

Funds from Fines

for new possibilities for financing alternative fuel and renewable energy projects.

Last year in Indiana, \$65,000 became available unexpectedly to build a natural gas fueling station and buy AFVs. This year in Sacramento, \$120,000 was designated for the purchase of CNG school buses. By this fall, several rural school districts in central Texas will have secured \$750,000, with hopes of using it to buy biodiesel fuel for newly acquired school buses. (Story details on page 7.)

A common thread connects these activities and many more nationwide, both past and pending. All are products of funds secured by government enforcement agencies in settlements with companies that violated environmental regulations.

An enforcement settlement is a negotiated agreement between a government agency and an entity (usually a company) charged with environmental violations (usually civil, not criminal). It is “negotiated” in the sense that if the company chooses, it can contest the charges. But most settle out of court.

Such cases can originate at the local, state, or federal level. Local air quality management districts (AQMDs), for example, are often responsible for issuing permits to operators of emissions sources such as refineries, chemical plants, and power plants. They also monitor compliance and impose fines for permit and regulatory violations. At the state level, similarly, enforcement agencies can penalize companies for violating standards of air and water quality and waste disposal. State settlements may be the most common type. In Colorado alone, for example, the state Air Pollution Control Division has settled more than 200 cases in the past four years.

Federal agencies, in response to environmental violations, have imposed some of the largest civil penalties in U.S. history. In 1998, the U.S. Department of Justice and the U.S. Environmental Protection Agency (EPA) announced a total of \$83.4 million in penalties against seven major diesel engine manufacturers. The companies were also required to spend more than \$1 billion to resolve claims that they had installed illegal “defeat devices” in heavy-duty diesel engines, allowing them to pass emission tests but operate with higher levels of nitrogen oxide (NO_x) emissions on the road.

Companies penalized by the action have developed new NO_x control technologies. “This settlement will prevent 75 million tons of harmful nitrogen oxide (NO_x) emissions nationwide by 2025,” said EPA in a 1998 press release. Some of the proceeds from the settlement have subsidized establishing natural gas transit bus fleets in Boston and metropolitan Atlanta.

Beyond Settlement: SEPs

Aside from requiring compliance, enforcement settlements often entail little more than a civil penalty paid to the appropriate agency or government body. Once the check is written, the penalized company has no control over how the money is spent. But some settlements go farther, crafted with a legally binding agreement in which the company voluntarily promises to perform specific actions to benefit the environment. EPA calls them Supplemental Environmental Projects, or SEPs. Some state agencies use other terms such as Community Environmental Projects and “in-kind penalties.” (SEPs of this kind should not be mistaken for grants from DOE’s State Energy Program, which is sometimes referred to as SEP.)

Environmental organizations such as the Natural Resources Defense Council (NRDC) applaud the use of



A SEP resulting from a Colorado settlement last year bought a GEM electric utility vehicle for the city of Brush, on the state’s eastern plains. The Street and Parks Department uses the vehicle for light-duty work, such as towing a barbecue grill to community picnics. Shown is Doug Kelly, supervisor of Public Works. SEPs can finance all kinds of renewable energy strategies, says attorney Jill Cooper of the Colorado Department of Public Health and Environment. But those involving the purchase of vehicles are “relatively easy to negotiate,” she says, with no need to train the recipients in the use of unfamiliar technologies. Top: Virginia’s Shenandoah National Park will benefit from the proceeds of a settlement with a utility (see page 5).

SEPs as a means of creating environmental benefits for communities. “If they’re well designed, they can be an extremely effective way of getting results,” says attorney John Walke, Director of Clean Air Programs at the NRDC. Implementing AFVs is an excellent application of the SEP concept, he says. But some SEPs are merely “anyway projects,” designed to claim credit for work that would have happened even without the settlement, according to Walke.

Individual enforcement settlements and SEPs can result in millions of dollars in funding. But most are considerably smaller, particularly at the state and local levels. The AQMD serving Sacramento, for example, has reached nearly 100 settlements in the current fiscal year. Most have been between \$500 and \$5,000. In a \$70,000 SEP in Texas, a chemicals manufacturer agreed to help implement alternative fueling in the mass transit system of Odessa. In another Texas settlement valued at \$25,937, a company agreed to pay for AFV fueling equipment in Houston. Colorado was the first state to devise a clean energy-related SEP, in which a company agreed to purchase \$300,000 in wind energy over a five-year period. Other SEPs in that state resulted in the purchase of several CNG vehicles and a fueling station in Weld County.

SEP Support

A collaborative team supported by DOE and the National Renewable Energy Laboratory (NREL) aims to expand awareness of enforcement settlements and promote SEPs involving renewable energy. “One problem we run into,” says team member Karin Sinclair, “is that SEPs are meant to be totally voluntary on the part of the company. So enforcement agency officials question whether they can even bring the subject to the table.” The DOE-NREL SEP Support Team is exploring ways to encourage renewable and alternative energy SEPs while adhering to all legal guidelines. Sinclair is a project leader in NREL’s Golden, Colorado office.

Recent state budget shortfalls represent another obstacle to the use of SEPs. Regulators and legislators may prefer civil penalties, which usually result in monies for the state’s general fund rather than specific projects. With that reasoning, at least one state—Pennsylvania—has announced its intention to discontinue SEPs.

EPA lists the more significant federal settlements of recent years on its own Web site (see “Resources,” page 7). But no central resource exists to track state and local cases. For that reason, it’s impossible to gauge the total amount of money that becomes available in the form of SEPs each year. But in one recent year (1999), a total of \$237 million went into SEPs at the federal level. “Almost none” included provisions for renewable energy or alternative fuels, says Sinclair. Securing even a small share of available SEP funding would be a big boost for renewable energy and alternative fuel projects.

A Colorado-based nonprofit organization has acted as a matchmaker, pairing funding opportunities with worthy

renewable energy projects. The StEPP Foundation (short for Strategic Environmental Project Pipeline) also aggregates settlement dollars and helps project backers apply for funds. (Visit www.steppfoundation.org.) Colorado’s state environmental department has gone through StEPP to allocate more than \$1.8 million in SEP funding, mostly for energy efficiency and renewable energy projects.

More to Come

Enforcement settlements with EPA can result from violations of many different environmental regulations and standards. Most common are cases dealing with standards established by the Clean Air Act. Within that realm is a complex section called New Source Review (NSR). When emitters such as power plants are modified, by law they must disclose the modifications to a regulating authority and apply for an NSR permit. Many have failed to do so in the past decade, resulting in many enforcement settlements with EPA and with states, either signed or pending. At least 10 NSR settlements are in progress, and many more NSR cases are under investigation.



Weld County

Weld County, Colorado acquired a CNG fueling station with funding from a settlement with an energy company.

One notable NSR case was recently settled between EPA and the Virginia Electric Power Company (VEPCO). A SEP resulting from that settlement commits \$1 million for funding an AFV project in Virginia’s Shenandoah National Park. The project will involve securing vehicles for trial use in the park, plus the necessary fueling equipment. (Alternatively, the company may choose “another project also intended to reduce damage” caused by air pollution in the park.)

Like many SEPs approved by EPA, the VEPCO agreement emphasizes diesel-reducing emissions through the use of exhaust after-treatment and lower-sulfur fuel. Although such projects don’t serve the alternative fuels mission of Clean Cities, they may represent an unintentional bias at EPA, says Adam Chambers of the DOE-NREL

SEP Team and an NREL project leader. “EPA brings the enforcement cases, and when it’s time to develop a mitigation plan, they have a lot of input into how the money is spent. Buses have been targeted through the agency’s Clean School Bus USA initiative, but the potential benefits of alternative fuels are often overlooked,” he says.

But that bias is not insurmountable, says Chambers. The state of Connecticut recently secured \$1.1 million in funding from the VEPCO settlement to retrofit the exhaust systems of diesel school buses. The Clean Cities coalition based in Norwich responded with a letter to the state, urging it to expand availability of the funds for alternative fuels including natural gas. The letter was co-signed by coordinator Peter Polubiatko and a representative of INFORM, an environmental organization and clean transportation advocate, based in New York City.

SEP opportunities may result from several developing NSR cases between EPA and the operators of coal-fired power plants, including a particularly contentious case with the Tennessee Valley Authority. Another case (recently settled) with Archer Daniels Midland provides \$2.3 million to the Illinois Green School Bus Program, covering the purchase of new buses and “differential costs associated with the use of ultra-low sulfur diesel fuel, cleaner biodiesel fuel and other clean alternative fuels.”

In general, SEPs represent a great opportunity for sponsors of alternative fuel and renewable energy projects, says DOE’s Jerry Kotas, another member of the DOE-NREL SEP Team. “They’re a way to maximize the environmental results of enforcement actions,” Kotas says. “SEPs can be a great benefit for the community and for the environment.”

Finding Funds

Pittsburgh attorney Harry Klodowski represents companies negotiating settlements resulting from environmental violations. To project planners hoping to secure funds from SEPs, he offers this advice:

Get involved in the process early—if possible, before the consent decree is signed. Often that’s not easy, he admits, because settlement negotiations happen behind closed



School bus exhaust is often targeted in settlement projects, which can pay for new vehicles as well as diesel retrofitting.

doors. But specific project ideas may help move the government to settle.

The “closed door” nature of negotiations is a good reason for maintaining regular contact with enforcement agency representatives. They can alert you to budding opportunities.

Enforcement actions are published in press releases and on agency Web sites. Agencies often have community relations and educational staffers who can explain the terms of SEPs when they’re final, and provide contacts.

Design projects with a clear connection to the community affected by the violation, and articulate that connection to the company. EPA says SEPs should reduce risk to public health and the environment, and lessen the likelihood of similar violations in the future.

Build in accountability on your part. Don’t make the company think of how to monitor progress; draw up a plan. The government agency won’t want to be involved at all in administering the project.

Consider the level of government involved, and size the project accordingly. “If you’re looking for a million dollars, that’s more likely to come from EPA. If you’re looking for 20 or 30 thousand, you might be better off at the state or local level,” he says.

If you collaborate in crafting a SEP, plan on “selling” the idea to a government agency. “In every agency, there are people who like SEPs and people who don’t,” says Klodowski. Companies too must sometimes be sold on incorporating your ideas into their project—or on the whole idea of a SEP. “But generally they’d rather do some good for the community than write a check to the government,” he says.

“I don’t think you need a lawyer,” say Klodowski. A pattern federal settlement agreement is available on the SEP page of EPA’s Web site. At the annual Clean Cities Conference in 2000, Klodowski spoke to program coordinators and stakeholders on securing SEP funds. A written report accompanying that presentation is available at www.ccities.doe.gov/pdfs/hklodowskipaper.pdf.

Following on page 7 are three specific enforcement settlement stories

Grassroots Cause and a Federal Case

A small citizens' group in rural Texas, near Austin, recently settled an NSR case arising from emissions violations by aluminum producer Alcoa. The case resulted in \$2.5 million in civil penalties, of which \$750,000 will fund a school bus emissions reduction program. The program will be modeled after the Adopt-A-Bus Program in Dallas, in which companies sponsor individual school buses. "Even here in Texas it is obvious that we need to get away from petroleum-based fuels," said Billie Woods, president of Neighbors for Neighbors, which brought the case.

Dan Deaton of DOE's regional duty station office in Texas was notified of the pending settlement last spring by a member of the DOE-NREL SEP Support Team. A meeting was held in Austin to discuss the settlement, with DOE and EPA representatives and Central Texas Clean Cities Coordinator Stacy Neef.

Much of the Alcoa settlement funding, they learned, may go toward fueling Austin-area school buses with low-sulfur diesel. "But we're hoping to secure at least some portion of the money for alternative fuels like biodiesel," said Deaton. In the future, AFV advocates in the area hope to see settlement funds paying for natural gas and propane vehicles along with the needed fueling infrastructure.

Local Enforcement and a Lottery

Chevron was charged with violating fuel pump design standards at several California gasoline stations. The company agreed to a \$120,000 settlement (not a SEP) with the Sacramento AQMD, which deposited the proceeds in a fund to buy alternative fuel school buses. A lottery was held among more than a dozen local school districts. Each of the two winners received \$60,000 to help pay for a CNG bus, which typically costs in excess of \$100,000.

The bus lottery was covered in the media and well-received by the public, says Tim Taylor, manager of the district's Mobile Source Division. Enforcement settlement projects that reduce emissions from stationary (not mobile) sources, he observes, are equally important to public health but generally get less attention than those involving cars, trucks, and buses. "Mobile source emissions reduction projects make a big splash," he says. Backers of such projects should be aware of their potential public relations value, he suggests.

Beyond that, seekers of enforcement settlement funds should "think in SEP-like terms," says Taylor. Devise projects that are manageable and conducive to accountability, and those that might help an offending company mitigate damage to its public image. Getting into settlement negotiations as early as possible, Taylor agrees, is excellent advice.

Settling with the State

BP Amoco's Whiting refinery settled with the Indiana Department of Environmental Management (IDEM), agreeing to pay \$500,000 for air quality violations. Its consent decree, signed in 2001, specified that the money would go toward reducing emissions of volatile organic compounds in several northern Indiana cities including Whiting.

An IDEM employee was a member the South Shore Clean Cities board of directors, and notified the coalition that funds would be available. Coordinator Deb McClelland-Parker drafted a three-page proposal soliciting funds for CNG police cruisers and a fueling station in East Chicago, and rebates for AFV buyers in certain other cities. In total she requested \$65,000.

The state agency responded favorably, but asked the coalition to take on one more task: administering \$42,000 worth of rebates for school districts retrofitting diesel buses with catalytic converters. McClelland-Parker "played hard nose," she says, agreeing to handle the retrofitting project but requesting another \$10,700 for administrative costs. IDEM agreed.

"No matter what kind of work you're taking on, you can't be expected to do it without being paid for it," she advises. The application process was simple and straightforward, involving a written request that was "very much free-form." Her written application was followed by three or four phone calls with IDEM officials seeking minor clarifications.

Resources

Beyond Compliance: Supplemental Environmental Projects: A 37-page EPA brochure describing SEPs in general and listing specific projects: www.epa.gov/Compliance/resources/publications/civil/programs/sebrochure.pdf.

Using Environmental Penalty Funds to Capitalize Clean Energy Projects: An article for Conservation Update, published by DOE's Office of Energy Efficiency and Renewable Energy. By Carol Tombari of the DOE-NREL SEP Support Team. www.eere.energy.gov/buildings/state_energy/connections/printer_friendly.cfm?volume=40.

Characteristics and categories of SEPs at the federal level, as well as past settlements, are listed by EPA at www.epa.gov/compliance/civil/programs/seps.

EPA lists the more significant federal settlements of recent years at <http://cfpub.epa.gov/compliance/resources/cases/civil>.