

Supplemental Environmental Projects FAQ

In 2017, the State Water Resources Control Board updated its [Policy on Supplemental Environmental Projects](#); this Policy became effective on May 3, 2018 when the Office of Administrative Law approved the regulatory action. The FAQ below are intended to help the public understand the Supplemental Environmental Project (SEP) process and learn how they may submit proposals for SEPs.

What is a SEP?

A SEP is a valuable water quality project that benefits public health and/or the environment, and off-sets a portion of a fine or penalty.

Who does the SEP Policy apply to?

The Policy applies to the nine Regional Water Boards and to the State Water Board's Divisions, including the Division of Water Rights, Division of Water Quality, and Division of Drinking Water and its Districts. Within this document, these entities are referred to as "Regional Boards/Divisions" or "Water Boards".

What is the relationship between an ACLC and a SEP?

The State Water Board and Regional Water Boards may issue an Administrative Civil Liability Complaint (ACLC) when a Discharger (also known as a Permittee, Diverter, Violator, or Settling Party) has allegedly caused a violation. An ACLC lists the alleged violations and proposes a liability, using the method described in the [2017 Enforcement Policy](#). Upon receipt of an ACLC, a Discharger may choose to either contest the matter or settle the matter. During settlement talks, the Discharger may propose a SEP to offset a portion of the penalty.

What are some more details about SEPs?

A person or business ("Discharger") that is subject to an enforcement action may voluntarily agree to undertake a SEP. The project cannot otherwise be required of the Discharger and must consist of actions that go above and beyond the Discharger's normal obligations. The Discharger's commitment to perform a SEP is included in a legally enforceable settlement document which is approved by the Water Board before implementation. The SEP is chosen by the Discharger, either by proposing their own project or selecting a project from a Regional Board/Division's proposed SEP list. In general, the cost of a SEP may offset no more than 50% of the penalty. However, up to 100% of a penalty may be offset by a SEP that meets exceptional circumstances, furthers the human right to water, or benefits a Disadvantaged Community, an Environmental Justice community, or a community with financial hardship.

Who is responsible for completing a SEP?

SEPs are either performed by the Discharger or by a third party funded by the Discharger. The Water Boards do not have the authority to directly manage or administer a SEP.

What is the SEP List?

The 2017 SEP Policy states that the State Water Board and each Regional Water Board/Division shall maintain SEP Lists. These lists contain SEPs that have been proposed by any public or private agency. The lists are available for review by a Discharger during settlement discussions, and the Discharger may propose completing a SEP on the list as a condition of settlement. The SEP which is chosen must have a nexus to the violation, that is, a relationship between the nature or location of the violation and the

nature or location of the SEP.

Who can submit a SEP proposal?

Any public or private party that has the ability to (a) receive and distribute funds and (b) complete the work may submit a SEP proposal. When the proposal is received by the State Water Board Office of Enforcement, it will be forwarded to the appropriate Regional Board. If additional information is needed, then Regional Board/Division staff will contact the proponent directly.

SEP proposals may be submitted at any time using the [SEP Proposal Form](#).

When do I need to submit a proposal?

SEP proposals may be submitted at any time and will be forwarded to the appropriate Regional Board/Division upon receipt. There is no limit to the number of SEP proposals on the SEP List. The Regional Boards/Divisions' SEP Lists will be updated on an annual basis, at which time a Regional Board may add new proposals in addition to reviewing the list to determine if a project has become outdated or has already been funded.

What kind of projects qualify as SEPs?

A SEP must fit one of the seven general categories summarized below and described further on pages 5-7 of the *SEP Policy*. As an overriding measure, all projects shall directly benefit groundwater, surface water or drinking water quality or quantity, and the beneficial uses of waters of the State.

1. Public Health: projects that further the human right to water and/or sanitation in a community.
2. Pollution Prevention: projects that prevent pollution at its source, before it is generated.
3. Pollution Reduction: projects that result in a decrease in the amount and/or toxicity of any pollutant being released into the environment.
4. Environmental Restoration and Protection: projects that benefit surface or groundwater quality and enhance the condition of the ecosystem that was adversely affected by the violation.
5. Assessments and Audits: these projects may include pollution prevention assessments, environmental quality assessments, compliance audits, studies, or monitoring programs.
6. Environmental Compliance Promotion: projects that provide training or technical support to members of a regulated community to identify, achieve, and maintain compliance with applicable statutory or regulatory requirements.
7. Other Projects: projects that do not fit into one of the above categories but have environmental or public health benefits and are consistent with the SEP Policy.

What kind of projects are not acceptable?

Pages 7-8 of the [SEP Policy](#) provides examples of projects that are not acceptable as SEPs. Basically, any project that is not a complete, discrete action with tangible water-related environmental or public health benefits is not acceptable.

What is the process for evaluating SEP proposals for inclusion on the SEP List?

When the State Water Board's Office of Enforcement receives a SEP proposal, it will be forwarded to the appropriate Regional Board/Division for review. Each Regional Board/Division may create additional SEP evaluation criteria; if they do so, they will post it on their website. They are also responsible for

updating their SEP List on at least an annual basis and posting it on their website. The Statewide SEP List is simply a compilation of the Regional Boards/Divisions' SEP Lists.

Each Regional Board/Division may choose one of three methods for adding proposed SEPs to its SEP List: (1) evaluating and pre-approving each individual SEP for inclusion on the List at Board hearings held at an appropriate frequency, (2) establishing criteria that staff may use to prioritize proposed SEPs as they are placed on the List, or (3) allowing staff to place proposed SEPS on the List without pre-approval or prioritization.

What is the process for evaluating SEPs proposed at the time of settlement?

A SEP may be proposed during settlement negotiations. This SEP may come from the SEP List or may be a project designed by the Discharger. The Prosecution Team will review the proposed SEP to determine whether it meets the criteria of the 2017 SEP Policy and any criteria established by that Regional Board. In particular, the Prosecution Team will determine whether the proposed SEP falls into one of the allowable categories of SEPs, whether there is an appropriate nexus to the violation, whether the entity which would complete the SEP has the ability to do so, and whether the project schedule, budget, milestones, and reports are appropriate. If the Prosecution Team agrees with the SEP, then it will be written into the Stipulated Order, and presented to the Regional Board/Division for review and concurrence.

Who do I contact if I have questions about submitting a SEP proposal?

If you have questions about the Region's SEP List, you may contact the Region's Enforcement Coordinator Adriana Godinez at Adriana.Godinez@waterboards.ca.gov.