
Santa Ana Regional Water Quality Control Board

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TO: ALL INTERESTED PARTIES

SOLICITATION OF SUGGESTIONS FOR SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEPs) and ENHANCED COMPLIANCE ACTIONS (ECAs)

Under the authority of the California Water Code (CWC), the Regional Board may issue administrative civil liability complaints (ACLCs) and/or mandatory minimum penalty complaints (MMPCs) (collectively Enforcement Actions) to dischargers in response to violations of waste discharge requirements, discharge prohibitions, enforcement orders, or other orders of the Regional Board. Assessments collected through the Enforcement Actions are required by the CWC to be paid to the State Water Resources Control Board (State Board) Cleanup and Abatement Account (CAA) or other accounts managed by the State Board. The State Board administers the CAA, and the CAA funds are used to address important water quality cleanup and abatement activities throughout the state.

As an alternative to depositing assessments from the Enforcement Actions into the CAA, the State Board's Enforcement Policy¹ and the Policy on Supplemental Environmental Projects² (collectively the State Board Policies) recognize that such assessments may be used for important and valuable water quality improvement projects within the region in which the assessment was made. These water quality improvement projects are known as Supplemental Environmental Projects (SEPs). These funds may be also used for Enhanced Compliance Actions (ECAs). ECAs are projects that enable a discharger to make capital or operational improvements beyond those required by law, and are separate from projects designed to merely bring a discharger into compliance. SEPs and ECAs have been used in this and other regions in the state. SEPs/ECAs are projects that enhance and protect water quality, enhance the beneficial uses of the waters of the state, provide a benefit to the public at large, and that, at the time they are funded, are not otherwise required of the discharger or would be greatly accelerated by the funding provided by the assessments from the Enforcement Actions. Generally, up to fifty percent of the assessed amount from the Enforcement Actions, excluding staff costs, is available for SEP/ECA funding.

SEP Projects:

Examples of SEPs include pollution prevention or reduction projects; environmental restoration programs including water and soil treatment; public awareness and education

¹ http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

² http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/rs2009_0013_sep_finalpolicy.pdf

activities; watershed assessments; watershed management facilitation services; wetland, stream or other waterbody protection, restoration or creation; riparian habitat restoration and/or enhancement; conservation easement; reclamation; compliance training and education; and non-point source program implementation.

The Regional Board directed staff to solicit ideas for SEPs from interested parties and to maintain a list of approved SEP projects. Since 2001, Regional Board staff received a number of suggestions for including projects on the approved SEP list and created a master list of approved SEPs. Subsequently, the SEP list was prioritized as per the criteria discussed during the July 14, 2006 Board meeting³. SEP recommendations are accepted on a continuous basis and the list of approved SEP projects is periodically updated. The approved SEPs would then be available for funding by dischargers who have been assessed a penalty through an Enforcement Action. A few of the approved SEP projects have been funded and completed and a few others have been partially funded.

All interested parties are encouraged to submit their suggestions for SEP projects in the SEP Application Form⁴. At a minimum, the proposed SEP projects should meet the criteria specified in the General SEP Qualification Criteria⁵.

Due to the limited availability of SEP funds, only the highest ranked projects will be listed in the approved list of SEP projects. As these projects are funded or other higher priority projects are accepted for SEP funding, the list will be updated. The current list of the highest priority SEP projects for the Santa Ana Water Board is listed on our website at:

http://www.waterboards.ca.gov/santaana/water_issues/programs/sep/index.shtml

We do not maintain an ECA list of approved projects. If a discharger proposes a SEP and/or ECA as part of settlement discussions, the Santa Ana Water Board staff will evaluate the proposal to determine whether it qualifies as a SEP/ECA and furthers the mission of the Board. The Santa Ana Water Board may or may not approve any individual SEP or ECA proposed by a discharger.

The following summarizes the procedures for obtaining SEP funds:

1. A SEP Proponent submits an application (use the SEP Application Form⁴).
2. Regional Board staff evaluates the application using the SEP Qualification Criteria⁵ and the SEP Evaluation Form⁶.
3. Regional Board staff lists the highest priority SEP Projects on the Approved List of SEP Projects⁷.
4. Lower priority projects may be funded if additional funds become available.

³ http://www.waterboards.ca.gov/santaana/water_issues/programs/sep/index.shtml

⁴ http://www.waterboards.ca.gov/santaana/water_issues/programs/sep/index.shtml

⁵ http://www.waterboards.ca.gov/santaana/water_issues/programs/sep/index.shtml

⁶ http://www.waterboards.ca.gov/santaana/water_issues/programs/sep/index.shtml

⁷ http://www.waterboards.ca.gov/santaana/water_issues/programs/sep/index.shtml

5. The Regional Board's Prosecution Team issues Enforcement Actions (ACLC, MMPC, etc.)
6. The discharger has the option of choosing a SEP project from the Approved List of SEP projects or may propose a new SEP. If the discharger submits a proposal for a new SEP, the proposal will be evaluated using the SEP Qualification Criteria⁵ and the SEP Evaluation Form⁶. If it meets the criteria to be listed with the highest priority projects, it will be listed as an approved SEP project. If an approved SEP project is chosen by the discharger, approximately 50% of the assessed amount could be allocated to the SEP project.
7. The SEP project funding terms and conditions are memorialized in a Settlement Agreement.
8. The Settlement Agreement is noticed for 30-days for public comments.
9. The Executive Officer signs the Settlement Agreement provided there are no significant comments during the public comment period. If there are significant comments that cannot be addressed by staff, the item will be scheduled for a public hearing before the Regional Board.
10. The SEP proponent is required to complete the SEP project as per the Settlement Agreement and provide quarterly and final reports and any other documentation as per the Agreement, including a Certificate of Completion⁸.

All the forms that are needed for SEP application and other related forms are included on the Regional Board's website at:

http://www.waterboards.ca.gov/santaana/water_issues/programs/sep/index.shtml

ECA Projects:

Enhanced Compliance Actions (ECAs) are projects that enable a discharger to make capital or operational improvements beyond those required by law, and are separate from projects designed to merely bring a discharger into compliance. According to State Board Policies, ECAs are subject to the same rules that apply to SEPs and the Water Boards must require the following:

1. ECAs must have clearly identified project goals, costs, milestones, and completion dates and these must be specified in the Settlement Agreements/ACL order.
2. ECAs that will last longer than one year must have at least quarterly reporting requirements.
3. Upon completion of an ECA, the discharger must submit a final report declaring such completion and detailing fund expenditures and goals achieved.
4. If the discharger completes the ECA to the satisfaction of the Water Board by the specified date, the suspended amount is dismissed.
5. If the ECA is not completed to the satisfaction of the Water Board on the specified date the amount suspended becomes due and payable to the CAA or other fund or account as authorized by statute.
6. The Settlement Agreement/ACL order must clearly state that payment of the previously suspended amount does not relieve the discharger of its independent

⁸ http://www.waterboards.ca.gov/santaana/water_issues/programs/sep/index.shtml

obligation to take necessary actions to achieve compliance.

ECA applications may be submitted on the ECA Application Form⁹ or in a letter format with the relevant information (see the ECA Application Form).

Submittal Requirements

Submit completed form to the Regional Board as searchable (OCR) Portable Document Format (PDF) to santaana@waterboards.ca.gov. Please identify as "SEP Proposal" or "ECA Proposal" in the subject line. If you need additional information regarding electronic submittal of documents, please visit the Regional Board's website and navigate to ECM (Electronic Content Management).

For any questions regarding SEP/ECA projects, please contact: Hope Smythe at 951-782-4493 or Hope.smythe@waterboards.ca.gov

⁹http://www.waterboards.ca.gov/santaana/water_issues/programs/sep/index.shtml