

## U.S. Department of Justice Resumption of Supplemental Environmental Projects: National Association of Clean Air Agencies Submits Comments



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The National Association of Clean Air Agencies (“NACAA”) submitted comments on a memorandum issued on May 5th by the United States Department of Justice (“DOJ”) titled:

*Guidelines and Limitations for Settlement Agreements Involving Payments to Non-Governmental Third Parties (“Memorandum”)*

The *Memorandum* stated that DOJ’s intent is to resume use of supplemental environmental projects (“SEPs”) as a potential component of environmental consent or settlement agreements.

DOJ had terminated the use of SEPs during the Trump Administration pursuant to a memorandum titled:

*Supplemental Environmental Projects (SEPs) in Civil Settlements with Private Defendants*

DOJ, pursuant to that memorandum, had indicated the SEPs would no longer be part of the suite of relief that its Environment and Natural Resources Division would seek in its cases (unless specifically authorized by Congress).

SEPs generally provide an alleged violator the opportunity to undertake a project to provide tangible environmental or public health benefits to the affected community or environment that is related to the violation being resolved. The voluntary agreement to perform a SEP is a factor that is considered in determining an appropriate settlement penalty and may be the basis for a reduction in the final assessment. Note that many state agencies (including Arkansas) have for many years offered SEPs as an option for partial settlement in violation of environmental laws.

The NACAA in its July 11th letter to DOJ regarding the SEP *Memorandum* stated its support of the use of SEPs. The organization had previously recommended to the Biden-Harris Administration in its transition phase to reconsider the termination of the use of SEPs. It noted that SEPs could be a method to harness clean air benefits via civil penalty mitigation and have:

. . . proven to be a powerful mechanism for providing needed resources to communities overburdened by air pollution resulting from noncompliance with environmental laws.

The NACAA describes itself as the national, non-partisan, nonprofit association of 155 air pollution control agencies including 31 states, the District of Columbia, 116 metropolitan areas, and five territories.

A copy of the July 11th letter can be downloaded [here](#).

