



DEPARTMENT OF RESOURCES, RECYCLING AND RECOVERY

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Policy on Supplemental Environmental Projects

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Definitions of Key Terms

Disadvantaged Communities— Identified based on geographic, socioeconomic, public health, and environmental hazard criteria, and may include, but are not limited to, either of the following:

- (a) Areas disproportionately affected by environmental pollution and other hazards that can lead to negative public health effects, exposure, or environmental degradation.
- (b) Areas with concentrations of people that are of low income, high unemployment, low levels of homeownership, high rent burden, sensitive populations, or low levels of educational attainment.

Enforcement Action—Legal action taken against violators of environmental laws.

Environmental Justice— The fair and equal treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations and policies.

Non-profit Entity— Any corporation, trust, association, cooperative or other organization that meets all of the following criteria:

- (a) Operates primarily for scientific, educational, service, charitable, or other similar purposes in the public interest;
- (b) Not organized for profit;
- (c) Uses its net proceeds to maintain, improve or expand, or any combination thereof, its operations, and;
- (d) Is a tax-exempt organization under federal Internal Revenue Code Section 501(c)(3) or is able to provide evidence that the State of California recognizes the organization as a non-profit entity.

Respondent—The defendant of an administrative enforcement action. The respondent may be an individual, a company, or an entity.

Settlements of Enforcement Actions— A settlement is an agreed-upon resolution to an enforcement action, often in the form of a consent agreement or final order.

Supplemental Environmental Projects— An environmentally beneficial project that a person or entity subject to an enforcement action voluntarily agrees to undertake in settlement of the action and to offset a portion of a civil penalty.

I. Introduction

California's Department of Resources Recycling and Recovery (CalRecycle) may allow a respondent to satisfy part of the monetary assessment imposed in the settlement of an enforcement action by completing or funding one or more Supplemental Environmental Projects (SEPs). A SEP is an environmentally beneficial project that a respondent agrees to voluntarily undertake in settlement of an enforcement action. As they pertain to CalRecycle, SEPs should further the Department's mission to restore, protect, and enhance the environment, to increase recycling capacity, and to ensure public health, environmental quality and economic vitality. SEPs approved by CalRecycle should promote environmental protection and provide benefit to the public at large.

Public Resources Code (PRC) section 71118 requires each agency within the California Environmental Protection Agency (CalEPA) with enforcement authority to establish a policy governing its use of SEPs. Section 71118(b)(3) requires an annual list of SEPs be prepared that may be selected to settle a portion of an enforcement action and that the list be made available via the CalEPA website.

II. CalRecycle's Interest in SEPs

CalRecycle supports the inclusion of SEPs in settlements of enforcement actions, so long as the project is consistent with this policy. SEPs are an adjunct to CalRecycle's enforcement programs and cannot be a reason for bringing an enforcement action. While SEPs can be useful in the facilitation of settlements, the funding of SEPs is not a primary goal of CalRecycle's enforcement programs nor is it necessary that a SEP always be included in the settlement of an enforcement action that assesses a monetary penalty.

CalRecycle will prioritize SEPs that benefit disadvantaged communities so that these communities may see direct environmental and public health benefits in their neighborhoods.

A SEP may not directly financially benefit CalRecycle's staff, management, or family of members of staff. Any indirect benefits provided to members, staff, or family will be only those that are enjoyed by the public generally. A SEP may not benefit or involve friends of members, staff, or family where there could be an appearance of undue influence or a suggestion of a conflict of interest for CalRecycle.

III. Completion of SEPs and Suspended Penalties

The funds allocated to a SEP will be treated as a suspended penalty. For CalRecycle's purposes, a suspended penalty refers to the portion of the enforcement penalty, up to 50 percent, that may be allocated towards the funding of a SEP and is no longer owed to CalRecycle.

CalRecycle may recover the full amount of the suspended penalty if the SEP is not fully or properly implemented and if any costs of CalRecycle oversight or auditing are not paid. The respondent will be responsible to spend the funds allocated for a SEP as provided in the settlement agreement. The respondent may directly administer a SEP or may contract to have the SEP implemented by a third party approved by CalRecycle. In the event a SEP is not fully or properly implemented, CalRecycle will determine the amount of the penalty that will be suspended.

The respondent must pay the balance of its penalty that is not allocated to fund a SEP to CalRecycle when it is due. The penalty balance that is not allocated to fund a SEP will be paid to CalRecycle or other accounts authorized by statute. If the respondent fails to pay the balance of the penalty in a timely manner, the respondent will be considered in violation of the settlement agreement.

IV. Funding from non-CalRecycle Enforcement Action Settlements

Other boards and departments within CalEPA and other enforcement agencies may provide funds for SEPs listed or funded by CalRecycle through their own enforcement action settlements. SEPs funded by agencies other than CalRecycle are governed by the settlement agreements between the respondents and those agencies and those agencies' SEP policies.

V. Categories of SEPs

The following categories of SEPs are appropriate for inclusion in settlements of CalRecycle enforcement actions.

A. Waste Prevention & Source Reduction Projects

A waste prevention project is one which reduces the generation of waste through "source reduction," which is any practice which reduces the amount of a waste material entering a waste stream or otherwise being released into the environment prior to recycling or disposal.

Source reduction projects may include equipment or technology modifications, process or procedure modification, reformulation or redesign of products, and improvements in housekeeping, maintenance, training, inventory control, or other operation and maintenance procedures. For a project to meet the definition of waste prevention, there must be an overall decrease in the amount of waste released to the environment, not merely a transfer of waste among media.

For example, a waste prevention and source reduction project may include the implementation of a food recovery program, to prevent edible non-perished food from disposal and repurposing that food for consumption.

B. Waste Reduction Projects

A waste reduction project is one that results in a decrease in the amount of any substance entering a waste stream or otherwise being released into the environment by an operating facility. A waste reduction approach is appropriate if a waste stream already exists. These projects employ recycling, treatment, containment, or disposal techniques. Projects may include the installation of more effective end-of-process control or treatment technology.

For example, a waste reduction program may include providing the public with a convenient collection location for household hazard waste such as paint, electronic devices, used motor oil, batteries, and mercury-containing thermostats.

C. Environmental Restoration and Protection Projects

An environmental restoration and protection project is one that goes beyond repairing the damage caused by the violation to enhance the condition of the environment in the adversely affected geographic area. These projects may be used to restore or protect natural or man-made environments. This includes the removal or mitigation of waste materials that burden individuals and communities.

For example, a community environment restoration project may result in the cleanup and proper disposal of illegally dumped solid waste, tires, or electronic waste that would otherwise become a public health hazard.

D. Environmental Compliance Promotion Projects

An environmental compliance promotion project may include trainings or distribution of materials to members of a regulated community or the public to identify, achieve, or maintain compliance with applicable statutory and regulatory requirements or to reduce the generation, release, or disposal of waste beyond legal requirements. An environmental compliance promotion project may also involve the promotion of environmental literacy and environmental stewardship, including support of community-based violation reporting networks, community task forces, fence-line monitoring projects, trainings, forums, or projects that promote community-based environmental enforcement and reduction of adverse environmental impacts.

For example, an environmental compliance promotion project may result in the distribution of CalRecycle's Education and the Environment Initiative (EEI) curriculum materials to K-12 classes or fund the training of teachers to present the EEI curriculum.

F. Other

Other types of projects may be determined to have environmental merit that do not fit within the above categories but are otherwise fully consistent with all other provisions of this policy.

VI. SEP Proposal & Application for List Consideration

CalRecycle will make available on its website a proposal form for SEPs. Each proposal will be reviewed by CalRecycle, and if the proposal satisfies the requirements identified below, CalRecycle may include it on its annual list of potential SEP projects submitted to CalEPA. CalRecycle may request more detailed information about the project from the SEP proponent when it is being considered for inclusion in a settlement. The information required to propose a SEP for inclusion on CalRecycle's list must include:

- A.** A title
- B.** Contact information for the organization, entity, or person proposing the SEP
- C.** Scope of work, including performance standards and measures or indicators of performance.
- D.** Budget or estimated cost
- E.** Indication of what project category the proposed SEP falls under
- F.** Location of proposed SEP
- G.** A description of the project that demonstrates how the project will benefit the environment and benefit disadvantaged communities, summarizes the work plan, and highlights major goals.
- H.** The organization proposing a SEP should have the institutional stability and capacity to complete the SEP, including the ability to accomplish the work and provide the expected reports. For example, an organization may demonstrate this capacity through documentation of prior successes with similar past projects or documented support by other public agencies, public groups, and affected persons.

Once CalRecycle reviews a SEP proposal and determines it contains the information and meets the requirements outlined above, it will include the SEP proposal on the list it submits to CalEPA annually for CalEPA's website. Nothing in the policy restricts CalRecycle from establishing additional, more stringent requirements for SEPs. Nothing in this policy prevents CalRecycle from including SEPs in settlements of enforcement actions that are not listed on CalEPA's website, so long as the SEP meets the requirements of this policy.

VII. SEP Criteria & Evaluation for Inclusion in a Settlement Agreement

CalRecycle will consider the following criteria when evaluating whether to approve the inclusion of a SEP in a settlement of an enforcement action:

- A.** There are two entities who may administer the SEPs following their inclusion in settlements of enforcement actions: (1) SEPs performed by the respondent; and (2) SEPs performed by third-parties but paid for by the respondent. Third-party entities that are paid to perform a SEP must be independent of the respondent and must be a non-profit entity, federally-recognized tribe, or local government.
- B.** A SEP must go above and beyond the otherwise applicable obligations of the respondent. The SEP cannot require something that is already required of the respondent by existing law or is proposed as mitigation to offset impacts of the respondent's project(s).
- C.** There must be a relationship between the nature or location of the violation and the nature or location of the SEP. A nexus exists if the project remediates or reduces the overall environmental or public health impacts or risks to which the violation at issue contributes, or if the project reduces the likelihood that similar violations will occur in the future.
- D.** The SEP should address whether it will receive additional funding from other sources.
- E.** The SEP should include, where appropriate, criteria by which to measure success and requirements for monitoring to track the short and long-term success of the project.
- F.** The SEP should include a detailed time schedule for implementation with milestones.

VIII. SEP Payment, Tracking, Reporting, & Oversight Provisions

SEPs that are included in the settlement of an enforcement action must adhere to the following provisions for project payment, tracking, reporting, and oversight.

- A.** CalRecycle may require the respondent to select and hire an independent management company or another third party, which reports solely to CalRecycle, to oversee implementation of the SEP in lieu of direct oversight by CalRecycle staff. Oversight costs generally are not costs that should be considered part of the direct cost of the SEP for settlement purposes.
- B.** The respondent must provide to CalRecycle a written acknowledgement, such as an executed contract between the third party and respondent, by a third party performing the SEP that any SEP funds it received from the respondent will be spent in accordance with the terms of the settlement and that the third party agrees to an

audit of its SEP expenditures, if requested by CalRecycle. The selection of the third party performing the SEP, and written acknowledgement, must be acceptable to CalRecycle.

- C. The respondent must provide CalRecycle with a final completion report, submitted under penalty of perjury, declaring the completion of the SEP and addressing how the expected outcome(s) or performance standard(s) for the project were met. Where a third-party performed the SEP, that entity may provide the report and the certification for the respondent.
- D. The respondent must provide CalRecycle a final post-project accounting of expenditures. If CalRecycle lacks the means or is otherwise unable to verify the accounting, CalRecycle may require an accounting to be performed by an independent third party acceptable to CalRecycle, paid for by the respondent.
- E. CalRecycle will not directly manage or administer the SEP. The respondent or the contracted third party will manage and administer the SEP.
- F. Where appropriate, it is permissible for a SEP funding agreement between a respondent and a third-party to require pre-approval of invoices or confirmation of completed work by CalRecycle before escrowed or set-aside funds are disbursed to the party performing the work.
- G. The respondent must provide periodic reporting on the performance of the SEP to monitor the timely and successful completion of the SEP. If a third party entity is implementing the SEP on the respondent's behalf, the third party entity may provide the periodic reporting to CalRecycle.
- H. A SEP is treated as a suspended penalty that is waived upon the satisfactory completion of the SEP. Section III provides more detailed information regarding the accounting treatment of SEPs.

IX. Publication of Approved SEPs Lists

CalEPA will maintain a list of the SEPs compiled by its boards, departments, and offices, including CalRecycle. The list of SEPs will be available on CalEPA's website. CalRecycle may also maintain and post on its website a list of environmental projects that it has pre-approved for consideration as a potential SEP.