

Supplemental Environmental Projects Policy

Introduction

The California Air Resources Board (ARB) coordinates the State's efforts to achieve and maintain health-based federal and state air quality standards in order to protect the public from exposure to ozone, particulate matter, and toxic air contaminants, and address climate change. To carry out these efforts, ARB has a multifaceted program of planning, regulation development and implementation, compliance assistance, training, and enforcement. ARB has a comprehensive enforcement program which includes the ability to issue citations, impose administrative penalties, refer cases to prosecutors for civil and criminal prosecution, and to settle cases.

Most violators agree to a settlement rather than to litigate cases. As a condition of settlement, ARB requires the violator to achieve and maintain compliance with air quality laws and regulations, and to pay a monetary civil penalty.

As part of a Settlement Agreement (Agreement), ARB may allow the violator to voluntarily perform or fund one or more Supplemental Environmental Projects (SEP or Project) to offset a portion of their civil penalty. SEPs are projects that benefit air quality by reducing emissions or exposure to air pollution or preventing future air quality violations, not otherwise required by law or regulation.

Under an Agreement, the violator agrees to conduct a SEP, and ARB approves the project and agrees to offset a portion of the penalty for SEP implementation.

This document incorporates the requirements under Public Resources Code section 71118, which was adopted as part of Assembly Bill (AB) 1071 (Statutes, 2015, Chapter 585), which states that SEP policies from California Environmental Protection Agency's (CalEPA) boards, departments, and offices have provisions that benefits disadvantaged communities and engagement with community-based organizations. Specifically, AB 1071 requires ARB to:

- Conduct a public process to solicit potential SEPs from disadvantaged communities.
- Allow the amount of a SEP to be up to 50 percent of an enforcement action.
- Develop an annual list of SEPs that may be selected to settle a portion of an enforcement action.
- Consider the relationship between the location of the violation and the location of the proposed SEP.

ARB Policy on Implementation of SEPs

This document provides ARB's policy for selection, development, and implementation of SEPs. ARB will annually develop a list of eligible SEPs that benefit disadvantaged

communities through a public process, including outreach and participation from disadvantaged communities. ARB will publish the eligible SEP list to ARB's website, and provide this list to CalEPA on an annual basis.

SEP Selection Criteria

ARB determines if a project qualifies to be a SEP, and if a violator may implement a SEP. A project may be eligible as a SEP if it meets all of the following criteria:

- Furthers ARB's purpose of cleaning up the air by
 - a. reducing the risk burden posed to public health,
 - b. preventing future air quality problems beyond those addressed in current air quality programs, or
 - c. improving the injured environment,
- Has a nexus to the violation either through location (the SEP furthers ARB's purpose of cleaning up the air in the specific community where the violation occurred) or through pollutant (the SEP furthers ARB's purpose of cleaning up the air by addressing the pollutants involved in the violation),
- Does not benefit the violator, and
- Goes above and beyond regulatory requirements that are otherwise required by a federal, state, and/or local entity.

SEPs that meet the following additional criteria are preferred:

- Provide direct emissions or exposure reductions,
- Benefit disadvantaged communities,
- Provide community benefits in addition to furthering ARB's purpose of cleaning the air, and/or
- Provide multimedia (e.g. air, water, soil) benefits.

Up to 50 percent of the penalty amount negotiated in a settlement may be offset with a SEP.

SEP Categories

A SEP will fall into one or more of the following categories:

- Pollution Prevention and/or Reduction – Preventing and/ or reducing air or climate pollution beyond current requirements.
- Environmental Restoration and Protection – Improve or restore the quality of the environment.
- Environmental Education and/or Compliance Training – Provide assistance to educators, schools, and community groups to conduct training and public awareness.

- Community Monitoring – Provide tools, such as surveillance and monitoring equipment, to be used by trained members of the public for data acquisition and enhancement of existing air quality monitoring stations.
- Trans-Boundary – Provide support for projects that provide a direct benefit to Californians in and around the border environment with other states and Mexico.
- Other – Other acceptable SEPs can be considered on a case-by-case basis. In limited circumstances, the Executive Officer may make an exception to this policy if there is an extraordinary benefit to human health or the environment that outweighs the considerations used in developing this policy.

Responsibilities of Violators

Through the settlement process, the violator has the option to agree to implement a SEP. To exercise this option, the violator may choose one of the following options:

- Design and implement a SEP
 - If the violator chooses to design and implement a SEP,
 - They are responsible for ensuring the project is completed,
 - The portion of a penalty offset to a SEP is treated as a suspended penalty that is waived upon project completion. If the SEP is not completed, the violator must pay the suspended penalty, and
 - They are responsible for providing oversight, and reporting of the project to ARB, including progress reports and a final completion report declaring the completion of the SEP, addressing how the expected project goals were met, and certifying post-project accounting of expenditures.
- Select a SEP from the ARB list and deposit money in a SEP administrator account
 - If the violator chooses to select a SEP from the ARB list and deposits money to pay for that SEP into the SEP administrator account, the SEP administrator is responsible for ensuring SEP completion.
- Select a SEP from the ARB list and fund SEP directly
 - If the violator chooses to select a SEP from the ARB list and directly fund a SEP, the project recipient is responsible for ensuring the project is completed.
 - The project recipient is responsible for providing reporting of the project to ARB, including progress reports and a final completion report declaring the completion of the SEP, addressing how the expected project goals were met, and certifying post-project accounting of expenditures.
- Deposit money in a SEP administrator account

- If the violator chooses to deposit money into a SEP administrator account, the SEP administrator is responsible for selecting a suitable SEP from the ARB list consistent with this policy and ensuring SEP completion.

Responsibilities of SEP Administrators

A SEP administrator is a party contracted with ARB to administer a SEP or group of SEPs. SEP administrators are responsible for:

- Managing financial contributions to a SEP by:
 - Collecting and managing SEP payments received from multiple violators,
 - Tracking funds by location of violation and type of pollutant,
 - Tracking funds allocated for specific SEPs,
 - Dispersing funds to SEPs, and
 - Tracking and accounting for dispersed funds,
- Ensuring that any selected SEP meets the requirements and criteria defined in this policy,
- Providing tracking, oversight, and reporting of the project to ARB, including:
 - Monitoring the timely and successful completion of each SEP,
 - Requesting and maintaining SEP expenditures from SEP recipient,
 - Notifying if a SEP recipient is not meeting proposed time schedule/milestones, and
 - Providing quarterly progress reports for each SEP, and a final completion report, declaring the completion of the SEP, certifying post-project accounting of expenditures, and describing the overall environmental and community benefits of the project.