

Integrating P2 into the Enforcement Process

EPA allows P2 integration into the enforcement process through negotiations of an injunctive relief or through supplemental environmental projects (SEPs) to offset civil penalties for violations of environmental regulations.

How do enforcement officers promote P2 during the mitigation process?

1. Inform companies of the availability and benefits of pollution prevention.
2. Work with inspectors or compliance assistance staff who have or can visit the site to evaluate P2 opportunities or whether the company would be a good candidate for a P2 project.
3. Discuss EPA's priority on pollution prevention in compliance settlements and inform companies of P2 measures available that could be part of their settlement. EPA allows 100% mitigation of SEP costs for only two types of projects:
 - For small businesses, government agencies or entities, and non-profit organizations if the defendant/respondent can demonstrate the project is of outstanding quality.
 - For *any* defendant/respondent, if the SEP implements pollution prevention projects of outstanding quality.
4. Offer flexibility in the penalty mitigation or compliance scheduling if the business implements P2 to achieve long-term compliance.

When should P2 be incorporated into the enforcement process?

- Some states include P2 information in the notice of violation (NOV). In addition to identifying problems identified during the inspection, such an NOV will suggest P2 strategies to resolve present and future violations.
- Refer facilities to a state TAP program during the inspection for help in developing P2 measures that may be considered during enforcement negotiations.
- Introduce P2 measures during settlement negotiations.

What are the most important factors to consider?

P2-based injunctive relief requires a facility to use P2 methods to reach legally required compliance levels.

P2 remedies must –

- Be sufficient to cure the violation and be technically and economically feasible for the facility.
- Reduce pollution and compliance problems–be aware of media transfer of pollutants.
- Have a high probability of success.
- Incorporate waste/pollutant measurement reporting.

What are the general guidelines for SEPs?

- Demonstrate adequate nexus or connection with the SEP's ability to correct the specific violation.

- Advance at least one of the declared objectives of the environmental statute violated. The SEP must not be inconsistent with any existing statutes or regulations.
- Avoid agency involvement in management/implementation of the SEP. The project must be managed by the business; however, the agency may provide oversight to ensure the project is implemented as agreed upon in the settlement.
- Include the type/scope of each project in the settlement agreement: identify what, where, and when—including project value and related record keeping.
- Avoid projects that, by law, are EPA-mandated duties or that may be an expansion of an existing EPA program.

What incentives does P2 provide in negotiating injunctive relief or SEPs into settlement agreements?

- P2 projects can be used to eliminate or reduce waste-causing compliance problems. Going beyond compliance with an SEP offers more health and environmental protection than end-of-pipe solutions.
- P2 projects can promote a shift in the businesses' environmental policies and objectives, providing long-term commitment to better environmental management.
- P2 projects can minimize potential for future violations and possibly remove the business from the regulatory arena.
- P2 projects provide economic incentives through better material utilization, more efficient operations, fewer health and safety concerns, reduced recordkeeping, and reduced liabilities.
- P2 projects can improve a company's public image and community relations.

How do you determine if a company is a good candidate for a P2 SEP?

- Company interest and commitment to a project.
- Company's compliance history. Is it a repeat offender showing little improvement in its compliance history?
- Penalty amount may affect the feasibility and/or attractiveness of a P2 SEP, although this depends on the required value of the SEP, size of the penalty, and payback/benefit potential of the P2 project.
- Ability to implement the project. The company must have the ability to implement a P2 project. Financial resources and technological expertise must be thoroughly evaluated.

What strategies facilitate discussions of P2 in the settlement process?

- Determine the company's understanding and ability to undertake a P2 project. Do this early in the negotiating process; if the company has limited knowledge, refer it to the SBEAP program for technical assistance. Reassess the company's capability after its consultation with the technical assistance providers.
- Encourage a cooperative environment; promote a nonadversarial process.
- Encourage the company to develop or acquire P2 expertise to explore opportunities and develop a settlement proposal. A crucial first step is completing a P2 audit.
- Provide the company with contacts and information on P2 to support initial discussions and assess proposals. Provide the facility with contacts from other

businesses or technical assistance providers that have information on similar P2 projects or SEPs.

- Reduce or eliminate the SEP multiplier so that it is equal to the penalty, providing an increased incentive for the company to choose a P2 SEP.

How have other states integrated pollution prevention into enforcement?

Ohio EPA has worked with its office of pollution prevention (OPP) to integrate P2 into the enforcement process by introducing the P2 concept during the inspection process in order to raise facility awareness. SEPs with P2 projects are favored and promoted. During enforcement negotiations, the agency encourages pollution prevention in the settlement as part of a supplemental environmental project. The agency works close in hand with the OPP to determine if the business is a good candidate for a P2 SEP, based on the size of the fine, the facility's interest, and its ability to undertake and complete a P2 project. Although some settlements of less than \$25,000 have included an SEP, most do not.

- Shops that undertake a P2 project with a five to ten-year payback may receive a penalty credit of up to 50% penalty reduction for every dollar invested.
- Shops are encouraged to undertake a year-long P2 assessment project with an immediate \$10,000 penalty mitigation, even if no P2 opportunities are implemented. Companies may use the Waste Minimization Opportunities Assessment Manual (EPA/625/7-88/003) or the Ohio Pollution Prevention and Waste Minimization Planning Guidance Manual, or EPA's Facility Pollution Prevention Guide to set up their P2 program. The facilities agree to submit a series of four reports and completed worksheets from the manual to document compliance and waste reduction results, if any are realized.
- Third party SEP projects are allowed. In one case a company contributed \$32,000 in two \$16,000 allotments, to the Northeast Industrial Waste Exchange. Project training programs that provide environmental training and significant environmental benefits to other businesses in the same industry sector are also allowed.

Arizona has state P2 legislation that supports specific waste reduction goals, P2 planning and certification. A quantified goal can measure pollution reduction against the baseline quantity. The baseline quantity indicates the amount of pollution that would be generated if the prevention were not conducted. A total of 270 plan filers are in the database. Of the total, 217 facilities (or 80 percent of the filers) are able to quantify some of their goals. Their pollution prevention time frame varies, spanning from 1991 through 2000. The remaining 45 facilities are accomplishing pollution prevention but through goals that are difficult to quantify, and eight facilities have "no opportunity" goals due to the nature of their business, e.g. chemical manufacturers.

During 1991 through 2000, a total of 2.93 billion of pounds of wastes and resources have been reduced by the 217 facilities. Among various categories of wastes and materials, hazardous materials and wastes (unspecified) represents the group with the highest reduction rate, i.e., 77.59 %.

The next categories ranked high in reduction levels are PCB (74.41 percent), oils and used oil (72.78 percent), and antifreeze (69.61 percent). The group of ignitable materials and wastes achieves 46.32 percent reduction rate, followed by reactives

(39.45 percent), toxics (34.41 percent), wastewater (32.59 percent), solid waste (27.95 percent) and corrosives (17.38 percent).

Ohio

The Aristech Chemical Corporation agreed to develop a pollution prevention program for the facility including, at a minimum, a series of management practices specified in the consent order. The management practices were established by agency and facility representatives during the course of settlement negotiations. Aristech agreed to maintain records of its achievements and annually submit a report for the previous year describing the progress made under the management practices. Aristech agreed to select a pollution prevention steering committee to promote and coordinate pollution prevention activities at the facility, monitor the progress of the program, and act as a clearinghouse for pollution prevention ideas and suggestions from the employees. The facility also agreed to complete a pollution prevention assessment of selected waste streams and releases, with selection criteria established in the consent order. Jeff Lewis, Ohio EPA 614-644-3469

Florida

Florida's P2 Act of 1991 provided the foundation for the Florida DEQ to consider P2 in its enforcement program. The following P2 costs can be used to offset penalties:

- Preparing a P2 plan.
- Designing, installing, and testing a specific P2 project.
- Training employees to run the project.
- Initial capital investment costs needed to start the project.

In one case a settlement allowed \$1 million of a \$2.5 million civil penalty for a P2 project. The company had illegally disposed of methylene chloride from stripping operations. The Florida DEQ and the facility negotiated a P2 SEP that allowed nearly 100% credit for most of the projects. Some of the most expensive projects include the following:

- Replacement of the methylene chloride stripper with alternative acid-based or other environmentally acceptable stripper (\$209,940; 100% credit).
- A process change at the wastewater treatment plant for filtering and recycling wastewater discharges (\$220,000; 100% credit).
- Downsizing of a large TCE-based vapor degreasing unit, reduction the in the exposed surface area of TCE, and installation of a carbon-absorption vapor recovery system (\$350,000; 100% credit).

Julie Abcarian, Florida DEP, P2 program 904-488-0300

Alaska

The Alaska Department of Environmental Conservation (DEC) and the P2 Policy Council require all NOV letters to:

1. Recommend implementation of P2 and recycling strategies to correct violations and prevent future violations.
2. Refer the facility to the DEC's non-regulatory P2 office for technical assistance.
3. Request a description of written P2 plans.

4. Request information on the steps the facility takes to correct violations using P2 strategies.

The DEC has found this upfront P2 language in the NOV yields positive results. One of these projects resulted in a company operating a used oil collection program from small villages, and another resulted in an audit where a company reduced its chemical inventory from 400 to 153 items and also managed to go closed loop on a wastewater stream. Alaska DEC, 907-269-7500

New York

In New York, the Bristol-Meyers Squibb Company entered into a multimedia SEP with the New York DEC. Its SEP required that the company:

- Hire an independent consultant, approved by the DEC, to complete a compliance audit of its facility.
- Implement a DEC-approvable air pollution control plan.
- Perform a remedial site assessment and groundwater monitoring study.
- Implement a toxic chemical reduction plan to achieve a 50% reduction of total toxic releases at the facility by the year 2000.
- Develop an approvable emergency response program to train and equip local emergency response teams.

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