEP and the Department has reasonable assurances the project will be completed. In such instance, the respondent will be required to guarantee performance.

8. A respondent shall not use any federal or state funding, including grants or loans, for the completion of a SEP.
9. Failure to complete a SEP fully in compliance with an approved SEP proposal will result in a complete forfeiture of any penalty reduction, making the full penalty amount due and payable.

IV. Role of Third Parties

A respondent may contract with a third party to execute the SEP on behalf of the respondent provided the Department receives sufficient assurances that the SEP will be completed. Permitting and oversight costs to perform the SEP, including third-party consulting and design costs directly related to obtaining any required permits required to return to compliance, may not be attributed to any penalty reduction provided by the completion of the SEP. The respondent maintains full responsibility for completing the SEP regardless of the third party's role.

V. Department Discretion

Acceptance of a SEP that meets this policy's requirements is solely within the Department's discretion. The Department may disapprove a SEP proposal for any reason, including but not limited to, the seriousness of the violation, in instances where the SEP fails to adequately address the needs of the impacted community, where the Department lacks necessary performance assurances or for inability to adequately address any aspect of this policy. This policy sets out a framework for the Department to use in exercising enforcement discretion.

If the Department determines that the development of a SEP proposal is causing an unacceptable delay to the resolution of an enforcement matter, the Department, in its discretion, may discontinue further consideration of a SEP from the negotiation.

VI. Climate Change Considerations

When evaluating a SEP proposal, DEP must consider whether the proposed SEP location may be subject to existing or projected impacts of climate change, such as chronic inundation, sea-level rise, and extreme heat. In doing so, DEP must consider the extent to which the proposed SEP would be impacted by potential future change in site conditions due to climate change. To that end, respondents should conduct an analysis of anticipated climate impacts and, for assistance, shall refer to the New Jersey Extreme Precipitation Protection Tool (April 2022), available at <https://njprojectedprecipitationchanges.com>, the Sea-Level Rise Guidance for New Jersey (June 2021), available at <https://www.nj.gov/dep/bcrp/resilientnj/docs/dep-guidance-on-sea-level-rise-2021.pdf> and other assessment and planning materials as may be later recommended by the Department or the State's Interagency Council on Climate Resilience.

The Department may deny approval of a SEP proposal if DEP determines that the project would have a negative impact on climate resilience or if potential future site conditions due to climate change may cause the SEP to fail in a manner that may substantially diminish its intended benefit.

Additionally, the Department encourages respondents to propose, where appropriate, SEPs that would improve the climate resiliency of the community impacted by the underlying violation.

VII. Nexus – The Relationship between the SEP and the Violation

All SEP proposals must demonstrate a sufficient nexus to the environmental impact of the violation. Nexus is the relationship between the violation and the proposed project. As further defined herein, all SEPs shall have a direct or indirect relationship to the environmental media and associated public health, safety, or natural resource protections affected by the underlying violation, community, and/or geographic area impacted (e.g., impacted municipality, county and its members). Preference will be given to SEPs that are geographically proximate to the impacted community and directly address the underlying environmental impact of the violation. All SEPs shall be performed in the State of New Jersey.

A direct relationship shall be required whenever practicable. To establish a direct relationship, a project must demonstrate that it is designed to reduce:

- a. The adverse impact to public health, safety, or the environment associated with the violation;
- b. The likelihood that similar violations will occur in the future; or
- c. The overall risk to public health and/or the environment potentially affected by the violation.

In addition, for any violations by a facility located, in whole or in part, in an overburdened community, as defined by New Jersey's Environmental Justice Law at N.J.S.A. 13:1D-158, to establish a direct relationship, a SEP must be conducted within or provide direct environmental or public health benefits to the members of the overburdened community. The Department must consider the results of the Community Needs Assessment (where applicable, as identified below) in determining whether to approve the SEP proposal.

The multi-media characteristics of many enforcement matters contrasted with the single media approach of the applicable laws and regulations may, in some instances, make identifying a SEP with a direct relationship challenging. Recognizing this, in circumstances where a direct relationship is impracticable, DEP may allow a SEP that has an indirect relationship to the violation in order to bring about concrete and measurable environmental benefits to other environmental media. A SEP with an indirect relationship must still demonstrate a nexus to the underlying violation and may be approved if it advances the Department's goals for the protection of the environment and public health or addresses community needs, including any input received from the Community Needs Assessment where applicable. The Department may consider a SEP that would directly reduce adverse environmental and public health stressors in an overburdened community, as satisfying the nexus requirement where a direct relationship is impracticable.

Regardless of existing delegation authorities, approval of a SEP with an indirect relationship to the violation must be given by the Assistant Commissioner of the program area with concurrence by the Chief Enforcement Officer.

VIII. Community Input

DEP strongly supports input on project proposals from the community that may have been adversely impacted by the violations. Enforcement staff should encourage respondents to seek community input as early in the SEP development process as possible. If enforcement staff is aware of community interest in a particular SEP, staff should share that information with the respondent. 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 DEP enforcement; and improve relations between the community and the violating facility.

Involving communities in consideration of SEPs enables the Department and respondent to focus on the environmental priorities, needs, and concerns of a community. The community also can be a valuable source of project ideas, including ideas that result in creative or innovative SEPs that might not otherwise have been considered.

For a SEP involving a violation located within an Overburdened Community, as defined by N.J.A.C. 7:1C-1.5, a respondent shall review information available in EJMAP (<https://experience.arcgis.com/experience/548632a2351b41b8a0443cfc3a9f4ef6>) in furtherance of SEP development as well as any Department community engagement guidance. Enforcement staff shall coordinate with the Office of Environmental Justice to assist in obtaining any additional community input, including from community-based organizations, as appropriate.

Additionally, if a respondent is proposing a SEP in a municipality that participates in the Department's Community Collaborative Initiative (CCI), the Respondent is encouraged to coordinate with the Department's Community Liaison for assistance in soliciting community input. Information about CCI can be found at the following website: <https://dep.nj.gov/cci/>

IX. Community Needs Assessment

In furtherance of DEP's goal to foster community input in the development of a SEP proposal, the respondent may conduct a "Community Needs Assessment" to solicit direct input from residents or community-based organizations in the community impacted by the violation and where the SEP is proposed to be implemented. Community input can include comments on a contemplated SEP proposal if one is drafted but can also be used to inform the respondent of other potential SEP projects for consideration and/or development if a proposal has not been drafted.

The Department shall consider the Community Needs Assessment when evaluating any SEP proposal that meets the above criteria, particularly where a respondent seeks to demonstrate an indirect nexus under Section VII. In circumstances where the respondent completes a Community Needs Assessment, in its discretion, the Department may agree to a full dollar-for-dollar penalty deduction, subject to approval from the program area's Assistant Commissioner, with concurrence by the Chief Enforcement Officer. See Paragraph XII., "Penalty Calculation." Notwithstanding the above, settlement agreements for violations of the Water Pollution Control Act shall not exceed a 50% reduction of the initial penalty assessment or compromise the statutory minimum penalty amounts, if applicable.

The respondent's development of a Community Needs Assessment shall include the following:

1. Respondent shall send public notice to addresses within 200 feet of location the violation took place. This public notice shall include a statement that the respondent is looking to solicit input on a potential SEP to settle an enforcement matter and provide an opportunity to comment. The notice shall also include information on attending a public hearing. For proof of notice, Respondents shall submit as part of their SEP proposal a certification stating that the required notice was issued attached with a copy of the list of those property owners within 200 feet.
2. Public notice of the potential SEP and information on attending a public hearing shall also be placed in at least two newspapers circulating within the community, including one local non-English

language newspaper, if available, in a language representative of the residents of the overburdened community, if applicable. In addition, respondent should share the public notice with the municipal clerk for inclusion within municipal publications/buildings.

3. Respondent shall conduct at least one public hearing in the community impacted by the violation to solicit input on a potential SEP. The hearing shall be a hybrid meeting with an in-person and online option where practicable, and language interpretation shall be provided if the SEP is being proposed in an Overburdened Community, as defined by N.J.A.C. 7:1C-1.5, based on Limited English Proficiency (LEP) status.
4. Respondent shall also solicit comments from the municipal and county government for the community impacted by the violation.
5. Respondent shall prepare a report summarizing the actions taken to solicit comment and any input received and provide a copy as part of the SEP proposal and shall provide a transcript or recording of the public hearing.

A respondent is not required to disclose any privileged or confidential business information in the development of a Community Needs Assessment.

X. Benefits to Respondent

The public shall be the primary beneficiary of any environmental improvements accomplished through a SEP. A SEP proposal must identify and itemize potential economic benefits. While the respondent may incidentally receive some direct or indirect benefit from conducting the SEP, any economic benefit to the respondent shall be subtracted from the amount of penalty deduction that is available by the completion of a SEP. In its sole discretion, the Department may disapprove of a SEP where the benefits to the respondent undermine deterrence.

The SEP cost represents civil administrative penalties assessed by DEP and the respondent shall not represent otherwise to any taxing authority or other governmental entity. In any publication, promotion, or statement in writing or spoken generated by the respondent, it must be clear and in a prominent manner, that the SEP was completed as a condition of a settlement of an enforcement action.

XI. Managing Funds

Neither the DEP nor any other state agency may play any role in managing or controlling SEP funds, except that a state agency may control SEP funds only when for the purpose of carrying out the agency's own SEP as part of the resolution of an enforcement action against that agency. In addition, a SEP for the purchase and maintenance of electric vehicle charging stations through payment to a DEP mitigation fund is allowable as appropriate.

Further, a respondent shall not use any federal or state funding, including grants or loans, for the completion of the SEP.

Where appropriate, the Department may require financial assurance in the form of an attorney escrow or other financial assurance documents that would apply towards the administrative penalty if the SEP is not completed in compliance with the terms of the settlement agreement authorizing the SEP, pursuant to any applicable regulations. This may be in addition to any other financial assurance required by the enforcement program in the resolution of the underlying violation. If the respondent fails to complete the SEP, the

Department shall direct that the escrow funds be disbursed to Treasury in satisfaction of the assessed administrative penalty. If the respondent completes the SEP in compliance with the terms of the settlement agreement authorizing the SEP, the Department shall direct that the escrow funds be returned to the respondent.

XII. Penalty Calculation

After the final penalty settlement amount has been determined, DEP may then adjust the penalty to account for the cost of the SEP. The fact that the respondent is proposing a SEP shall not be incorporated into the calculation of the initial penalty assessment or final penalty settlement amount. For each dollar spent on the SEP, one dollar may be deducted from the penalty settlement amount. It is within the Department's sole discretion to determine the appropriate penalty reduction. This is a fact-sensitive determination to be made on a case-by-case basis.

In general, the dollar-for-dollar penalty deduction should be no more than 75% of the final penalty settlement amount. Under appropriate circumstances, however, the Department may agree to a greater penalty reduction, subject to approval from the program area's Assistant Commissioner, with concurrence by the Chief Enforcement Officer. Appropriate circumstances may include instances where the respondent completes a Community Needs Assessment as described in Paragraph IX., and there is strong support from the impacted community for a SEP that will redress the environmental harms; and/or where the value of an environmentally beneficial SEP exceeds the amount of the initial assessed penalty.

Notwithstanding the above, settlement agreements for violations of the Water Pollution Control Act shall not exceed a 50% reduction of the initial penalty assessment or compromise the statutory minimum penalty amounts, if applicable.

XIII. SEP Proposal

A respondent shall provide the enforcement program with a complete SEP proposal prior to the drafting of any settlement agreement. Enforcement staff may share this policy with the respondent to provide guidance on the formulation of a SEP proposal, but the development and preparation of the proposal shall be the sole responsibility of the respondent.

In order to ensure that the development of a SEP proposal leads to a project with the greatest likelihood of success, respondents are strongly encouraged to consult with the relevant DEP permitting program(s) and where appropriate, DEP's Office of Permitting and Project Navigation, in the event it is anticipated that DEP permits may be needed to implement a SEP.

A SEP proposal shall include the following:

1. Name and contact information of representative for respondent knowledgeable of the SEP;
2. Detailed project description, including conceptual site plans if appropriate;
3. A description of any local, state, or federal permits that would be required for implementation, and the estimated timeframe to obtain such permits;
4. Community Needs Assessment, if applicable;
5. Start date;
6. Completion date;
7. Project deliverables;
8. Project milestones and timeline for reaching milestones;

9. Timeline for submitting interim and final verification to DEP for review;
10. Details of costs, including consulting/permitting/oversight costs that are specific to the development and approval of a SEP that would be excluded from penalty reduction. Consulting/oversight costs that are specific to the implementation of a SEP (after any required permits are obtained) may be included;
11. A description of the funding source for completion of the SEP along with a certification from the respondent attesting that the SEP funding does not include any federal or state funding, including grants or loans;
12. Details of project benefits, including any economic benefit to respondent that would be excluded from penalty reduction;
13. Identification of parties that benefit from the project; and
14. Role of third party (if applicable).

XIV. Review of SEP Proposal

After reviewing the project proposal, the enforcement programs may consider several factors in determining whether to approve the SEP as a condition of settlement. Below is a list of several, but not all, factors that the enforcement programs may consider:

1. The capacity of the respondent to complete the proposed SEP;
2. The availability of DEP's resources or capacity to verify that the SEP was completed as required;
3. The compliance history of the respondent;
4. The likelihood of the environmental/public benefits outlined in the proposal being obtained;
5. The extent to which the SEP advances Department priorities and aligns with overall Department policy;
6. The extent to which the SEP reduces the environmental burden in or provides direct environmental or public health benefits to the members of the that overburdened community, where applicable;
7. The extent to which the SEP conforms with the Community Needs Assessment, if applicable; and
8. The extent to which the SEP otherwise conforms with the requirements of this policy.

The Department may accept the proposal, request modifications, or reject the proposal. Recognizing that other Department programs possess unique technical knowledge, the enforcement programs are encouraged to contact other programs in the Department, including the Office of Enforcement Policy, for technical guidance on any component of the SEP, including the project plan, anticipated costs and benefits, and meaningfulness of the environmental benefits.

XV. Inclusion of the SEP in Settlement Document

Any settlement agreement shall define with particularity the nature and scope of the specific project or projects that the respondent has agreed to undertake or fund. It should describe the specific actions to be performed by the respondent and provide a reliable means to verify project completion. Once the enforcement programs have agreed to integrate the SEP into the settlement, the following components are to be included in the settlement document:

1. The project start and end date;
2. Project deliverables;
3. The DEP contact to whom interim and final project updates should be sent, with specific deadlines; and

4. Terms for if the SEP is not completed as required, including the assessment of stipulated penalties and the potential forfeiture of the offered administrative penalty reduction.

See Attachment A: “Template for SEP Language for Administrative Consent Orders”

Notification in the DEP Bulletin (<https://dep.nj.gov/bulletin/>), NJ Register, or other appropriate method of public notice, as determined by the enforcement program, and a public comment period of at least 30 calendar days for Administrative Consent Orders including SEPs is encouraged.

XVI. SEP Completion Verification

A respondent must submit to the Department updates on the progress of completing the SEP. The intervals at which periodic project status updates must be submitted will vary depending on the nature of the SEP being implemented and should be specified in the settlement agreement. Similarly, the contents of the project status updates will vary and may include verification in the form of photographs illustrating project progress and/or invoices detailing equipment or supply purchases. The intervals and contents project status updates are at the Department’s discretion and should be set forth in the settlement document.

For multi-year projects, at a minimum, a SEP update should be submitted to the Department once every three months. For shorter-term projects, such as a year or less, monthly updates may be more appropriate. However, these timelines will depend primarily on the complexity of the SEP. Enforcement programs should include timelines that they deem appropriate to determine that the SEP is being completed as required. Enforcement programs may need to visit the site of the SEP while in progress, or once completed, to verify that the SEP is completed as required by the settlement document.

XVII. NJEMS and SEP Reporting

If a SEP is incorporated into a settlement agreement, the “Supplemental Environmental Project” information box in the corrective actions tab of the Enforcement Action (PEA) screen shall be filled out with a summary of the SEP, key milestone date, and the assigned staff member responsible for monitoring implementation. As SEP implementation progresses, NJEMS shall be timely updated. On a yearly basis, the Office of Enforcement Policy shall distribute a report to the Assistant Commissioners and Enforcement Directors tracking the implementation of SEPs across the Department.

Attachment A: Template SEP Language for Settlement Agreements and Administrative Consent Orders

SUPPLEMENTAL ENVIRONMENTAL PROJECT

1. Respondents have proposed to offset the assessed penalty below, by completing a SEP that involves [brief description of project].
2. The Department conceptually approves this SEP, and the [Facility Name/Party] may satisfy up to \$[x] of the penalty amount by satisfactorily completing the SEP in accordance with the conditions contained in this ACO (Replace “ACO” throughout if used for a “Settlement Agreement”). [Facility Name/Party] agree to complete the SEP in its entirety, regardless of whether the final costs of the SEP exceed the original projected costs. Any additional costs required to complete the SEP that exceed the dollar value of the credit provided herein shall not be considered for any further penalty reduction. Credits against the penalty shall be on a dollar-for-dollar basis. By signing this ACO, Respondents certify that they have not commenced performance of the SEP.
3. Funds dedicated for the SEP shall not be used to pay for consultant oversight costs or permit fees as applicable. If [Facility Name/Party] require the assistance of a consultant, they shall provide funds directly to the consultant in addition to the funds dedicated to the SEP.
4. By signing this ACO, [Facility Name/Party] certify that the SEP is not required by any federal, state, or local law or regulation, nor is it required by any other agreement, grant or as injunctive relief in this or any other case.
5. [Facility Name/Party] shall not utilize any outside funding, such as federal or state loans, contracts, or grants, for the completion of the SEP.
6. The penalties specified in this ACO shall represent civil penalties assessed by the Department and [Facility Name/Party] hereby agrees not to represent otherwise to any taxing authority or other governmental entity.
7. [Facility Name/Party] acknowledge that they are solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by Respondents to a third party, shall not relieve [Facility Name/Party] of their responsibility to complete the SEP as described in this ACO.
8. In the event [Facility Name/Party] publicize the SEP or the SEP results, [Facility Name/Party] shall prominently state that the project is part of a settlement of an enforcement action.
9. The project deliverable benchmarks and timeframes established within the approved SEP proposal shall become binding compliance deadlines upon this document becoming final, unless the deadlines derived from the proposal conflict with any other provision of this document, in which case the deadlines contained within this document shall govern.

10. Within [x] calendar days of this document becoming final, [Facility Name/Party] shall apply for all local, state, and federal approvals required to complete the SEP.
11. Within [x] calendar days of the Department issuing any subsequent deficiency notice related to any permit application submitted to the Department for the completion of the SEP, [Facility Name/Party] shall respond with the information required to address the deficiency to the Department's satisfaction.
12. [Facility Name/Party] will submit any and all documentation requested by the Department for any permit application to the Department for the SEP that is required for the application to be complete for technical review within [x] calendar days of the permit application being deemed administratively complete.
13. [Facility Name/Party] shall submit progress reports on the SEP to the Department every [x] months, due the last business day of each month, with the first report being due the month after this document becomes final. The progress reports shall include [specify documentation required].
14. [Facility Name/Party] shall complete the SEP within [x] month(s)/year(s) from the issuance of approvals necessary to complete the project.
15. [Facility Name/Party] shall complete the project in full compliance with any permit conditions applied to those approvals.
16. [Facility Name/Party] shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this ACO, and certified by a Certified Public Accountant as to the financial aspects and/or by a responsible corporate officer or owner. Respondents shall submit the final report and certification to the Department within [x] calendar days from the completion of the SEP. The SEP completion report shall contain the following information:
 - a. A detailed description of the SEP as implemented;
 - b. A description of any operating problems encountered and the solutions thereto;
 - c. Itemized costs;
 - d. Certification that the SEP has been fully implemented pursuant to the provisions of this ACO; and
 - e. A description of the environmental and public health benefits resulting from the implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).
17. SEP documentation as required by this ACO to be submitted to the Department shall be sent to:

[Insert Name and Contact information of appropriate Enforcement program or other Department representative]
18. In the event that [Facility Name/Party] fails to comply with any of the terms or provision of this ACO relating to the performance of the approved SEP and/or to the extent that the actual expenditures for

the SEP do not equal the amount of credit described above, for the Department may assess stipulated penalties or the balance of assessed administrative penalties according to the provisions set forth below:

- a. If [Facility Name/Party] fails to comply with any portion of the approved schedule for SEP implementation, for the Department may assess daily stipulated penalties as outlined in the Stipulated Penalties section of this ACO.
 - i. If [Facility Name/Party] submits a request in writing to the Department for a reasonable extension of an applicable deadline at least 30 calendar days prior to that date, and if the Department approves such a request, then [Facility Name/Party] shall not be liable for daily stipulated penalties. The determination of what constitutes a reasonable extension request is within the sole discretion of the Department.
 - ii. Daily stipulated penalties assessed for noncompliance with the approved SEP schedule shall continue to accrue until compliance is achieved, or the [Facility Name/Party] declares to the Department, in writing, that they intend to abandon completion of the SEP, at which point [Facility Name/Party] will become liable for the SEP termination penalty described in subgraph b below.
- b. If [Facility Name/Party] for any reason fail to complete the SEP in accordance with the proposal approved by the Department or otherwise declares to the Department that they intend to abandon completion of the SEP, [Facility Name/Party] shall forfeit the entirety of the penalty reduction provided by the SEP and pay the full amount of the potential reduction plus any SEP termination stipulated penalty, as assessed by the DEP, by a cashier's or certified check payable to the "Treasurer, State of New Jersey" within [x] calendar days of notice from the Department. [If financial assurance was required, replace red underlined text with the following: "the Department shall direct that the funds held in escrow be disbursed to the "Treasurer, State of New Jersey", as detailed in the Financial Assurance section of this ACO."]
 - i. The Department may at this time also assess the sum of any daily potential stipulated penalties for noncompliance with the approved SEP schedule as described in subparagraph a. above, and the Department may also assess an additional SEP termination penalty equal to 25% of the offered administrative penalty reduction.
- c. If the SEP is completed in accordance with the provisions outlined above, but the [Facility Name/Party] spent less than \$[x] to complete the SEP, [Facility Name/Party] shall pay, via cashier's or certified check payable to the "Treasurer, State of New Jersey," the difference between \$[x] and the amount spent to complete the SEP to within [x] calendar days of SEP completion.

PENALTY SETTLEMENT

19. [Facility Name/Party] shall pay a penalty of \$[x] to the Department.
20. This penalty shall be subject to a reduction by \$[x] as described above contingent upon the successful completion of the approved SEP.
21. Within [x] calendar days of the ACO becoming final, [Facility Name/Party] shall pay \$[the remaining administrative penalty after the SEP reduction is applied] by a cashier's or certified check payable to the "Treasurer, State of New Jersey", as directed on the attached invoice.
22. If [Facility Name/Party] fail to comply with the terms of this ACO and/or fails to pay the civil penalties described above, [Facility Name/Party] shall be in default of this ACO, and the Department may thereafter take action to collect the full amount of civil penalties assessed by the Superior Court.

FINANCIAL ASSURANCE FOR SEP COMPLETION

[If required by Department, otherwise delete]

23. Within [x] calendar days of this document becoming final, [Facility Name/Party] shall execute and return the Escrow Agreement along with a certification from the attorney licensed to practice in the State of New Jersey with whom the escrow account is created attesting to the creation of the escrow account with sufficient funds to cover the full amount of the originally assessed administrative penalty indicated in paragraph [20] above. Upon a determination by the Department that the SEP has been completed in compliance with the terms of this ACO, the Department shall direct that the escrow funds be returned to [Facility Name/Party]. If [Facility Name/Party] fails to complete the SEP in compliance with the terms of this ACO, the Department shall direct that the escrow funds be disbursed to Treasurer, State of New Jersey, in satisfaction of the assessed Administrative Penalty.