

TCEQ Interoffice Memorandum

To: Commissioners

Thru: Caroline Sweeney, Deputy Director
Office of Legal Services

From: Kathleen Decker, Director, Litigation Division

Date: June 5, 2013

Subject: June 14, 2013 Work Session-Supplemental Environmental Projects

At the January 30, 2013 Agenda, the Commission directed staff to prepare a briefing on the SEP Program to present at an upcoming Work Session. This memo provides general information about the current status of the SEP Program as well as issues for the Commission's consideration.

Background

Currently, the SEP Program has 49 active pre-approved SEPs managed by Third-Party Administrators. Attachment 1 contains the current list of pre-Approved SEPs. Of these 49 projects, 22 are air projects and 27 are water projects. Attachment 2 contains additional information on these projects. The total of all budgets for these projects is \$48,376,322. The total amount contributed to Third-Party SEPs in 2012 was \$2,711,108, and the year-to-date total for 2013 is \$1,716,748. Third-Party SEP contributions for FY 2008-2013 are listed in Attachment 3.

In 2012, the SEP program developed seven Custom SEPs and eleven Compliance SEPs. The custom SEPs were focused on the cleanup of illegal trash dump sites and scrap tire collections. All of the compliance SEPs afforded local governments the opportunity to repair or upgrade their wastewater treatment systems. Information on the number of custom and compliance SEPs is in Attachment 4.

The SEP Program has 40 pending applications for Third-Party SEP projects. Seventeen of these applications are for renewals of existing projects and 23 are for new projects. Eighteen applications are for air projects and 32 are for water projects. Additional information on pending applications is in Attachment 5.

TCEQ Interoffice Memorandum

SEP Guidance Document

The SEP Guidance Document, GI-352, was last revised in March 2009. Since then, many changes have taken place in the SEP program, including the initiation of Compliance SEPs. House Bill 2290, recently passed by the 83rd Legislature and sent to the Governor on May 22, 2013, creates an allowance for administrative costs that would also render this document out-of-date if it becomes law. Updating the SEP Guidance Document would provide current and accurate information on the SEP Program to the public, respondents, and potential third-party administrators. A draft revised guidance document in redline format is provided as Attachment 6 and a clean revised copy is provided as Attachment 7. This document reflects current practices in the SEP Program as well as the allowance of up to 10% of the SEP budget to be used as administrative costs.

Other Issues for Consideration

Staff plans to solicit feedback on the SEP Program from Third-Party Administrators. In addition to what is included in Attachment 8, are there any other matters that should be covered in a survey of Third-Party Administrator's experience with the SEP Program?

Additionally, staff is prepared to discuss other issues that have arisen recently in the SEP Program such as:

- The basis for reimbursement on vehicle replacement SEPs (e.g., incremental cost, percentage of cost, etc);
- Possibility of a statewide multi-project SEP that would utilize SEP funds for projects throughout the state without regard to the media of the violation; and
- Expansion of the Commission Resolution that allows transfer of funds between RC & D projects to allow transfer between any Third-Party Administrators.

Attachment 1: List of Pre-Approved SEPs

PRE-APPROVED SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEPS) LIST¹

STATEWIDE SEPs

All Texas counties may have an eligible SEP through several non-profit and state agencies that have agreements with TCEQ that allow these organizations to provide SEP options statewide. These SEPs are known as "Statewide SEPs." View the list of available Statewide SEPs on the TCEQ SEP website at [Statewide SEPs](#). (pdf).

SEPs BY MEDIA

NO	RECIPIENT OF SEP FUNDS	PROJECT TITLE	PROJECT DESCRIPTION (HYPERLINKED BELOW)	MINIMUM CONTRIBUTION	ENFORCEMENT MEDIA	ELIGIBLE COUNTIES
AIR PROJECTS						
1.	Barbers Hill Independent School District	Alternative Fuel School Bus Replacement	Replace model year 2006 or older diesel- or gasoline-powered buses with newer propane-fueled buses. (pdf)	\$500	AIR, IHW ² , MM ³ , PST ⁴	Austin, Brazoria, Chambers, Colorado, Ft Bend, Galveston, Harris, Liberty, Matagorda, Montgomery, San Jacinto, Walker, Waller, Wharton
2.	Barbers Hill Independent School District	Energy Efficiency Building Upgrade/Retrofit Project	Installation and monitoring of sub-meters for the hardware and software infrastructure of certain district buildings which will allow real-time observation of energy consumption and demand. (pdf)	\$500	AIR, IHW ² , MM ³ , PST ⁴	Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Harris, Liberty, Matagorda, Montgomery, San Jacinto, Walker, Waller, and Wharton

¹ The TCEQ Executive Director may revise this list from time to time to add similar projects, make minor modifications, or delete projects. Availability of listed projects is subject to coordination with SEP fund recipients.

² Enforcement cases designated IHW media may contribute to an AQ-media SEP if there is an air component in the alleged violation.

³ Enforcement cases designated MM media may contribute to an AQ-media SEP if there is an air component in the alleged violation.

⁴ Enforcement cases designated PST media may contribute to an AQ-media SEP if there is an air component in the alleged violation. If there is no air component, the case may contribute to a Cleanup, Habitat, or Water Quality SEP.

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NO	RECIPIENT OF SEP FUNDS	PROJECT TITLE	PROJECT DESCRIPTION (HYPERLINKED BELOW)	MINIMUM CONTRIBUTION	ENFORCEMENT MEDIA	ELIGIBLE COUNTIES
3.	Borger Independent School District	Borger ISD Clean School Bus Replacement Program	Provide up to 100% of the purchase price of a model year 2010 or newer bus to replace a diesel or gasoline school bus that is model year 2002 or older. (pdf)	\$500	AIR, IHW ² , MM ³ , PST ⁴	Armstrong, Bailey, Briscoe, Carson, Castro, Cochran, Collingsworth, Crosby, Dallam, Deaf Smith, Dickens, Donley, Floyd, Garza, Gray, Hale, Hall, Hansford, Hartley, Hemphill, Hockley, Hutchison, King, Lamb, Lipscomb, Lynn, Lubbock, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Terry, Wheeler, and Yoakum
4.	Brazoria County	Brazoria County Vehicle and Equipment Program	Replace or retrofit gasoline and diesel powered vehicles and equipment with lower-emission or alternative fuel ones. (pdf)	\$500	AIR, IHW ² , MM ³ , PST ⁴	Brazoria
5.	Harris County	Ambient Air Monitoring	Air monitoring of hazardous air pollutants in Harris County. Data available to the public via the TCEQ website. (pdf)	Any Amount	AIR, IHW ² , MM ³ , PST ⁴	Harris
6.	Houston-Galveston Area Emissions Reduction Credit Organization ("AERCO")	Clean Cities/Clean Vehicles Program	Provide reimbursement to school districts, area transit agencies, or local governments to retrofit or replace older school buses with cleaner technology and for the incremental cost of replacing local government fleet vehicles with newer lower-emission vehicles (pdf)	Any Amount	AIR, IHW ² , MM ³ , PST ⁴	Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller
7.	Houston Regional Monitoring Corporation	Houston Area Air Monitoring Project	Report data from three existing air monitors in the Houston Regional Monitoring Corporation ambient air quality network in Texas Air Quality Region 216. (pdf)	\$1000	AIR, IHW ² , MM ³ , PST ⁴	Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Harris, Liberty, Matagorda, Montgomery, Walker, Waller, and Wharton
8.	North Central Texas Council of Governments	North Central Texas Clean School Bus Program	Retrofit or replace older school buses with newer model year buses or cleaner technology. (pdf)	\$1000	AIR, IHW ² , MM ³ , PST ⁴	Collin, Cooke, Dallas, Denton, Ellis, Erath, Fannin, Grayson, Hood, Hunt, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Tarrant, and Wise
9.	Railroad Commission of Texas	Alternative Fuels Clean School Bus Replacement Program	Provide up to 100% of the purchase price of a propane or natural gas powered school bus that is model year 2010 or newer to public and public charter schools to replace a diesel school bus that is 2002 or older. (pdf)	\$1,000	AIR, IHW ² , MM ³ , PST ⁴	Statewide

NO	RECIPIENT OF SEP FUNDS	PROJECT TITLE	PROJECT DESCRIPTION (HYPERLINKED BELOW)	MINIMUM CONTRIBUTION	ENFORCEMENT MEDIA	ELIGIBLE COUNTIES
10.	South East Texas Regional Planning Commission	Southeast Texas Regional Air Monitoring Network	Air monitoring in the Southeast Texas area. Project is compatible with EMRS initiative. Data available to the public via the TCEQ website. (pdf)	\$1,000	AIR, IHW ² , MM ³ , PST ⁴	Jefferson
11.	South East Texas Regional Planning Commission	West Port Arthur Home Energy Efficiency Program	Energy efficiency for low-income homeowners to reduce fuel and electricity usage, thus reducing air emissions. (pdf)	Any Amount	AIR, IHW ² , MM ³ , PST ⁴	Jefferson
12.	Texas A&M University Corpus Christi	AutoCheck Program	Free vehicle emissions testing using remote sensors with an infrared beam. Vehicle owners with polluting vehicles get free vouchers to pay for auto repairs. (pdf)	\$600	AIR, IHW ² , MM ³ , PST ⁴	Aransas, Bee, Brooks, Calhoun, DeWitt, Duval, Goliad, Jackson, Jim Wells, Kenedy, Kleberg, Lavaca, Live Oak, McMullen, Nueces, Refugio, San Patricio, and Victoria
13.	Texas Air Research Center - Lamar University	Flare Speciation and Air Quality Modeling	Air quality improvements through speciation of emissions. (pdf)	\$5,000	AIR, IHW ² , MM ³ , PST ⁴	Jefferson
14.	Texas Association of RC&D Areas	Clean Buses Project	Retrofit and replace school buses with lower emission technology throughout Texas. When a bus is replaced, the higher emission bus will be permanently retired. (pdf)	\$2,500	AIR, IHW ² , MM ³ , PST ⁴	Statewide
15.	Texas Congress of Parents and Teachers dba Texas PTA	Texas PTA Clean School Bus Replacement Program	Retrofit and replace school buses with lower emission technology throughout Texas. When a bus is replaced, the higher emission bus will be permanently retired. (pdf)	\$500	AIR, IHW ² , MM ³ , PST ⁴	Statewide

NO	RECIPIENT OF SEP FUNDS	PROJECT TITLE	PROJECT DESCRIPTION (HYPERLINKED BELOW)	MINIMUM CONTRIBUTION	ENFORCEMENT MEDIA	ELIGIBLE COUNTIES
<i>CLEANUP PROJECTS</i>						
16.	Angelina Beautiful Clean	Household Hazardous Waste Collection	Collection events to collect and properly dispose of HHW such as paints, corrosive cleaners, pool chlorine and acid, pesticides, and electronics such as television and computer monitors. (pdf)	\$500	EAQ, IHW ² , IWD, MLM, MM ³ , PWS, MSW, MWD, PST ⁴ , PWS, WQ, WR	Anderson, Angelina, Atascosa, Bastrop, Bee, Bexar, Brazos, Burleson, Caldwell, Camp, Cass, Cherokee, DeWitt, Dimmit, Duval, Fayette, Franklin, Freestone, Frio, Gonzales, Gregg, Grimes, Guadalupe, Hardin, Harrison, Henderson, Hopkins, Houston, Jasper, Jefferson, Karnes, La Salle, Lavaca, Lee, Leon, Liberty, Live Oak, Madison, Marion, Maverick, McMullen, Medina, Milam, Morris, Nacogdoches, Orange, Panola, Polk, Robertson, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Trinity, Tyler, Upshur, Van Zandt, Walker, Washington, Webb, Wilson, Wood and Zavala
17.	El Paso, City of	Neighborhood Cleanup Events	Collection events to collect, properly dispose, or recycle household non-hazardous materials such as used tires, motor oil, batteries, antifreeze, and bulky solid waste. (pdf)	\$100	EAQ, IHW ² , IWD, MLM, MM ³ , PWS, MSW, MWD, PST ⁴ , PWS, WQ, WR	El Paso
18.	Gulf Coast Waste Disposal Authority	River, Lakes, Bays 'N Bayous Trash Bash	Clean up trash and pollutants from Galveston Bay and waterways in the San Jacinto watershed. (pdf)	Any Amount	EAQ, IHW ² , IWD, MLM, MM ³ , PWS, MSW, MWD, PST ⁴ , PWS, WQ, WR	Galveston and Harris
19.	Texas Association of RC&D Areas	Tire Collection Events and Cleanup of Abandoned Tire Sites	Coordinate with local government officials and private entities to conduct tire collection events for residents to properly dispose of or recycle used tires or clean sites where tires have been disposed of illegally. (pdf)	\$500	AIR, EAQ, IHW ² , IWD, MLM, MM ³ , PWS, MSW, MWD, PST ⁴ , PWS, WQ, WR	Statewide
20.	Texas Association of RC&D Areas	Cleanup of Unauthorized Dumpsites	Coordinate with city and/or county government officials to clean sites where trash, tires, or other materials have been disposed of illegally. (pdf)	\$500	EAQ, IHW ² , IWD, MLM, MM ³ , PWS, MSW, MWD, PST ⁴ , PWS, WQ, WR	Statewide

NO	RECIPIENT OF SEP FUNDS	PROJECT TITLE	PROJECT DESCRIPTION (HYPERLINKED BELOW)	MINIMUM CONTRIBUTION	ENFORCEMENT MEDIA	ELIGIBLE COUNTIES
21.	Texas Association of RC&D Areas	Household Hazardous Waste Collection	Conduct events for residents to bring in HHW for proper disposal. HHW may include paint, thinners, pesticides, oil and gas, corrosive cleaners, fertilizers, and electronic devices. (pdf)	\$500	EAQ, IHW ² , IWD, MLM, MM ³ , PWS, MSW, MWD, PST ⁴ , PWS, WQ, WR	Statewide
HABITAT RESTORATION, PRESERVATION, AND ACQUISITION PROJECTS						
22.	Armand Bayou Nature Center	Coastal Prairie, Tidal Marsh, and Forested Wetland Restoration Project	Propagation and installation of native plants to restore ecosystems, reduce erosion, and increase habitat for wildlife. (pdf)	\$1000	EAQ, IHW ² , IWD, MLM, MM ³ , PWS, MSW, MWD, PST ⁴ , PWS, WQ, WR	San Jacinto River Basin and the Gulf Coast Aquifer including Angelina, Aransas, Atascosa, Austin, Bee, Brazoria, Brazos, Brooks, Calhoun, Cameron, Chambers, Colorado, DeWitt, Duval, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Grimes, Hardin, Harris, Hidalgo, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Karnes, Kenedy, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, McMullen, Montgomery, Newton, Nueces, Orange, Polk, Refugio, Sabine, San Jacinto, San Patricio, Starr, Trinity, Tyler, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, and Zapata Counties
23.	Bayou Land Conservancy	Spring Creek Greenway Project	Land and water preservation of 12,000 acres of contiguous forested riparian corridor along Spring Creek between Harris and Montgomery Counties. (pdf)	\$1,000	EAQ, IHW ² , IWD, MLM, MM ³ , PWS, MSW, MWD, PST ⁴ , PWS, WQ, WR	Harris and Montgomery
24.	Big Thicket Association	Wetland Species and Ecosystem Analysis	Inventory of a taxonomic group for the Big Thicket National Preserve, such as lichens, bryophytes, mussels, mollusks, amphibians, fish, or birds. (pdf)	\$1,000	EAQ, IHW ² , IWD, MLM, MM ³ , PWS, MSW, MWD, PST ⁴ , PWS, WQ, WR	Hardin, Jefferson, Orange, Jasper, Liberty, Polk, and Tyler Counties
25.	City of Corpus Christi	Wetland Construction, Habitat Enhancements, and Land Acquisition at the Oso Conservation Interpretive Park	Development of a 162-acre nature park on the shores of Oso Bay. Will include habitat enhancement (wetland construction and enhancement and native species control, property acquisition) for wildlife. (pdf)	\$5,000	EAQ, IHW ² , IWD, MLM, MM ³ , PWS, MSW, MWD, PST ⁴ , PWS, WQ, WR	Nueces

NO	RECIPIENT OF SEP FUNDS	PROJECT TITLE	PROJECT DESCRIPTION (HYPERLINKED BELOW)	MINIMUM CONTRIBUTION	ENFORCEMENT MEDIA	ELIGIBLE COUNTIES
26.	Friends of the River San Bernard	Natural Area Acquisition and Conservation Program	Permanently preserve and protect wetland and upland habitat next to San Bernard River by acquisition of conservation easements in Fort Bend County. (pdf)	\$500	EAQ, IHW ² , IWD, MLM, MM ³ , PWS, MSW, MWD, PST ⁴ , PWS, WQ, WR	Austin, Brazoria, Colorado, Fort Bend, Matagorda, and Wharton
27.	Galveston Bay Foundation	The Galveston Bay Restoration "Marsh Mania"	Restore shoreline elevations, growing plants for shoreline restoration, and planting new habitat. (pdf)	Any Amount	EAQ, IHW ² , IWD, MLM, MM ³ , PWS, MSW, MWD, PST ⁴ , PWS, WQ, WR	Brazoria, Chambers, Galveston and Harris
28.	Houston Arboretum and Nature Center	Hurricane Ike Habitat Restoration and Removal of Invasive Species	Houston Arboretum will remove exotic vegetation and replant trees on 10 acres of the Houston Arboretum's property. (pdf)	\$500	EAQ, IHW ² , IWD, MLM, MM ³ , PWS, MSW, MWD, PST ⁴ , PWS, WQ, WR	San Jacinto River Basin and the Gulf Coast Aquifer including Angelina, Aransas, Atascosa, Austin, Bee, Brazoria, Brazos, Brooks, Calhoun, Cameron, Chambers, Colorado, DeWitt, Duval, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Grimes, Hardin, Harris, Hidalgo, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Karnes, Kenedy, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, McMullen, Montgomery, Newton, Nueces, Orange, Polk, Refugio, Sabine, San Jacinto, San Patricio, Starr, Trinity, Tyler, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy and Zapata
29.	National Audubon Society	Mitchell Lake Project	Restore upland habitat at the Mitchell Lake Audubon Center and Sanctuary by removing non-native, exotic plant species and re-establishing native grasses, forbs, and woody vegetation. (pdf)	Any Amount	EAQ, IHW ² , IWD, MLM, MM ³ , PWS, MSW, MWD, PST ⁴ , PWS, WQ, WR	Bexar
30.	National Audubon Society	Restoration and revegetation of Green Island and Three-Islands	Improve nesting conditions for colonial waterbirds on these four islands by planting appropriate native plants, thus further reducing damage due to erosion. (pdf)	Any Amount	EAQ, IHW ² , IWD, MLM, MM ³ , PWS, MSW, MWD, PST ⁴ , PWS, WQ, WR	Cameron and Willacy

NO	RECIPIENT OF SEP FUNDS	PROJECT TITLE	PROJECT DESCRIPTION (HYPERLINKED BELOW)	MINIMUM CONTRIBUTION	ENFORCEMENT MEDIA	ELIGIBLE COUNTIES
31.	City of Portland	Violet Andrews Park Erosion Control and Habitat Restoration	Habitat restoration and erosion control in Violet Andrews Park. (pdf)	\$500	EAQ, IHW ² , IWD, MLM, MM ³ , PWS, MSW, MWD, PST ⁴ , PWS, WQ, WR	Aransas, Bee, Goliad, Nueces, Refugio, and San Patricio
32.	The Conservation Fund	Cade Ranch Habitat Acquisition & Preservation Project	Performing Party shall acquire 2,614 coastal acres known as the Cade Ranch to be permanently protected for water quality and wildlife habitat (the "Property"). Following its purchase, the Property shall be conveyed by donation to the United States Fish & Wildlife Service ("USF&W") to be permanently protected as part of the Anahuac National Wildlife Refuge ("ANWR"). (pdf)	\$1,000	EAQ, IHW ² , IWD, MLM, MM ³ , PWS, MSW, MWD, PST ⁴ , PWS, WQ, WR	Neches-Trinity Coastal Basin and Gulf Coast Aquifer including Angelina, Aransas, Atascosa, Austin, Bee, Brazoria, Brazos, Brooks, Calhoun, Cameron, Chambers, Colorado, DeWitt, Duval, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Grimes, Hardin, Harris, Hidalgo, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Karnes, Kenedy, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, McMullen, Montgomery, Newton, Nueces, Orange, Polk, Refugio, Sabine, San Jacinto, San Patricio, Starr, Trinity, Tyler, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, and Zapata Counties.
33.	Travis Audubon	Baker Sanctuary Fence Project Phase III	Build a game fence to reduce habitat destruction and soil erosion in Baker Sanctuary. (pdf)	\$500	EAQ, IHW ² , IWD, MLM, MM ³ , PWS, MSW, MWD, PST ⁴ , PWS, WQ, WR	Colorado River Basin including Andrews, Austin, Bastrop, Blanco, Borden, Brown, Burnet, Caldwell, Callahan, Cochran, Coke, Coleman, Colorado, Comanche, Concho, Crockett, Dawson, Eastland, Ector, Edwards, Fayette, Gaines, Garza, Gillespie, Glasscock, Hays, Hockley, Howard, Irion, Kendall, Kerr, Kimble, Lampasas, Lee, Llano, Lynn, Martin, Mason, Matagorda, McCulloch, Menard, Midland, Mills, Mitchell, Nolan, Reagan, Real, Runnels, San Saba, Schleicher, Scurry, Sterling, Sutton, Taylor, Terry, Tom Green, Travis, Upton, Wharton and Yoakum
34.	Trust for Public Land	Galveston Bay Natural Area Acquisition and Conservation Program	Acquisitions to preserve open space in the Galveston Bay watershed, improve water quality, conserve wetlands and other habitat, and increase access to bay and tributaries. (pdf)	\$10,000	EAQ, IHW ² , IWD, MLM, MM ³ , PWS, MSW, MWD, PST ⁴ , PWS, WQ, WR	Brazoria, Chambers, Galveston, and Harris

NO	RECIPIENT OF SEP FUNDS	PROJECT TITLE	PROJECT DESCRIPTION (HYPERLINKED BELOW)	MINIMUM CONTRIBUTION	ENFORCEMENT MEDIA	ELIGIBLE COUNTIES
WATER QUALITY PROJECTS						
35.	Brazoria County	Wastewater Treatment Assistance	Repair or replace failing septic systems for low-income residents impacting the Brazos River Basin, Christmas Bay, Galveston Bay, Chocolate Bayou, and Bastrop Bayou. (pdf)	\$1,000	EAQ, IHW ² , IWD, MLM, MM ³ , PWS, MSW, MWD, PST ⁴ , PWS, WQ, WR	Brazoria
36.	Jefferson County	Cheek-Community First Time Sewer Service for Low Income Homeowners	First-time sewer service for low-income residential customers in the Candlelight and Martel Subdivisions (Cheek Community) in Jefferson County. (pdf)	\$10,000	EAQ, IHW ² , IWD, MLM, MM ³ , PWS, MSW, MWD, PST ⁴ , PWS, WQ, WR	Jefferson
37.	Pasadena, City of	Capture Gate on Preston	Design and install a gate to trap floatable debris, trash, and oil that will be removed from the storm water stream before flowing into Armand Bayou and Galveston Bay. (pdf)	\$500	EAQ, IHW ² , IWD, MLM, MM ³ , PWS, MSW, MWD, PST ⁴ , PWS, WQ, WR	San Jacinto River Basin; Fort Bend, Grimes, Harris, Liberty, San Jacinto, Walker and Waller Counties
38.	Texas Association of RC&D Areas	Wastewater Treatment Assistance	Repair or replace failing on-site wastewater systems for low-income homeowners. (pdf)	\$100	EAQ, IHW ² , IWD, MLM, MM ³ , PWS, MSW, MWD, PST ⁴ , PWS, WQ, WR	Statewide
39.	Texas State University at San Marcos	Continuous Water Quality Monitoring Network	Install water monitors to assess water quality, including D.O, pH, and specific conductance. Data will be reported to the TCEQ in real time. (pdf)	\$10,000	EAQ, IHW ² , IWD, MLM, MM ³ , PWS, MSW, MWD, PST ⁴ , PWS, WQ, WR	Bandera, Bell, Bexar, Blanco, Burnet, Hays, Lee, Travis, and Williamson
40.	Trans-Pecos Water & Land Trust	Trans-Pecos Water Rights Acquisition Project	The goal of this project is to maintain water in the Rio Grande River for environmental and conservation purposes, to benefit water quality as well as aquatic and riparian wildlife habitat. (pdf)	\$500	EAQ, IHW ² , IWD, MLM, MM ³ , PWS, MSW, MWD, PST ⁴ , PWS, WQ, WR	Rio Grande River Basin; including all of Andrews, Brewster, Cameron, Crane, Crockett, Culberson, Dimmit, Ector, Edwards, El Paso, Hidalgo, Hudspeth, Jeff Davis, Jim Hogg, Kinney, Loving, Maverick, Pecos, Presidio, Reagan, Reeves, Schleicher, Starr, Sutton, Terrell, Upton, Val Verde, Ward, Webb, Winkler and Zapata

Projects Fully Funded

Administrator Name and Project Name		Explanation	Date
Air Quality			
1.	Brazoria County <i>Vehicle and Equipment Program</i>	Administrator has older funds to spend	FY 2011
2.	Port Arthur, City of <i>Alternative Fueled Vehicles and Equipment</i>	Administrator has older funds to spend	FY 2011
3.	Port Arthur, City of <i>Building Infrastructure and Energy Efficiency</i>	Administrator has older funds to spend	FY 2011
4.	Texas Air Research Center at Lamar University <i>Flare Minimization and Air Quality Modeling</i>	Administrator stated project fully funded at this time.	02/06/12
Habitat			
5.	National Audubon Society <i>Anti-erosion, revegetation and pest control, Sundown Sanctuary Island</i>	Administrator has older funds to spend	02/22/12
Water Quality			
6.	Caddo Lake Institute <i>Caddo Lake Watershed Enhanced Monitoring Program</i>	Administrator stated project has funding available from other sources	11/15/11

Projects Not Accepting Contributions

Administrator Name and Project Name		Explanation	Date
Air Quality			
1.	Texas A&M University Kingsville <i>Corpus Christi Airshed Quality Monitoring</i>	Performance under review	FY 2011
2.	University of Texas at Arlington <i>Texas Air Monitoring Network</i>		01/17/12
3.	University of Texas at Austin <i>Corpus Christi Air Monitoring and Surveillance Camera Project</i>	Updating SEP agreement to conform with new budgetary and reporting requirements	04/12/12

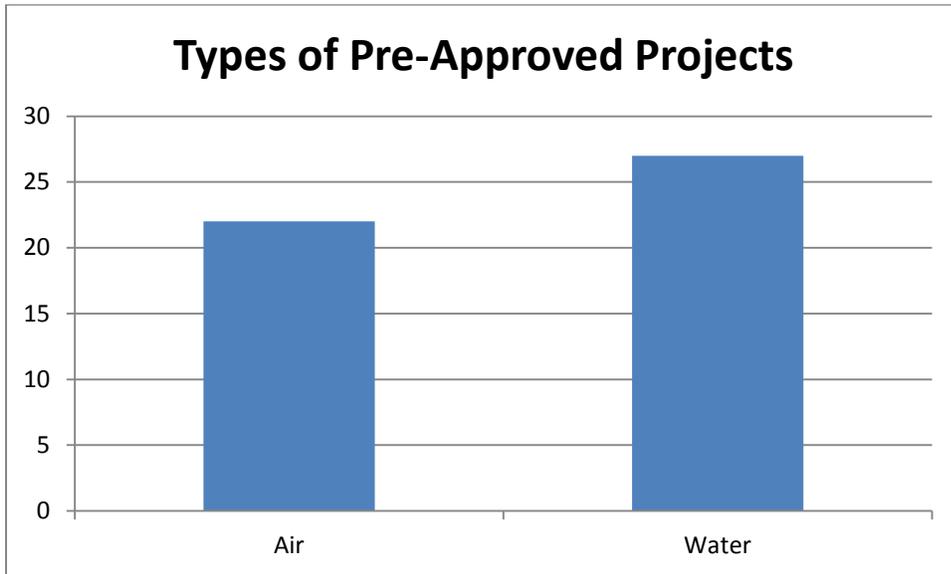
SEPS COMMONLY DIRECTLY PERFORMED BY CITIES OR COUNTIES

(These SEPs would still require a proposal in a custom SEP application that addresses the details of the project.)

1.	A tire, household hazardous waste, electronics, or large MSW collection day, where the city/county will advertise to citizens that they may bring in these items for proper disposal at no cost to the citizens.
2.	Removal of dilapidated housing that contains asbestos or lead paint. A site owned by the respondent is not eligible unless the respondent: 1) is a governmental entity that acquired the site through escheat, foreclosure, eminent domain, or bequest after the dumping occurred; and 2) there is a clear benefit to the community, such as when the land is cleaned up for preservation as a park.
3.	An erosion control project around a creek, river or lake.
4.	Illegal tire site or dumpsite clean-ups –Eligible sites will be those where a responsible party cannot be found or is unable to clean the site and where reasonable efforts have been made to prevent the dumping. A site owned by the respondent is not eligible unless the respondent: 1) is a governmental entity that acquired the site through escheat, foreclosure, eminent domain, or bequest after the dumping occurred; and 2) there is a clear benefit to the community, such as when the land is cleaned up for preservation as a park.
5.	Extend first time sewer service to low-income recipients utilizing failing septic systems.
6.	Extend first time water service to low-income recipients utilizing shallow or contaminated well water.
7.	Improve wastewater treatment plants where the city does not have adequate funding to make such improvements.
8.	Dam repairs for dams on the agency's list of high-risk dams.
9.	Funding for swap-outs of gas for electric equipment.

Attachment 2: Information on Pre-Approved SEPs

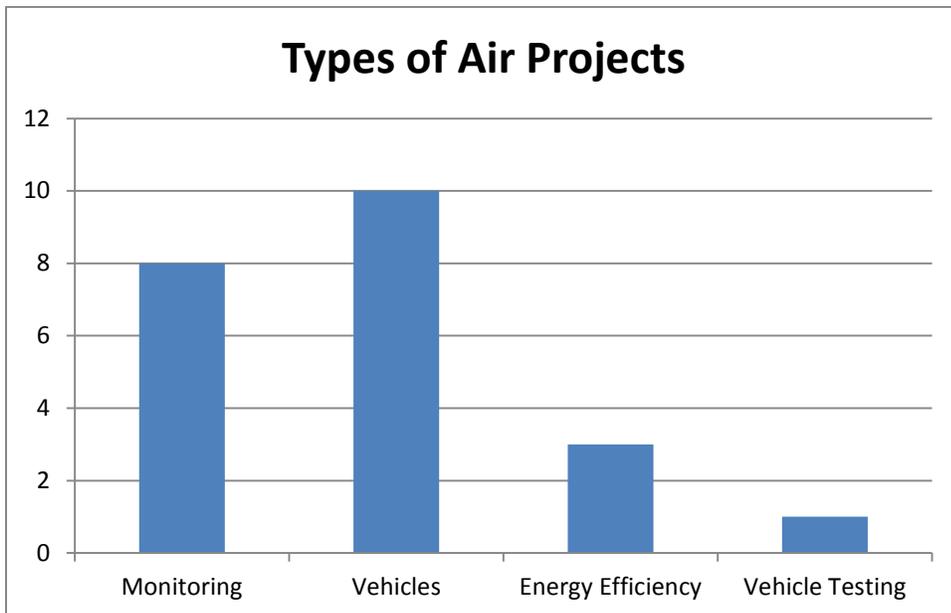
Attachment 2: Information on Pre-Approved SEPs



Air – 22

Water- 27

Total Number of Projects – 49



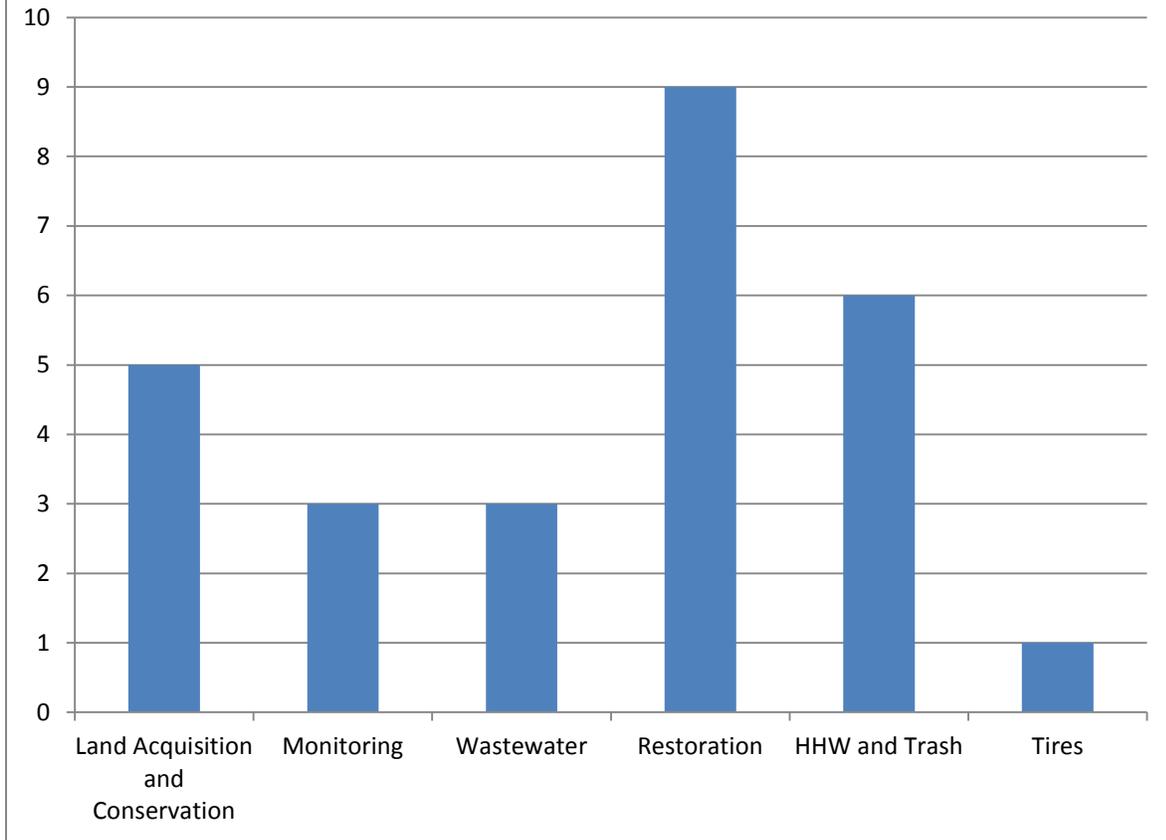
Air Quality Monitoring – 8

Vehicle/School Bus Replacement – 10

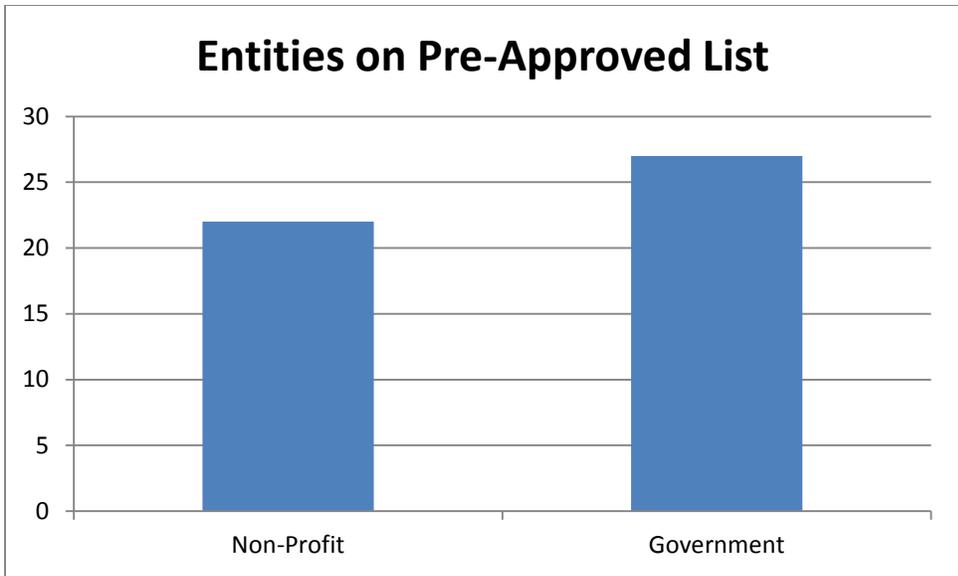
Energy Efficiency Upgrades – 3

Vehicle Emissions Testing and Repairs – 1

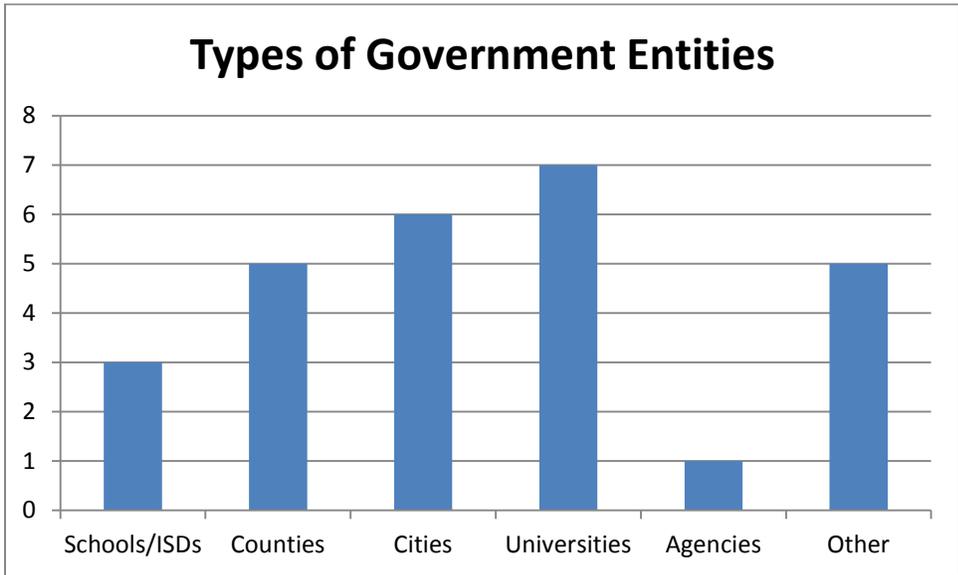
Types of Water Projects



Land Acquisition and Conservation – 5
Water Quality Monitoring – 3
Wastewater/Sewer Assistance – 3
Restoration – 9
HHW and Trash Collections and Cleanups – 6
Tire Collections and Cleanups – 1



Non-Profit Organizations – 22
 Government Entities – 27

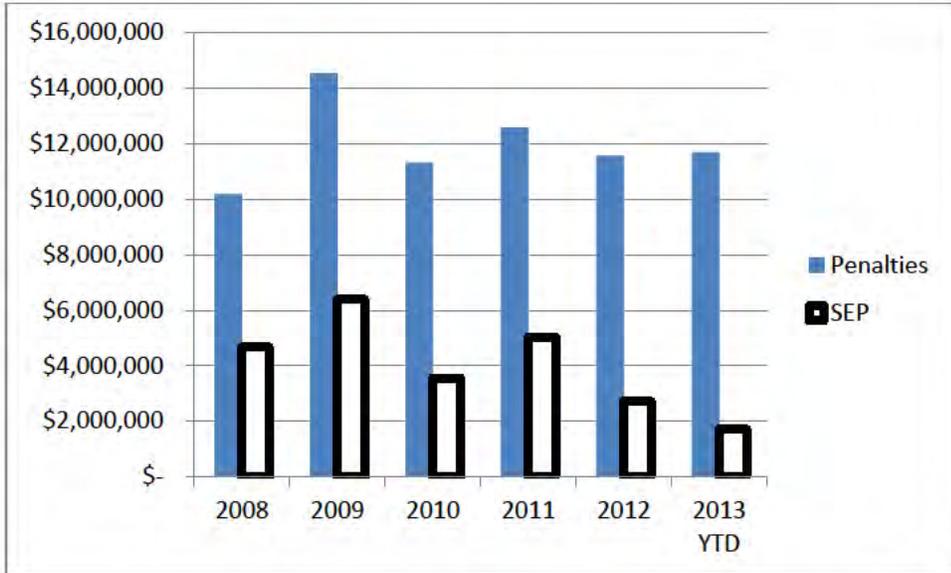


Schools/ISDs – 3
 Counties – 5
 Cities/Municipalities – 6
 Universities – 7
 State Agencies – 1
 Others, such as local government councils – 5

Attachment 3: Penalties and SEP Contributions by Year

Attachment 3: Penalties and SEP Contributions by Year

Penalties and SEP Offsets by Year

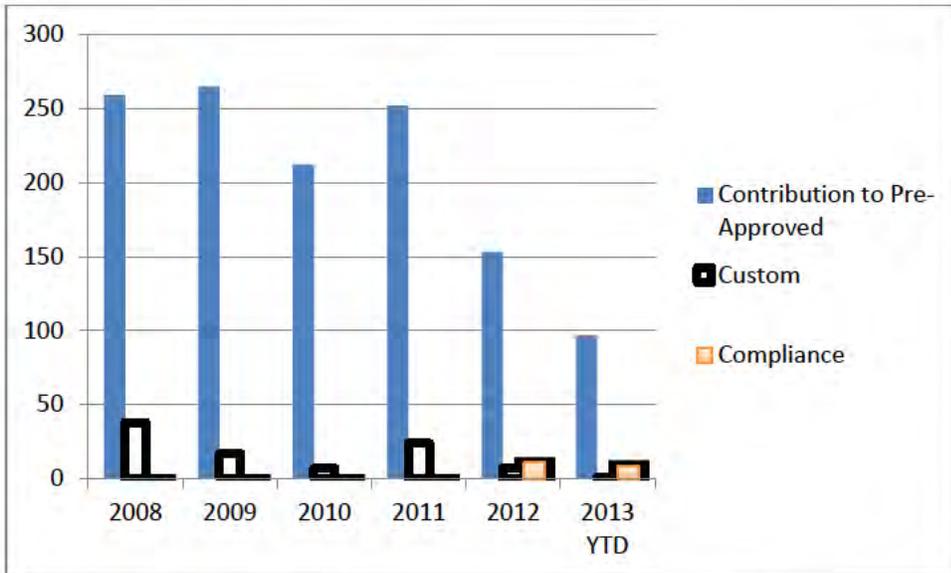


	Penalties	SEP
2008	\$10,180,835	\$4,659,119
2009	\$14,524,544	\$6,375,212
2010	\$11,309,521	\$3,558,484
2011	\$12,582,418	\$5,028,126
2012	\$11,560,506	\$2,711,108
2013		
YTD	\$11,674,391	\$1,716,748

Attachment 4: Information on Custom and Compliance SEPs

Attachment 4: Information on Custom and Compliance SEPs

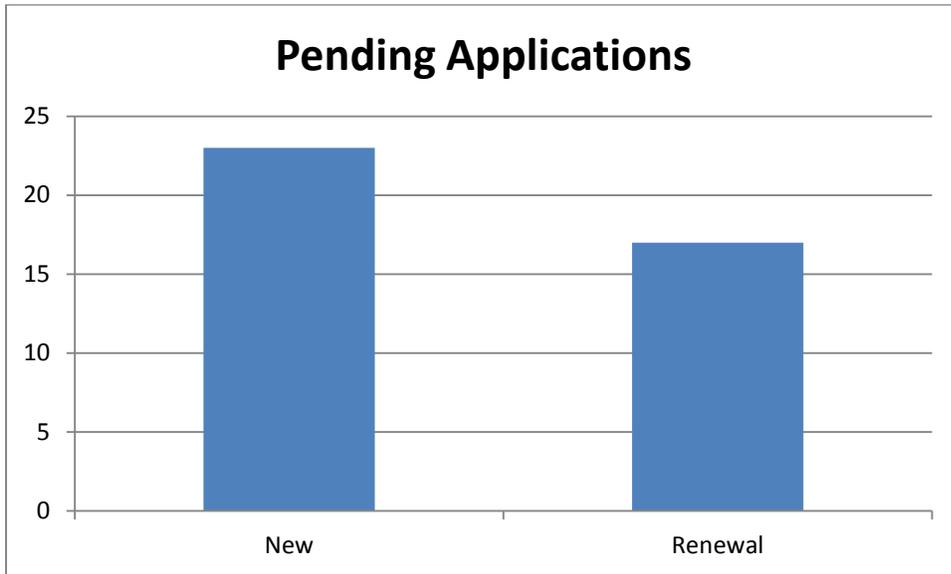
Distribution of SEP Funds by Type of SEP



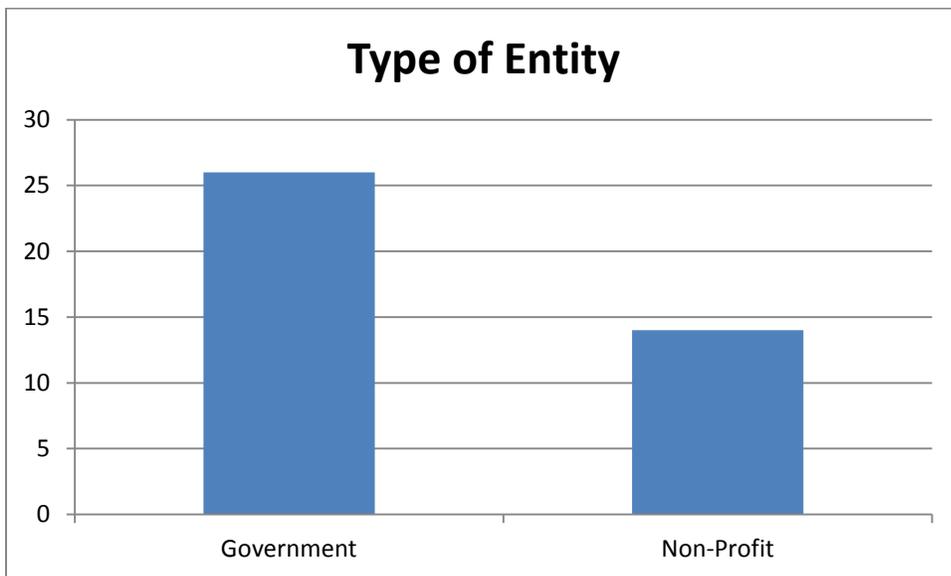
	Contribution to Pre-Approved	Custom	Compliance
2008	259	38	0
2009	265	17	0
2010	212	7	0
2011	252	24	0
2012	153	7	11
2013 YTD	97	1	9

**Attachment 5: Information on Pending Applications
for Pre-Approved SEPs**

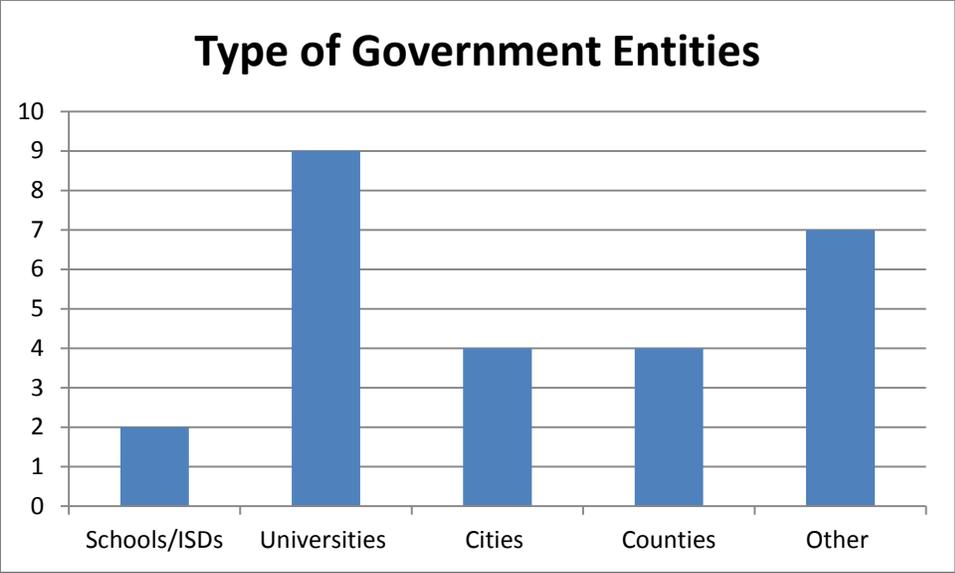
Attachment 5: Information on Pending Applications for Pre-Approved SEPs



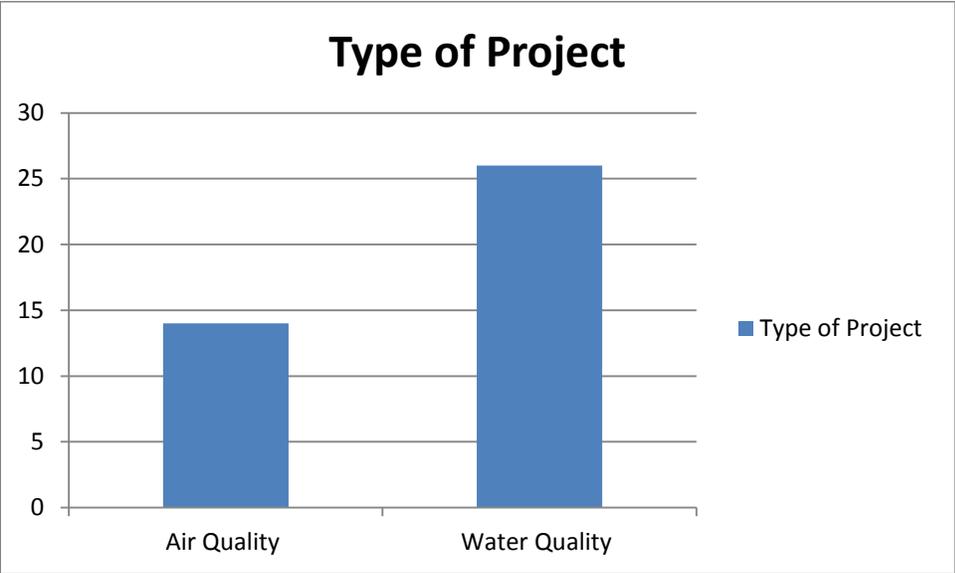
New Projects – 23
Renewal Projects – 17
Total - 40



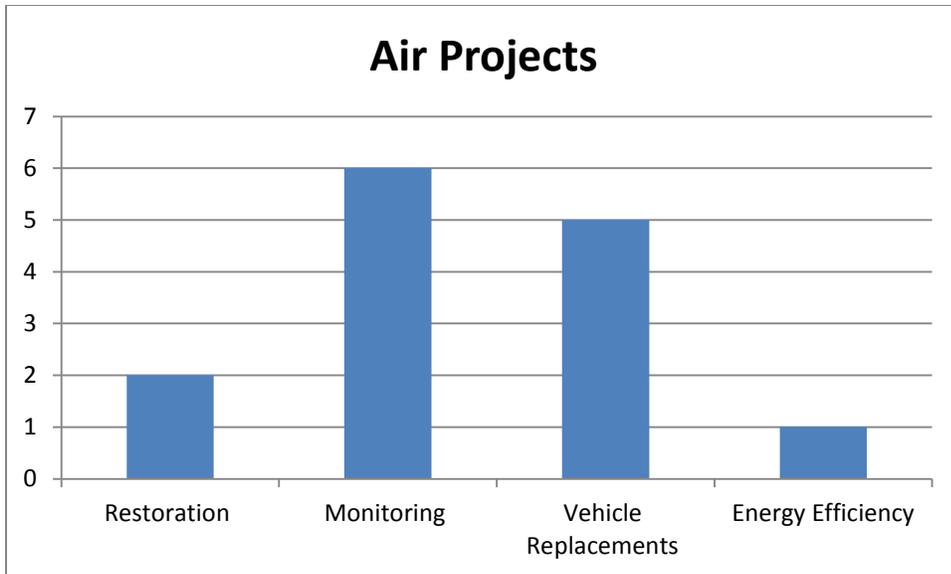
Government Entities – 26
Non-Profits - 14



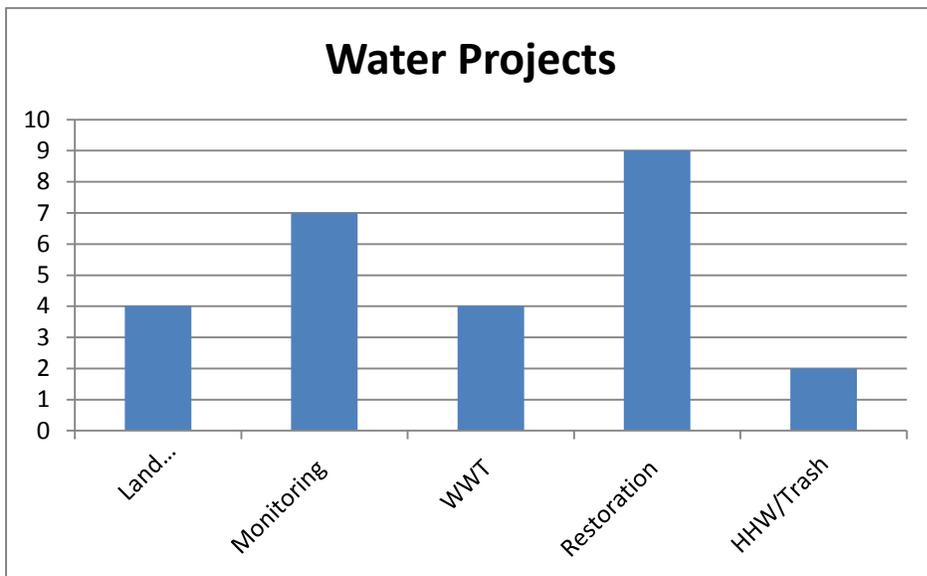
Schools/ISDs – 2
Universities – 9
Cities – 4
Counties – 4
Other - 7



Air Quality – 14
Water Quality – 26



Restoration – 2
 Monitoring – 6
 Vehicle Replacement – 5
 Energy Efficiency – 1



Land Acquisition/Conservation – 4
 Monitoring – 7
 Wastewater/sewer assistance – 4
 Restoration – 9
 HHW/Trash – 2

**Attachment 6: Redline Draft
Revised SEP Guidance Document, GI-352**

SEP Guidance Document, Revision 6/2013 – Note: much of the redline/strikeout text below is the result of reorganization rather than deletion.

Supplemental Environmental Projects (SEPs): Putting Fines to Work Closer to Home¹

I. Introduction

When your plant or facility is found to be in violation of ~~certain state~~ environmental laws or regulations, you may be assessed a monetary penalty, or fine by the Texas Commission on Environmental Quality (TCEQ). ~~This fine is~~ Penalties are paid to TCEQ and deposited into the state's General Revenue Fund ~~and is not directly applied toward environmental remediation.~~ As an alternative to paying a penalty to TCEQ, ~~But another option under~~ state law allows you to put a portion of the penalty ~~your fine~~ to work closer to home and help improve the environmental quality of your region. This option is called a Supplemental Environmental Project.

A. What's a Supplemental Environmental Project?

A Supplemental Environmental Project, or SEP, allows a respondent ~~you to fully comply within~~ the enforcement process ~~while to~~ voluntarily taking a positive step toward participate in a project that enhances ~~sd,~~ protects ~~ion,~~ and improves ~~ment of~~ the Texas environment. If a SEP is approved, ~~an alleged violator, or~~ respondent, may offset a portion of ~~the assessed an assessed monetary penalty to~~ by taking on conduct an environmental-enhancement project or to contribute ~~ing~~ to an existing environmental project ~~in, or near, the community where the violation occurred.~~ Under Texas law, the ~~Texas Commission on Environmental Quality (TCEQ)~~ may consider the respondent's ~~your~~ willingness to contribute to a SEP in the settlement of enforcement actions. ~~So, early in the enforcement process, you may discuss the possibility of investing in a project that improves the environment—~~ a Supplemental Environmental Project. SEPs can include a wide range of actions that protect or improve the environment in or near the community where an environmental violation took place. The use of SEPs advances the goals of cleaner air, water, and soil throughout Texas and enhances the environment in communities affected by environmental violations.

~~This publication amends and replaces Use of Supplemental Environmental Projects (RC 367, October 2002). This publication does not create any rights on behalf of alleged violators or other parties involved in the development of environmental projects. The approval of any particular proposed agreed order, or SEP, or related conditions is wholly subject to the discretion of the TCEQ commissioners.~~

¹ This publication amends and replaces Supplemental Environmental Projects (SEPs): Putting Fines to Work Closer to Home (GI-352, March 2009). This publication does not create any rights on behalf of alleged violators or other parties involved in the development of environmental projects. The approval of any particular proposed agreed order or SEP is wholly subject to the discretion of the TCEQ commissioners.

B. Types of Supplemental Environmental Projects

There are three types of SEPs: Pre-Approved, Custom, and Compliance. Opting for a Pre-Approved SEP makes the individual SEP proposal process simpler and less time consuming. Although opting for a Custom or Compliance SEP makes the proposal process more complex, it provides a respondent with the opportunity to construct a project tailored to the respondent's capabilities and the community's environmental needs.

1. Pre-Approved SEPs

Pre-Approved SEPs are fully designed and ready to be implemented or are already in progress. Pre-Approved SEPs are implemented by Third-Party Administrators such as non-profit organizations and government entities. Rather than paying a penalty to TCEQ to resolve an enforcement case, a respondent can opt to pay a specific portion of the penalty to a Pre-Approved SEP. The benefit to contributing to a Pre-Approved SEP is that the respondent does not need to plan and propose its own project; rather, the respondent can simply choose a project from the list and send its penalty offset to the Third-Party Administrator of the project. The TCEQ maintains a list of pre-approved Supplemental Environmental Projects on the TCEQ Web site at www.tceq.texas.gov/legal/sep.

2. Custom SEPs

A Custom SEP is a project that the respondent designs, proposes, and implements. A Custom SEP must have a significant, enduring, and quantifiable environmental benefit. A Custom SEP cannot be used to address the respondent's violations. Creating a Custom SEP can be time consuming, but it allows the respondent to plan a project around the specific environmental needs in the respondent's community.

3. Compliance SEPs

Compliance SEPs are available to local governments that qualify under a financial inability to pay analysis conducted by TCEQ's Financial Administration Division. Compliance SEPs are a statutorily authorized exception to the requirement that a SEP cannot be performed in order to address a respondent's violations. Under this exception, a local government respondent may apply to conduct a Compliance SEP in order to put its penalty towards correcting the violations that are the subject of its enforcement action. A local government respondent may offset up to 100% of its penalty for a qualifying project. For example, a city that is under enforcement for exceeding its effluent limitations may propose a compliance SEP to repair or replace its wastewater treatment plant equipment in order to use the penalty to correct those violations. The respondent must agree to come into compliance with all of the violations regardless of whether the penalty offset will provide enough funds to complete the compliance activities.

C. Allowable Offset Amounts

There is a set of formulas in place for determining the percentage of a penalty that can be offset through a SEP. The formula applied in each case depends on the environmental benefit of the project, i.e. whether the project is considered to have a direct benefit, an indirect benefit, or a mixed benefit, as well as the nature of the respondent organization—government, non-profit, or for-profit. Table 1 shows the percentage of a penalty that can go towards Pre-Approved and Custom SEPs for governments and non-profits versus for-profit organizations.

Table 1 – Allowable Offset Amounts

<u>Type of Entity</u>	<u>Direct-Benefit SEPs</u>	<u>Indirect-Benefit SEPs</u>	<u>Mixed-Benefit SEPs</u>
<u>Governments and Non-Profit Organizations</u>	<u>100%</u>	<u>33%</u>	<u>50%</u>
<u>For-Profit Organizations</u>	<u>50%</u>	<u>33%</u>	<u>50%</u>

Additionally, a financially qualified local government may offset 100% of its penalty to perform a Compliance SEP. Also, it is important to note that, on a case-by-case basis, the Executive Director may approve a higher offset percentage based on the project's exceptional benefit to the affected community or the project's extraordinary environmental enhancement.

1. Direct-Benefit SEPs

A direct-benefit SEP is one that directly benefits the environment. It should provide significant, immediate, and enduring enhancements to the quality of the environment, or prevent or reduce further environmental degradation. The environmental benefits of direct-benefit projects should be readily quantifiable. Governments and non-profit organizations may offset up to 100 percent of the penalty by performing a direct-benefit, media-specific SEP. For-profit businesses may offset only up to 50 percent of their penalty with a direct-benefit project. The offset for a direct-benefit project that does not involve the same media as that of the violation will be determined based on how the project addresses state, regional, or community environmental priorities.

Examples of direct-benefit projects include the removal of exotic invasive species from an affected habitat and the collecting and disposing of community household hazardous waste.

2. Indirect-Benefit SEPs

An indirect-benefit SEP is one that does not have an immediate, direct effect of improving the environment. Projects that indirectly benefit the environment can only offset up to 33 percent of any respondent's penalty.

General examples of indirect-benefit projects include educational and public awareness projects.

3. Mixed-Benefit SEPs

A mixed-benefit SEP is one that has both indirect and direct benefits. Mixed-benefit projects can offset up to 50 percent of the penalty, no matter the type of respondent.

An example of a mixed-benefit SEP is a project that involves both collecting household hazardous waste and educating the public on proper disposal methods.

D. Who's Eligible to Undertake a SEP Participate in the SEP Program??

All respondents in the TCEQ enforcement process are eligible to contribute to a Third-Party SEP, and most respondents are eligible to perform a Custom SEP. Only qualifying local governments can participate in Compliance SEPs. The TCEQ encourages all respondents to consider undertaking a SEP. However, the TCEQ must evaluate each case individually to determine whether a SEP is appropriate in that instance. In its evaluation process, the TCEQ may consider a number of factors, including the respondent's history of completing SEPs. ~~The TCEQ may also consider other factors, such as~~ the respondent's good-faith participation in the settlement of the enforcement action, and the respondent's degree of culpability for the violations at issue. In each case, the TCEQ tries to bring the enforcement process to a conclusion as soon as reasonably possible, while ~~still~~ providing the respondent with an opportunity to do a SEP. In order to be considered for a SEP, ~~within 30 days after the exit interview that concludes an investigation,~~ a respondent must declare intent to undertake inform the TCEQ of its desire to participate in a SEP as soon as possible after the enforcement process begins. For the SEP approval process to be completed, the respondent must resolve any dispute concerning the amount of the proposed monetary penalty and be willing to sign an agreed order. Opportunities for public comment are available during the enforcement process.

E. What Makes for an Acceptable SEP?

In order to be considered acceptable as a Supplemental Environmental Project, a project must ~~include several key elements, as follows~~ meet the following three principal criteria:

Three Principal Criteria:

~~There are three principal criteria that the TCEQ uses to assess the validity of a SEP proposal. To adequately meet the agency's standards, the project must ...~~

1. *The Project Must Be Environmentally Beneficial*

The project should improve and protect the environment and reduce environmental risks to the public. Projects that are directly beneficial to the environment are preferred. Projects that have only an indirect benefit to the environment may be acceptable, but, if approved, the amount of the penalty that may be offset by the project ~~would be~~ limited to a smaller portion (33 percent) than is allowed with a project that directly

benefits the environment (50 or 100 percent – see Section I.B., above). An example of a directly beneficial project is the restoration of a degraded wetland cleanup of an illegal dump site. An example of an indirectly beneficial project is an educational project teaching students about recycling environmental research project conducted to develop new techniques to control pollution. If the proposed project would provide some direct benefit to you, the respondent, the project may not be approvable allowable or it may only allow limited portions of the penalty amount to be offset by the project.

2. ——— The Project Must Be Done Performed as a Result of a Settlement Agreement

The project must follow, not precede, a TCEQ enforcement action. A respondent you cannot receive SEP credit offset its penalty for a project that the respondent has you have already completed, or already included in its your budget, or already committed to undertake. For example, a city could cannot offset a penalty amount with a household hazardous waste (HHW) collection project, if it had previously committed to implement, such a project or received grant funds to implement, such a project one. However, if that same city proposed to expand the HHW household hazardous waste project beyond its previous commitments by expanding it to include additional neighborhoods, then the project may be appropriate.

3. ——— The Project Must Go Beyond What Is Required for Compliance

A Pre-Approved or Custom SEP must directly or indirectly benefit the environment above and beyond legal compliance requirements. Compliance SEPs, discussed above in Section I.B.3., are a specific exception to this requirement. If federal, state, or local law requires the respondent you to carry out the project being proposed, the project cannot qualify as a Pre-Approved or Custom SEP. Nor can a respondent you use a SEP to fix the problems that are the basis of the enforcement action taken against you the respondent by the TCEQ. For example, if a respondent is in enforcement for discharging waste into a river, the respondent cannot use a SEP to clean up the discharge.

Other Factors Considered

The TCEQ will may also consider the following three questions when determining whether to approve a SEP (and whether to allow a dollar for dollar offset). a number of other factors when determining whether a SEP can be approved, including:

- Does the project meet state, regional, or community environmental priorities?
- Will the project be done in or near the community where the violation occurred? The agency gives preference to SEPs that benefit the same community where the violation occurred. In addition to SEPs performed within the immediate geographic locale of the violation, a project benefiting the same community may include one that provides an environmental

~~enhancement to~~ A community may include areas in the same river basin, watershed, airshed, or nonattainment area where the violation occurred.

- Does the project match the environmental media of the violation? The agency gives preference to SEPs that involve the same environmental media (air, water, or waste) as the alleged violation. For example, to address an air emission violation, a respondent could contribute to a project that replaces old, high emissions school buses with new, low emissions buses. ~~a wastewater discharge violation, you might focus on improving water quality, perhaps by extending wastewater treatment services to low income families who do not have such service. The agency cannot approve projects that are necessary to return the respondent to compliance, but otherwise it has broad discretion in its implementation of the SEP program.~~

F. Exceptions to SEP Policy

In limited circumstances, the TCEQ's executive director may make an exception to the agency's SEP policy if there is an extraordinary benefit to human health or the environment that outweighs the considerations used in developing this policy. Such cases will be evaluated on an individual basis and must directly benefit the individuals, community, or area potentially or actually affected by the violations, or otherwise address environmental priorities of the state, region, or community. Any exception to the policy must ultimately be approved by the TCEQ commissioners before the project can be implemented.

—What Are the Basic Types of SEPs?

~~There are two basic "types" of SEPs: pre-approved SEPs and custom SEPs. Opting for a pre-approved SEP makes the individual proposal process simpler, and therefore likely to take less time. Opting for a custom SEP, although making the proposal process more complex, provides a respondent with a unique opportunity to construct a project tailored to the respondent's capabilities and the community's environmental needs.~~

—Pre-approved SEPs

~~The TCEQ maintains a list of pre-approved Supplemental Environmental Projects. These are generally limited to direct benefit projects. They're fully designed and ready to be implemented, or already in progress. You can find a list of these pre-approved SEPs on the TCEQ Web site at . Or you can ask your enforcement coordinator for a list of pre-approved projects available in your area. Most of these pre-approved SEPs are meant to be implemented by third parties, but some are meant to be implemented by individual respondents.~~

Third Party Operated

~~The TCEQ has agreements with a number of nonprofit and governmental organizations to conduct fully developed environmental enhancement projects that have been approved as SEPs and that are on our list of pre-approved projects. You can make a cash~~

~~contribution toward one of these pre-approved SEPs that are performed by another entity. This would be a “third party” pre-approved SEP.~~

Respondent Operated

~~Alternatively, you can opt to take on a pre-approved SEP on your own. The TCEQ maintains a list of fully developed environmental enhancement projects that have already been approved as SEPs, and that can be implemented by a respondent. This would be a “respondent operated” pre-approved SEP.~~

—Custom SEPs

~~Yet another option would be to undertake a custom Supplemental Environmental Project—one you design, propose, and implement. A custom SEP must have a significant, enduring, and quantifiable environmental benefit, which must be described in detail in a proposal. Please see page 14 for a description of the proposal process~~

G. Where Can a SEP Be Located?

~~TCEQ will consider t~~The location of a proposed SEP when determining ~~is an important factor in its feasibility and approvability. There are several considerations to keep in mind.~~

General Rule

~~The agency TCEQ~~ gives preference to SEPs that benefit the ~~same~~ community where the violation occurred, including projects that provide environmental enhancement to the same watershed, river basin, airshed, or nonattainment area where the violation occurred. But a SEP cannot generally be located “on-site”, meaning at ~~at~~ the actual site of the facility that committed the violations. Also, a SEP cannot generally be located outside the state. However, there are a few exceptions to these restrictions.

—Special Cases

~~There are some exceptions to the policies that prohibit locating a SEP on the site of the respondent’s facility, or outside the state’s borders. These exceptions are described below.~~

1. On-site SEPs

On-site SEPs are SEPs that are performed at the same site or facility where the violations occurred. As mentioned above, on-site SEPs are generally not approvable. However there are three exceptions to this rule, so long as the SEP is not necessary to bring the respondent into compliance with environmental laws and is not necessary to remediate the environmental harm caused by the respondent’s violation:

- Cities, counties, or other governmental entities under enforcement may perform a Custom or Pre-Approved SEP within their jurisdiction: as long as the SEP is not

necessary to bring the respondent into compliance with environmental laws and is not necessary to remediate the environmental harm caused by the violation.

- Non-profit organizations under enforcement may also be eligible to perform a Custom or Pre-Approved SEP on-site when the benefit to the environment far outweighs the benefit to the nonprofit organization as long as the SEP is not necessary to bring the respondent into compliance with environmental laws and is not necessary to remediate the environmental harm caused by the violation.
- Local governments may perform Compliance SEPs, which may take place on the property where the violation(s) occurred regardless of whether the SEP is necessary to achieve compliance.
- ~~An on-site SEP might be approvable if the project would make the respondent eligible for a Proposition 2 tax exemption and the respondent does not apply for this tax exemption.~~

2. Transboundary SEPs

There are many border communities in Texas that are affected by the same water-quality and air-quality conditions as their sister cities in Mexico. In light of this fact, the Texas Legislature has given the TCEQ the authority to consider for approval some projects that operate across the international boundary with Mexico. In limited circumstances, therefore, a respondent may propose to undertake a project on the Mexican side of the border; if that project would also benefit the environment on the Texas side of the border. ~~If you wish to propose a transboundary SEP, there are additional factors that the TCEQ must consider before approving~~ the a transboundary SEP project:

- The project cannot benefit a Mexican city at the expense of its Texas sister city.
- The project must address a problem of strong concern to Texans.
- The project should directly benefit the border environment.
- There must be an existing infrastructure through which the project can be accomplished.
- There must be channels for international communication about the project.
- The project goals should be capable of quick realization.
- The respondent or Third-Party Administrator must assume direct responsibility for oversight and implementation of the project.

~~For more information on the acceptability of transboundary SEPs, please call a SEP staff person, at 512-239-0600.~~

—How Does It All Work, in Terms of Money?

~~When it comes to the percentage of a penalty that can be offset through a SEP, there is a set of formulas in place. Which formula is applied in a specific case depends principally on the benefit the project will provide the environment—that is, on whether the project is considered a direct benefit project, an indirect benefit project, or a mixed benefit~~

project. Another factor that comes into play in the case of direct benefit projects is the nature of the respondent organization.

—Direct Benefit SEPs

~~A direct benefit SEP is one that directly benefits the environment. It should provide significant, immediate, and enduring enhancements to the quality of the environment, or prevent or reduce further environmental degradation. The environmental benefits of direct benefit projects should be readily quantifiable. Governments and not for profit organizations may offset up to 100 percent of the penalty by performing a direct benefit, media specific SEP. The offset for a direct benefit project that does not involve the same media as that of the violation will be determined based on how the project addresses state, regional, or community environmental priorities. For profit businesses may offset only up to 50 percent of their penalty with a direct benefit project. On a case by case basis, however, the executive director may approve a higher offset percentage for a business proposing a SEP, based on the project's significant relationship to the affected community or the project's extraordinary opportunity for environmental enhancement.~~
~~A direct benefit SEP is one that directly benefits the environment. It should provide significant, immediate, and enduring enhancements to the quality of the environment, or prevent or reduce further environmental degradation. The environmental benefits of direct benefit projects should be readily quantifiable.~~ General examples of direct benefit projects include environmental restoration projects, projects to fund public works for a neighboring municipality or county to benefit the environment in a way that is beyond ordinary compliance with the law, and projects to clean up illegal municipal and industrial dump sites.

Potential direct benefit projects include the removal of exotic invasive species from an affected habitat; the installation and maintenance of air or water monitors compatible with the agency's Environmental Monitoring and Response System (EMRS) initiative; the removal of abandoned underground storage tanks and the completion of associated soil remediation; off site pollution prevention projects; the conversion of gasoline-powered equipment used by local governments or school districts to alternative-powered, low emission equipment; and the collecting of community household hazardous waste. A project is media specific when it pertains to the same environmental media (air, water, or waste) as the violation. For example, a respondent in a case involving a wastewater discharge violation could undertake a SEP that would extend wastewater treatment services to a low income community that lacks this service.

—Indirect Benefit SEPs

~~An indirect benefit SEP is one that does not have an immediate effect of improving the environment.~~ Projects that indirectly benefit the environment can only offset up to 33 percent of any regulated entity's penalty. ~~An indirect benefit SEP is one that does not have an immediate effect of improving the environment.~~ General examples of indirect benefit projects include education, public awareness, and technical assistance projects. The projects' environmental benefits must be quantifiable to be approved. Potential

indirect benefit SEPs include environmental education programs where the number of participants can be tracked, or technical assistance programs for small businesses where there are methods to measure their impact.

— Mixed Benefit SEPs

~~A mixed benefit SEP is one that has both indirect and direct benefits. Mixed benefit projects can only offset up to 50 percent of the penalty. A mixed benefit SEP is one that has both indirect and direct benefits.~~ General examples of mixed benefit SEPs include pollution reduction projects that don't have an immediate quantifiable benefit, projects that have both educational and direct environmental benefits, and handheld air-monitoring projects conducted by environmental groups. A specific example of a mixed-benefit SEP could be one that involves both cleaning up an illegal dump site and educating the public on the hazards of illegal dumping.

Examples of Penalty Offsets

After you submit a SEP proposal, it will be reviewed to determine whether it will qualify as a direct , indirect , or mixed benefit project. The following examples show how much penalty can be offset in each case. If an organization offsets only a portion of its penalty amount through a SEP, the balance of the penalty must be paid to the state's General Revenue Fund.

With a Direct Benefit SEP

If a government or nonprofit organization has a \$30,000 fine and proposes doing a SEP that has a direct environmental benefit, the entity will be able to offset the entire \$30,000 by spending \$30,000 on a SEP. A for profit business with a \$30,000 fine will be able to offset \$15,000 of the penalty by spending \$15,000 on a SEP.

With an Indirect Benefit SEP

If an entity has a \$30,000 fine and proposes an indirect benefit SEP, the entity is allowed to offset up to \$10,000 of the penalty.

With a Mixed Benefit SEP

If an entity has a \$30,000 penalty and proposes a mixed benefit SEP, the entity can offset \$15,000 of the penalty.

II. How Does the Proposal Application Process Work?

When a TCEQ investigator determines that your case is required to be submitted for formal enforcement action, you will be informed of your option to perform a SEP, and given any guidance you might need in the proposal process. You or your facility representative will be informed of the option to perform a SEP either during the exit interview that concludes the investigation, or during a telephone call

~~subsequent to the exit interview. The investigator will make note of the conversation on the exit interview form.~~ a respondent's case is referred to the Enforcement Division, the respondent will receive a proposed agreed order² to settle the matter. The cover letter accompanying the order will explain what the respondent needs to do in order to apply for a SEP. If the respondent desires to conduct a SEP, it should inform the enforcement coordinator assigned to the case as soon as possible but no less than thirty days after receipt of the proposed order. In order to apply for a SEP, the respondent must agree to the penalty amount and submit a SEP application.

Declaration of Intent to Undertake a SEP

~~The investigator will inform you that in order to maintain your eligibility to propose a SEP, you must declare to the TCEQ your intent to perform a SEP, and the TCEQ must receive your notice of intent within 30 days after the date of the exit interview. If the exit interview is performed in person, the investigator will provide you with a pre-printed postcard that, when received by the TCEQ, will serve as your notice of intent to propose a SEP. If the exit interview is conducted by telephone, the investigator will notify you that the postcard is available on the TCEQ's Web site. After the exit interview, an enforcement coordinator will be assigned to you and will call you to explain the enforcement process.~~

A. Submission of a SEP Proposal Application

~~Your~~ A respondent must submit a SEP proposal application must be submitted within 30 days after the date of receipt of the draft settlement offer (the draft agreed order proposed agreed order). If a SEP proposal application is not received during this time period, the case will be either settled without a SEP or, if no settlement is reached, forwarded to the TCEQ's Litigation Division. If ~~the your~~ SEP proposal application is for a custom or Compliance SEP, ~~the respondent you~~ may be given more time to develop the details of ~~your~~ the project, but an application must be submitted you must submit at least a summary describing the basic SEP within the 30-day period. SEP applications for each kind of SEP are available on the TCEQ website.

B. Review and Approval of a SEP Proposal Application

Once a SEP proposal application is submitted, it will proceed through the review and approval process. This process will vary, depending on whether the proposal is for a prePre-approved Approved, Custom, or Compliance or a custom SEP. ~~But in either case, if~~ If the proposal application is approved, the SEP must be incorporated into the settlement agreed order.

² An agreed order is a legally binding agreement between TCEQ and a respondent that settles an enforcement action. The agreed order sets forth alleged violations, the corrective actions required to resolve the alleged violations, and the payment of an administrative penalty. The agreed order can also require the performance of a SEP to offset all or a portion of the penalty when a respondent has elected to participate in a SEP.

C. ~~Pre-approved~~ Approved SEP Applications

The application for contributing to a Pre-Approved SEP is available on the TCEQ website at www.tceq.texas.gov/legal/sep. The application requires certain information, including respondent information, choice of the SEP that will receive the contribution, and a certification that contributing to the SEP is not otherwise required by law and that there is no pre-existing obligation to contribute to the SEP or the Third-Party Administrator. A respondent may contribute to a SEP that is in the respondent's community, that involves the same media as the respondent's violations, and that is accepting contributions in the amount of the respondent's eligible offset amount. A proposal for a pre-approved SEP must indicate the enforcement case, the penalty amount, and the location where the violations occurred, including the name of the county. It also needs to include a statement declaring that the SEP is attributable only to the settlement of the current enforcement action, and that no funding has been allocated to the project prior to the approval of the project. If a pre-approved SEP is proposed, the project has already been determined to meet applicable SEP criteria, and approved by the TCEQ. The SEP provision will be drafted by the enforcement coordinator and After the application to contribute to a Pre-Approved SEP is approved by TCEQ, language will be added to the ~~incorporated into~~ agreed order immediately after the proposal is received and has been determined to meet applicable offset percentages that incorporates the requirement to contribute to a SEP, and an attachment will be added to the order that describes the SEP and details the respondent's offset amount. The enforcement coordinator will already have a list of offset values for any pre-approved project.

D. Compliance and Custom SEP Applications

The application for a Compliance or Custom SEP is also available on the TCEQ website at www.tceq.texas.gov/legal/sep. The application requires detailed information regarding the proposed SEP, including a line-item budget. If the proposal involves a custom SEP, ~~the~~ The SEP coordinator Program will can help the respondent you develop any further with the details of your the custom Compliance or Custom SEP as necessary and will draft the SEP provision of the agreed order. Once the details of the custom project are complete, the SEP coordinator Program will review the project to determine that it meets applicable offset percentages and the criteria for an acceptable SEP and will confer with the TCEQ program area and/or regional office as necessary to evaluate the environmental benefits of the SEP for the community where the SEP is located. If the application is for a Compliance SEP, the TCEQ Financial Administration Division will complete a financial review to determine whether the local government qualifies to put the offset amount towards compliance. This review may require the local government respondent to provide financial information to TCEQ.

* An agreed order is a document used to settle an enforcement action. The agreed order—which is agreed to by you and the TCEQ—sets forth alleged violations and the actions required to resolve the alleged violations; and requires payment of a monetary penalty. The agreed order can also require the performance of a SEP to offset all or a portion of the penalty, when a regulated entity has elected to use a SEP.

After the SEP coordinator finishes this review of the custom SEP and determines that all criteria are met, the proposal will be forwarded to the Office of the Executive Director for approval. If approved, it will be incorporated into the agreed order by the enforcement coordinator. Specifically, a written provision will be added to the agreed order requiring the completion of the proposed SEP.

A Custom or Compliance SEP must have a significant, enduring, and quantifiable environmental benefit, which should be described in detail in the application. The following information is also required by the application for a Custom or Compliance SEP:

- Respondent/applicant information, including name, facility, and contact information.
- Compliance history and information regarding the enforcement action.
- Details of the project, including media, implementation plan, site information, and performance schedule.
- A line-item budget, including all expenses for the project, the number of each expense item needed, the price per item, and the total price.
- Geographic area that will benefit from the project, such as the applicable watershed, river basin, airshed, or nonattainment area.
- Kind of project
 - Identify the kind of project that is being proposed. The agency identifies the following six kinds of projects as appropriate SEPs:
 1. Pollution prevention and/or reduction projects
 2. Environmental restoration projects that go beyond repair that serve to enhance the environment in the community of the violating facility.
 3. Assistance to regulated entities experiencing economic and/or technological hardships that prevent them from complying with environmental regulations.
 4. Environmental education and/or engineering assistance to members of the regulated community or public.
 5. Projects to fund public works for a neighboring municipality or county that will benefit the environment in a way that is beyond ordinary compliance with the law.
 6. Projects to clean up illegal municipal and industrial solid waste dumps where an owner cannot be identified or is not financially capable of cleaning up the site.
- The expected environmental benefits of the project, quantified to the extent possible.
- Any estimated financial returns from the project.
- A certification that the project is not required to meet already existing legal requirements and that the project is not already budgeted for by the respondent or already funded through other sources.

E. The Agreed Order Process

After the SEP Program finishes reviewing the SEP application and determines that all criteria are met, the project will be incorporated into the agreed order. Specifically, a written provision will be added to the agreed order requiring the completion of the proposed SEP, and an attachment will be added that will detail the project and include the project budget.

The agreed order, incorporating the SEP, will be provided to the respondent you and must be signed and returned to the agency within the time frame established by the TCEQ in the cover letter~~the enforcement coordinator, which is usually 10 days.~~ The respondent You should not yet make any payment to the SEP, or begin conducting the SEP; ~~when you sign and return the agreed order until the agreed order is approved by the Commission.~~ Once the agency receives the signed agreed order, it will be scheduled to be presented to the TCEQ commissioners for approval. The TCEQ commissioners have full discretion in the final approval of any agreed order and associated SEP. The respondent will be notified when ~~Once~~ the commissioners approve the agreed order and associated SEP and should, you should begin to implement the project in accordance with the agreed order at that time.

—Preparing a Proposal for a Custom SEP

~~A proposal for a custom SEP will require more information than one for a pre-approved SEP. If your proposal is for a custom SEP, you should contact the TCEQ SEP coordinator, who can help you prepare the proposal.~~

~~Your custom SEP must have a significant, enduring, and quantifiable environmental benefit, which should be described in detail in the proposal. A quantified estimate of projected benefits of a SEP is necessary so that the TCEQ can assess the proposed project's expected benefit to the environment. The following information must be included in a proposal for a custom SEP.~~

- ~~●—Enforcement Action
 - ~~○—Indicate the name of the entity and the location of the site associated with the enforcement action.~~~~
- ~~●—Regulatory Information
 - ~~○—Provide a brief summary of all environmental enforcement orders, including compliance status, relating to the site identified above.~~~~
- ~~●—Name of Project
 - ~~○—Provide the name of the proposed SEP.~~~~
- ~~●—Project Implementer
 - ~~○—Provide the name, mailing address, telephone number, and fax number for the project director, the organization conducting the project, and the person who will be responsible for submitting status reports (if different from the project director). If the project will be conducted by a third party to the TCEQ enforcement action, the proposal should be accompanied by a letter or resolution from the appropriate board, governing body, or~~~~

executive staff expressing the organizations commitment to the project if approved.

- ~~TCEQ Contact Person~~
 - ~~Provide the name, division, and telephone number of any TCEQ staff person who has assisted with the development of this project.~~
- ~~Geographical Area to Benefit from Project~~
 - ~~Identify cities, counties, and watersheds and/or nonattainment areas that would be affected by the project.~~
- ~~Kind of Project~~
 - ~~Identify the kind of project that is being proposed. The agency's SEP policy identifies the following six kinds of projects as appropriate SEPs.~~
 1. ~~Pollution prevention and/ or reduction projects~~
 2. ~~Environmental restoration projects that go beyond repair, service the enhance the environment in the vicinity of the violating facility.~~
 3. ~~Assistance to other TCEQ regulated entities that are faced with economic and/or technological hardships.~~
 4. ~~Environmental education and/or engineering assistance to members of the regulated community or public.~~
 5. ~~Projects to fund public works for a neighboring municipality or county that will benefit the environment in a way that is beyond ordinary compliance with the law.~~
 6. ~~Projects to clean up illegal municipal and industrial solid waste dumps.~~
- ~~Project Description~~
 - ~~Describe the project, including the following information: the need for the project, the availability of other similar services or projects in the area; and the requirements for implementing the project, which can include technology, operation, or process changes.~~
- ~~Expected Environmental Benefits~~
 - ~~Explain the expected environmental benefits of this project and quantify these expected benefits to the extent practical.~~
 1. ~~For pollution prevention or reduction projects: Quantify the amount of each pollutant that is expected to be reduced beyond the level required for environmental compliance. Specify the media (air, water, land) to be affected.~~
 2. ~~For all other types of projects: Quantify the participants, programs offered, sites cleaned, types of contamination contained or removed, acres restored or affected, etc.~~
- ~~Project Budget~~
 - ~~Provide projected initial and annual project costs with specific subcategories. Costs must be clearly and solely attributable to the proposed SEP.~~
- ~~Rate of Return Analysis~~
 - ~~Provide an analysis of the estimated annual financial returns on the project.~~
- ~~Project Schedule~~

- Provide a proposed schedule that addresses project implementation and the submittal of status reports to the TCEQ. Project implementation must not commence until after the commissioners have approved the agreed order that includes this SEP.
- Accounting
 - Describe how SEP contributions would be accounted for if a third party is the proposed project implementer.
- Reporting
 - Describe the information and documentation that would be included in project status reports. Reports must provide sufficient information for the TCEQ to monitor the implementation status of the project, verify and document proper expenditure of SEP Funds, and evaluate the effectiveness and benefits of the project. Reporting must include the quantified environmental benefits.
- Regulatory Requirements and/or Prior Commitments
 - Identify any applicable local, state, or federal regulations that would require implementation of this project or any part of this project.
 - Identify any binding private commitments to implement this project or any part of this project.
 - Identify whether this project is part of one or more of the following:
 1. A pollution prevention commitment identified in a plan developed pursuant to the state's Waste Reduction Policy Act (WRPA)
 2. A commitment made under the Clean Texas Program
 3. The US EPA's Project XL
 4. Any other incentive or regulatory flexibility program
 - Indicate the time frame for implementation of the project under any identified commitments. Identify any applicable local, state, or federal
- Certification of Expenditures by Respondent
 - Provide a separate certification that the proposed SEP is solely attributable to the settlement of the current enforcement action; that no funding has been budgeted to the project prior to the approval of the project; and that the proposed project is not funded by grants, donations, low-interest loans, or other sources of funding not attributable to the respondent's normal budgetary process. Also certify that the proposed project is not being done, nor will it receive credit, as part of an environmental incentive or awards program.

III. What Are the Performance and Reporting Requirements??

Performance and reporting requirements vary according to the kind of SEP being implemented – Pre-Approved, Custom, or Compliance. There are also performance and reporting requirements for the Third Party Administrators performing Pre-Approved SEPs. Those requirements are covered below in Section IV.

Written provisions requiring reporting on the actual quantified benefits achieved during project implementation (such as pounds of reduction in nitrogen oxides, or the number of tires properly disposed) are included in any agreed orders with SEPs (and also in

~~third-party agreements for pre-approved projects). It is important to report quantified benefits so that the TCEQ can gather and report to the public and the affected community—accurate information on the environmental benefits generated by the SEP program.~~

A. Reporting for Custom and Compliance SEPs

Both Custom and Compliance SEPs will include line-item budgets listing all allowable SEP expenses. Additionally, both Custom and Compliance SEPs will include Performance Schedules for implementation of the SEP, reporting dates, and a deadline for completion of the SEP. Specific reporting requirements will vary by project, but in general, both Custom and Compliance SEPs require certain information to be reported to TCEQ on a regular basis to ensure that the SEPs are implemented according to the agreements.

B. Performance and Reporting for a Contribution to a Pre-Approved SEP

Agreed Orders for respondents contributing to Pre-Approved SEPs will include a Performance Schedule with a deadline for the respondent to contribute its SEP Offset Amount to the Third-Party Administrator. The respondent must also provide TCEQ with proof that the contribution has been provided to the Third-Party Administrator.

C. Failure to Perform or Failure to Report

If a respondent fails to perform a SEP or fails to properly report on its progress and expenditures, the respondent will be required to pay the unused or unreported portion of the SEP offset amount to TCEQ for deposit into the state General Revenue Fund. Additionally, if a respondent uses SEP funds to pay for any work, equipment, or materials that are not included in the budget, the respondent will have to refund those funds to TCEQ.

IV. Third-Party Administrators of Pre-Approved SEPs

As mentioned above, the TCEQ can enter into agreements with third-party non-profit and governmental organizations to conduct environmental enhancement projects. Once approved as SEPs, these Pre-Approved SEPs are maintained in a list on TCEQ's website that is available to all respondents interested in contributing to such SEPs.

A. Basic Eligibility

A third party that is interested in obtaining and using SEP funds to implement an environmental-enhancement project must meet the criteria for an acceptable SEP listed above. In addition, eligible third-party organizations must have Internal Revenue Code section 501(c)(3) status as a nonprofit organization, or be a governmental organization, and must be able to:

- receive and manage SEP funds and to report to the TCEQ on the use of these funds with supporting documentation;

- maintain SEP funds in a separate bank account;
- provide a line-item budget for the project, spend funds in accordance with the budget, and report on budget expenditures;
- estimate and report on the quantifiable benefits of the project (e.g., number of tires to be removed); and
- submit detailed Quarterly Reports for the project each quarter, reporting on each contribution and expenditure and providing supporting documents, as further explained below.

The TCEQ may consider other factors in determining the appropriateness of entering into a third-party agreement with an organization such as an organization's experience in implementing and managing environmental enhancement projects.

B. Submitting a Third-Party Proposal

The Third-Party Administrator SEP application is available on TCEQ's website at www.tceq.texas.gov/legal/sep. The following information is required by the application:

- Information regarding the Third-Party Administrator, including contact information and type of organization (government or non-profit).
- Previous experience with SEPs or with funds management and ability to maintain SEP Funds in a separate account.
- Insurance information.
- Total project cost and minimum contribution amount.
- Project description, media of project (air, water or waste), location of the project, and ownership of the project site.
- Quantified estimate of environmental benefit of the project.
- Project schedule.
- A line-item budget, including all expenses for the project, the number of each expense item needed, the price per item, and the total price.
- A certification that the project is not required to meet already existing legal requirements and that the project is not already budgeted for by the Third-Party Administrator or already funded through other sources.

Other information may be required as the application is reviewed.

During review, the application will be considered by the SEP Program and a panel of TCEQ staff from the Litigation, Enforcement, Field Operations, and Small Business and Local Government Assistance divisions (the "SEP Panel") as needed to ensure that the proposed SEP meets criteria and that all agency priorities are met. Other areas of the agency will also be consulted as needed. Proposed SEPs that meet agency criteria will be signed by the TCEQ and the Third-Party Administrator. After agreements are signed, they are added to the pre-approved list on TCEQ's website. The pre-approved list is submitted to the commissioners annually.

C. Quarterly Reporting Requirements for Pre-Approved SEPss

Once your a Pre-Approved SEP has been approved by the TCEQ, the Third-Party Administrator will be provided with a Quarterly Report form that must be completed and submitted each quarter. The specific information required in the Quarterly Reports will vary by project, but the following information is typically required: ,you must provide the TCEQ with quarterly reports on the status of the project. The reports should itemize each expenditure and give the status of the project with supporting documentation such as receipts and photographs.

- SEP Funds received;
- Expenditures;
- Balance of SEP Funds and interest earned (if any);
- Bank statements for the SEP Funds bank account;
- Copies of receipts, checks, and other documentation to support all expenditures;
- Invoices, receipts, contracts, work logs, and work plans for all work performed by a contractor;
- Before and after pictures; and
- Maps showing locations of SEP sites.

At the conclusion of the project, a Final Quarterly Report will be required. This report must include the information listed above for the final quarter of the project, along with a list of any remaining SEP Funds, which must be returned to TCEQ within 30 days after the due date of the Final Quarterly Report, along with any additional information required by TCEQ.

Final Report

At the conclusion of the SEP, you must submit a detailed report verifying completion of the project and supplying data regarding benefits to the environment (for example, the number of pounds collected of household hazardous waste). You must provide any necessary documentation to support the facts in your report, including evidence of expenditures. SEP staff and the Field Operations Division coordinate to perform on-site visits to verify SEP completion for selected projects. The results of all SEPs are available to the public and are consolidated into an annual report, posted on the TCEQ Web site.

What about “Third Party” Agreements?

As has been mentioned earlier, the TCEQ can enter into agreements with third party nonprofit and governmental organizations to conduct environmental enhancement projects. These agreements are generally limited to projects that directly benefit the environment. Once approved as SEPs, these “third party projects” are added to our list of pre-approved projects, which appears on the TCEQ Web site at <www.tceq.state.tx.us>.

Basic Eligibility

A third party that is interested in obtaining and using SEP dollars to implement an environmental enhancement project must meet the criteria for an acceptable SEP listed on pages 3–5 of this booklet. In addition, eligible third party organizations must:

- have Internal Revenue Code section 501c (3) status as a nonprofit organization, or be a governmental organization;
- have the ability to receive and manage SEP monies, and to report to the TCEQ on the use of these monies, with verifying documentation;
- estimate the quantifiable benefits in the proposal (e.g., number of tires to be removed); and
- commit to providing a report on the actual quantified benefits achieved during project implementation (such as, pounds of reduction in nitrogen oxides, or the number of tires properly disposed).

The TCEQ may consider other factors in determining the appropriateness of entering into a third party arrangement with an organization. For example, an organization's experience in implementing and managing environmental enhancement projects may be taken into consideration.

Submitting a Third Party Proposal

Field Operations investigator committees can provide input in developing your third-party SEP proposal. Your proposal will be reviewed by a panel of TCEQ staff from the Litigation, Enforcement, Field Operations, and Small Business and Local Government Assistance divisions (the "SEP Panel") to ensure that the proposed SEP meets criteria and that all agency priorities are met. Other areas of the agency will be consulted, as appropriate.

Proposed SEPs that meet agency criteria, as determined by the SEP Panel, are added to the pre-approved list. The pre-approved list is submitted to the commissioners annually. Please see the TCEQ Web site at <www.tceq.state.tx.us> for further guidance on drafting a proposal for a third party, pre-approved project. You can also find a number of other publications and forms, including the standard reporting form used to report the results of a SEP.

For Further SEP Assistance

The SEP Program can be reached at Call a SEP staff person, at 512-239-22233400. SEP Applications and other information are available at Or visit our Web site, for forms & information at <www.tceq.state.tx.us/texas.gov/legal/sep/index.html>.

TCEQ Field Use Only:

RN# _____

Yes, if this enforcement case results in an Agreed Order, I want to include a SEP in that order.

I am interested in contributing to a third party project.

I want to perform my own project.

I am not sure how I want to participate in the program — Please contact me.

Opting for a Supplemental Environmental Project (SEP)

Note: if you prefer, you can submit the above information using our online form at

<www.tceq.state.tx.us/goto/sep>.

Name: _____

Company: _____

Address: _____

City: _____

State: _____ ZIP: _____

Phone: (_____) _____

TCEQ 20489 (3.09)

Field Operations DIVISION, MC 174

Texas Commission ON ENVIRONMENTAL QUALITY

PO Box 13087

Austin TX 78711-9958

**Attachment 7: Clean Copy
Revised SEP Guidance Document, GI-352**

I. Introduction

When your plant or facility is found to be in violation of state environmental laws or regulations, you may be assessed a monetary penalty, or fine by the Texas Commission on Environmental Quality (TCEQ). Penalties are paid to TCEQ and deposited into the **state's General Revenue Fund**. As an alternative to paying a penalty to TCEQ, state law allows you to put a portion of the penalty to work closer to home and help improve the environmental quality of your region. This option is called a Supplemental Environmental Project.

A. What's a Supplemental Environmental Project?

A Supplemental Environmental Project, or SEP, allows a respondent in the enforcement process to voluntarily participate in a project that enhances, protects, and improves the Texas environment. If a SEP is approved, a respondent may offset a portion of the assessed penalty to conduct an environmental-enhancement project or to contribute to an existing environmental project. Under Texas law, the TCEQ may consider the **respondent's** willingness to contribute to a SEP in the settlement of enforcement actions. SEPs can include a wide range of actions that protect or improve the environment in or near the community where an environmental violation took place. The use of SEPs advances the goals of cleaner air, water, and soil throughout Texas and enhances the environment in communities affected by environmental violations.

B. Types of Supplemental Environmental Projects

There are three types of SEPs: Pre-Approved, Custom, and Compliance. Opting for a Pre-Approved SEP makes the individual SEP proposal process simpler and less time consuming. Although opting for a Custom or Compliance SEP makes the proposal process more complex, it provides a respondent with the opportunity to construct a **project tailored to the respondent's capabilities and the community's environmental needs**.

1. Pre-Approved SEPs

Pre-Approved SEPs are fully designed and ready to be implemented or are already in progress. Pre-Approved SEPs are implemented by Third-Party Administrators such as non-profit organizations and government entities. Rather than paying a penalty to TCEQ to resolve an enforcement case, a respondent can opt to pay a specific portion of

¹ This publication amends and replaces Supplemental Environmental Projects (SEPs): Putting Fines to Work Closer to Home (GI-352, March 2009). This publication does not create any rights on behalf of alleged violators or other parties involved in the development of environmental projects. The approval of any particular proposed agreed order or SEP is wholly subject to the discretion of the TCEQ commissioners.

the penalty to a Pre-Approved SEP. The benefit to contributing to a Pre-Approved SEP is that the respondent does not need to plan and propose its own project; rather, the respondent can simply choose a project from the list and send its penalty offset to the Third-Party Administrator of the project. The TCEQ maintains a list of pre-approved Supplemental Environmental Projects on the TCEQ Web site at www.tceq.texas.gov/legal/sep.

2. Custom SEPs

A Custom SEP is a project that the respondent designs, proposes, and implements. A Custom SEP must have a significant, enduring, and quantifiable environmental benefit. **A Custom SEP cannot be used to address the respondent's violations. Creating a Custom SEP can be time consuming, but it allows the respondent to plan a project around the specific environmental needs in the respondent's community.**

3. Compliance SEPs

Compliance SEPs are available to local governments that qualify under a financial **inability to pay analysis conducted by TCEQ's Financial Administration Division**. Compliance SEPs are a statutorily authorized exception to the requirement that a SEP cannot be **performed in order to address a respondent's violations. Under this** exception, a local government respondent may apply to conduct a Compliance SEP in order to put its penalty towards correcting the violations that are the subject of its enforcement action. A local government respondent may offset up to 100% of its penalty for a qualifying project. For example, a city that is under enforcement for exceeding its effluent limitations may propose a compliance SEP to repair or replace its wastewater treatment plant equipment in order to use the penalty to correct those violations. The respondent must agree to come into compliance with all of the violations regardless of whether the penalty offset will provide enough funds to complete the compliance activities.

C. Allowable Offset Amounts

There is a set of formulas in place for determining the percentage of a penalty that can be offset through a SEP. The formula applied in each case depends on the environmental benefit of the project, i.e. whether the project is considered to have a direct benefit, an indirect benefit, or a mixed benefit, as well as the nature of the respondent organization—government, non-profit, or for-profit. Table 1 shows the percentage of a penalty that can go towards Pre-Approved and Custom SEPs for governments and non-profits versus for-profit organizations.

Table 1 – Allowable Offset Amounts

Type of Entity	Direct-Benefit SEPs	Indirect-Benefit SEPs	Mixed-Benefit SEPs
Governments and Non-Profit Organizations	100%	33%	50%
For-Profit Organizations	50%	33%	50%

Additionally, a financially qualified local government may offset 100% of its penalty to perform a Compliance SEP. Also, it is important to note that, on a case-by-case basis, the Executive Director may approve a higher offset **percentage based on the project’s exceptional benefit to the affected community or the project’s extraordinary environmental enhancement.**

1. Direct-Benefit SEPs

A direct-benefit SEP is one that directly benefits the environment. It should provide significant, immediate, and enduring enhancements to the quality of the environment, or prevent or reduce further environmental degradation. The environmental benefits of direct-benefit projects should be readily quantifiable. Governments and non-profit organizations may offset up to 100 percent of the penalty by performing a direct-benefit, media-specific SEP. For-profit businesses may offset only up to 50 percent of their penalty with a direct-benefit project. The offset for a direct-benefit project that does not involve the same media as that of the violation will be determined based on how the project addresses state, regional, or community environmental priorities.

Examples of direct-benefit projects include the removal of exotic invasive species from an affected habitat and the collecting and disposing of community household hazardous waste.

2. Indirect-Benefit SEPs

An indirect-benefit SEP is one that does not have an immediate, direct effect of improving the environment. Projects that indirectly benefit the environment can only offset up to 33 percent of any **respondent’s** penalty.

General examples of indirect-benefit projects include educational and public awareness projects.

3. Mixed-Benefit SEPs

A mixed-benefit SEP is one that has both indirect and direct benefits. Mixed-benefit projects can offset up to 50 percent of the penalty, no matter the type of respondent.

An example of a mixed-benefit SEP is a project that involves both collecting household hazardous waste and educating the public on proper disposal methods.

D. Who's Eligible to Participate in the SEP Program?

All respondents in the TCEQ enforcement process are eligible to contribute to a Third-Party SEP, and most respondents are eligible to perform a Custom SEP. Only qualifying local governments can participate in Compliance SEPs. The TCEQ encourages all respondents to consider undertaking a SEP. However, the TCEQ must evaluate each case individually to determine whether a SEP is appropriate in that instance.

In its evaluation process, the TCEQ may consider a number of factors, including the **respondent's history of completing SEPs, the respondent's good-faith participation in the settlement of the enforcement action, and the respondent's** degree of culpability for the violations at issue. In each case, the TCEQ tries to bring the enforcement process to a conclusion as soon as reasonably possible while providing the respondent with an opportunity to do a SEP. In order to be considered for a SEP, a respondent must inform the TCEQ of its desire to participate in a SEP as soon as possible after the enforcement process begins. For the SEP approval process to be completed, the respondent must resolve any dispute concerning the amount of the proposed penalty and be willing to sign an agreed order. Opportunities for public comment are available during the enforcement process.

E. What Makes for an Acceptable SEP

In order to be considered acceptable as a Supplemental Environmental Project, a project must meet the following three principal criteria:

1. *The Project Must Be Environmentally Beneficial*

The project should improve and protect the environment and reduce environmental risks to the public. Projects that are directly beneficial to the environment are preferred. Projects that have only an indirect benefit to the environment may be acceptable, but, if approved, the amount of the penalty that may be offset by the project is limited to a smaller portion (33 percent) than is allowed with a project that directly benefits the environment (50 or 100 percent – see Section I.B., above). An example of a directly beneficial project is the restoration of a degraded wetland. An example of an indirectly beneficial project is an educational project teaching students about recycling. If the proposed project would provide some direct benefit to the respondent, the project may not be allowable.

2. *The Project Must Be Performed as a Result of a Settlement Agreement*

The project must follow, not precede, a TCEQ enforcement action. A respondent cannot offset its penalty for a project that the respondent has already completed, already included in its budget, or already committed to undertake. For example, a city cannot offset a penalty amount with a household hazardous waste collection project if it had previously committed to implement, or received grant funds to implement, such a project. However, if that same city proposed to expand the household

hazardous waste project beyond its previous commitments by expanding it to include additional neighborhoods, then the project may be appropriate.

3. *The Project Must Go Beyond What Is Required for Compliance*

A Pre-Approved or Custom SEP must benefit the environment above and beyond legal compliance requirements. Compliance SEPs, discussed above in Section I.B.3., are a specific exception to this requirement. If federal, state, or local law requires the respondent to carry out the project being proposed, the project cannot qualify as a Pre-Approved or Custom SEP. Nor can a respondent use a SEP to fix the problems that are the basis of the enforcement action taken against the respondent by the TCEQ. For example, if a respondent is in enforcement for discharging waste into a river, the respondent cannot use a SEP to clean up the discharge.

The TCEQ may consider a number of other factors when determining whether a SEP can be approved, including:

- Does the project meet state, regional, or community environmental priorities?
- Will the project be done in or near the community where the violation occurred? The agency gives preference to SEPs that benefit the same community where the violation occurred. A community may include areas in the same river basin, watershed, airshed, or nonattainment area where the violation occurred.
- Does the project match the environmental media of the violation? The agency gives preference to SEPs that involve the same environmental media (air, water, or waste) as the alleged violation. For example, to address an air emission violation, a respondent could contribute to a project that replaces old, high emissions school buses with new, low emissions buses.

F. Exceptions to SEP Policy

In limited circumstances, the TCEQ's executive director may make an exception to the **agency's SEP policy** if there is an extraordinary benefit to human health or the environment that outweighs the considerations used in developing this policy. Such cases will be evaluated on an individual basis and must directly benefit the individuals, community, or area potentially or actually affected by the violations, or otherwise address environmental priorities of the state, region, or community. Any exception to the policy must ultimately be approved by the TCEQ commissioners before the project can be implemented.

G. Where Can a SEP Be Located?

TCEQ will consider the location of a proposed SEP when determining its feasibility and approvability. TCEQ gives preference to SEPs that benefit the community where the violation occurred, including projects that provide environmental enhancement to the same watershed, river basin, airshed, or nonattainment area where the violation

occurred. But a SEP cannot generally be located on-site, meaning at the actual site of the facility that committed the violations. Also, a SEP cannot generally be located outside the state. However, there are a few exceptions to these restrictions.

1. On-site SEPs

On-site SEPs are SEPs that are performed at the same site or facility where the violations occurred. As mentioned above, on-site SEPs are generally not approvable. However there are three exceptions to this rule, so long as the SEP is not necessary to bring the respondent into compliance with environmental laws and is not necessary to remediate the environmental harm caused by the **respondent's violation**:

- Cities, counties, or other governmental entities under enforcement may perform a Custom or Pre-Approved SEP within their jurisdiction as long as the SEP is not necessary to bring the respondent into compliance with environmental laws and is not necessary to remediate the environmental harm caused by the violation.
- Non-profit organizations under enforcement may also be eligible to perform a Custom or Pre-Approved SEP on-site when the benefit to the environment far outweighs the benefit to the nonprofit organization as long as the SEP is not necessary to bring the respondent into compliance with environmental laws and is not necessary to remediate the environmental harm caused by the violation.
- Local governments may perform Compliance SEPs, which may take place on the property where the violation(s) occurred regardless of whether the SEP is necessary to achieve compliance.

2. Transboundary SEPs

There are many border communities in Texas that are affected by the same water-quality and air-quality conditions as their sister cities in Mexico. In light of this fact, the Texas Legislature has given the TCEQ the authority to consider for approval some projects that operate across the international boundary with Mexico. In limited circumstances, therefore, a respondent may propose to undertake a project on the Mexican side of the border if that project would also benefit the environment on the Texas side of the border. There are additional factors that the TCEQ must consider before approving a transboundary SEP:

- The project cannot benefit a Mexican city at the expense of its Texas sister city.
- The project must address a problem of strong concern to Texans.
- The project should directly benefit the border environment.
- There must be an existing infrastructure through which the project can be accomplished.
- There must be channels for international communication about the project.
- The project goals should be capable of quick realization.
- The respondent or Third-Party Administrator must assume direct responsibility for oversight and implementation of the project.

II. How Does the Application Process Work?

When a **respondent's case is referred to the Enforcement Division, the respondent will** receive a proposed agreed order² to settle the matter. The cover letter accompanying the order will explain what the respondent needs to do in order to apply for a SEP. If the respondent desires to conduct a SEP, it should inform the enforcement coordinator assigned to the case as soon as possible but no less than thirty days after receipt of the proposed order. In order to apply for a SEP, the respondent must agree to the penalty amount and submit a SEP application.

A. Submission of a SEP Application

A respondent must submit a SEP application within 30 days after the date of receipt of the proposed agreed order. If a SEP application is not received during this time period, the case will be either settled without a SEP or, if no settlement is reached, forwarded to the **TCEQ's Litigation Division**. If the SEP application is for a custom or Compliance SEP, the respondent may be given more time to develop the details of the project, but an application must be submitted within the 30-day period. SEP applications for each kind of SEP are available on the TCEQ website.

B. Review and Approval of a SEP Application

Once a SEP application is submitted, it will proceed through the review and approval process. This process will vary depending on whether the proposal is for a Pre-Approved, Custom, or Compliance SEP. If the application is approved, the SEP must be incorporated into the agreed order.

C. Pre-Approved SEP Application

The application for contributing to a Pre-Approved SEP is available on the TCEQ website at www.tceq.texas.gov/legal/sep. The application requires certain information, including respondent information, choice of the SEP that will receive the contribution, and a certification that contributing to the SEP is not otherwise required by law and that there is no pre-existing obligation to contribute to the SEP or the Third-Party **Administrator. A respondent may contribute to a SEP that is in the respondent's community, that involves the same media as the respondent's violations, and that is** accepting contributions in the amount of the **respondent's eligible offset amount. After** the application to contribute to a Pre-Approved SEP is approved by TCEQ, language will be added to the agreed order that incorporates the requirement to contribute to a SEP, and an attachment will be added to the order that describes the SEP and details the **respondent's offset amount.**

² An agreed order is a legally binding agreement between TCEQ and a respondent that settles an enforcement action. The agreed order sets forth alleged violations, the corrective actions required to resolve the alleged violations, and the payment of an administrative penalty. The agreed order can also require the performance of a SEP to offset all or a portion of the penalty when a respondent has elected to participate in a SEP.

D. Compliance and Custom SEP Application

The application for a Compliance or Custom SEP is also available on the TCEQ website at www.tceq.texas.gov/legal/sep. The application requires detailed information regarding the proposed SEP, including a line-item budget. The SEP Program can help the respondent with the details of the Compliance or Custom SEP as necessary and will draft the SEP provision of the agreed order. Once the details of the project are complete, the SEP Program will review the project to determine that it meets applicable offset percentages and the criteria for an acceptable SEP and will confer with the TCEQ program area and/or regional office as necessary to evaluate the environmental benefits of the SEP for the community where the SEP is located. If the application is for a Compliance SEP, the TCEQ Financial Administration Division will complete a financial review to determine whether the local government qualifies to put the offset amount towards compliance. This review may require the local government respondent to provide financial information to TCEQ.

A Custom or Compliance SEP must have a significant, enduring, and quantifiable environmental benefit, which should be described in detail in the application. The following information is also required by the application for a Custom or Compliance SEP:

- Respondent/applicant information, including name, facility, and contact information.
- Compliance history and information regarding the enforcement action.
- Details of the project, including media, implementation plan, site information, and performance schedule.
- A line-item budget, including all expenses for the project, the number of each expense item needed, the price per item, and the total price.
- Geographic area that will benefit from the project, such as the applicable watershed, river basin, airshed, or nonattainment area.
- Kind of project
 - Identify the kind of project that is being proposed. The agency identifies the following six kinds of projects as appropriate SEPs:
 1. Pollution prevention and/or reduction projects
 2. Environmental restoration projects that go beyond repair that serve to enhance the environment in the community of the violating facility.
 3. Assistance to regulated entities experiencing economic and/or technological hardships that prevent them from complying with environmental regulations.
 4. Environmental education and/or engineering assistance to members of the regulated community or public.
 5. Projects to fund public works for a neighboring municipality or county that will benefit the environment in a way that is beyond ordinary compliance with the law.

6. Projects to clean up illegal municipal and industrial solid waste dumps where an owner cannot be identified or is not financially capable of cleaning up the site.
 - The expected environmental benefits of the project, quantified to the extent possible.
 - Any estimated financial returns from the project.
 - A certification that the project is not required to meet already existing legal requirements and that the project is not already budgeted for by the respondent or already funded through other sources.

E. The Agreed Order Process

After the SEP Program finishes reviewing the SEP application and determines that all criteria are met, the project will be incorporated into the agreed order. Specifically, a written provision will be added to the agreed order requiring the completion of the proposed SEP, and an attachment will be added that will detail the project and include the project budget.

The agreed order incorporating the SEP will be provided to the respondent and must be signed and returned to the agency within the time frame established by the TCEQ in the cover letter. The respondent should not yet make any payment to the SEP or begin conducting the SEP until the agreed order is approved by the Commission. Once the agency receives the signed agreed order, it will be scheduled to be presented to the TCEQ commissioners for approval. The TCEQ commissioners have full discretion in the final approval of an agreed order and associated SEP. The respondent will be notified when the commissioners approve the agreed order and associated SEP and should begin to implement the project in accordance with the agreed order at that time.

III. What Are the Performance and Reporting Requirements?

Performance and reporting requirements vary according to the kind of SEP being implemented – Pre-Approved, Custom, or Compliance. There are also performance and reporting requirements for the Third Party Administrators performing Pre-Approved SEPs. Those requirements are covered below in Section IV.

A. Reporting for Custom and Compliance SEPs

Both Custom and Compliance SEPs will include line-item budgets listing all allowable SEP expenses. Additionally, both Custom and Compliance SEPs will include Performance Schedules for implementation of the SEP, reporting dates, and a deadline for completion of the SEP. Specific reporting requirements will vary by project, but in general, both Custom and Compliance SEPs require certain information to be reported to TCEQ on a regular basis to ensure that the SEPs are implemented according to the agreements.

B. Performance and Reporting for a Contribution to a Pre-Approved SEP

Agreed Orders for respondents contributing to Pre-Approved SEPs will include a Performance Schedule with a deadline for the respondent to contribute its SEP Offset Amount to the Third-Party Administrator. The respondent must also provide TCEQ with proof that the contribution has been provided to the Third-Party Administrator.

C. Failure to Perform or Failure to Report

If a respondent fails to perform a SEP or fails to properly report on its progress and expenditures, the respondent will be required to pay the unused or unreported portion of the SEP offset amount to TCEQ for deposit into the state General Revenue Fund. Additionally, if a respondent uses SEP funds to pay for any work, equipment, or materials that are not included in the budget, the respondent will have to refund those funds to TCEQ.

IV. Third-Party Administrators of Pre-Approved SEPs

As mentioned above, the TCEQ can enter into agreements with third-party non-profit and governmental organizations to conduct environmental enhancement projects. Once approved as SEPs, these **Pre-Approved SEPs are maintained in a list on TCEQ's website** that is available to all respondents interested in contributing to such SEPs.

A. Basic Eligibility

A third party that is interested in obtaining and using SEP funds to implement an environmental-enhancement project must meet the criteria for an acceptable SEP listed above. In addition, eligible third-party organizations must have Internal Revenue Code section 501(c)(3) status as a nonprofit organization, or be a governmental organization, and must be able to:

- receive and manage SEP funds and to report to the TCEQ on the use of these funds with supporting documentation;
- maintain SEP funds in a separate bank account;
- provide a line-item budget for the project, spend funds in accordance with the budget, and report on budget expenditures;
- estimate and report on the quantifiable benefits of the project (e.g., number of tires to be removed); and
- submit detailed Quarterly Reports for the project each quarter, reporting on each contribution and expenditure and providing supporting documents, as further explained below.

The TCEQ may consider other factors in determining the appropriateness of entering into a third-party agreement with an organization such as **an organization's experience** in implementing and managing environmental enhancement projects.

B. Submitting a Third-Party Proposal

The Third-Party Administrator **SEP application is available on TCEQ's website at www.tceq.texas.gov/legal/sep**. The following information is required by the application:

- Information regarding the Third-Party Administrator, including contact information and type of organization (government or non-profit).
- Previous experience with SEPs or with funds management and ability to maintain SEP Funds in a separate account.
- Insurance information.
- Total project cost and minimum contribution amount.
- Project description, media of project (air, water or waste), location of the project, and ownership of the project site.
- Quantified estimate of environmental benefit of the project.
- Project schedule.
- A line-item budget, including all expenses for the project, the number of each expense item needed, the price per item, and the total price.
- A certification that the project is not required to meet already existing legal requirements and that the project is not already budgeted for by the Third-Party Administrator or already funded through other sources.

Other information may be required as the application is reviewed.

During review, the application will be considered by the SEP Program and a panel of TCEQ staff from the Litigation, Enforcement, Field Operations, and Small Business and Local Government **Assistance divisions (the "SEP Panel")** as needed to ensure that the proposed SEP meets criteria and that all agency priorities are met. Other areas of the agency will also be consulted as needed. Proposed SEPs that meet agency criteria will be signed by the TCEQ and the Third-Party Administrator. After agreements are signed, they are added to the pre-approved list **on TCEQ's website**. The pre-approved list is submitted to the commissioners annually.

C. Reporting Requirements for Pre-Approved SEPs

Once a Pre-Approved SEP has been approved by the TCEQ, the Third-Party Administrator will be provided with a Quarterly Report form that must be completed and submitted each quarter. The specific information required in the Quarterly Reports will vary by project, but the following information is typically required:

- SEP Funds received;
- Expenditures;
- Balance of SEP Funds and interest earned (if any);
- Bank statements for the SEP Funds bank account;
- Copies of receipts, checks, and other documentation to support all expenditures;
- Invoices, receipts, contracts, work logs, and work plans for all work performed by a contractor;

- Before and after pictures; and
- Maps showing locations of SEP sites.

At the conclusion of the project, a Final Quarterly Report will be required. This report must include the information listed above for the final quarter of the project, along with a list of any remaining SEP Funds, which must be returned to TCEQ within 30 days after the due date of the Final Quarterly Report, along with any additional information required by TCEQ.

For Further SEP Assistance

The SEP Program can be reached at 512-239-2223. SEP Applications and other information are available at www.tceq.texas.gov/legal/sep.

Attachment 8: SEP Customer Satisfaction Survey

Customer Satisfaction Survey

Take our customer satisfaction survey and comment on our service.

HOW ARE WE DOING?

Have we provided the service you need?

1. Which customer type would you consider yourself?

Third Party Administrator

Municipality

County

2. What county is your project in?



For the following question, your answers mean:

5= very satisfied

1= Not satisfied at all

Overall

3. How satisfied are you that the SEP staff group is sufficiently knowledgeable?

5 4 3 2 1

4. How satisfied are you that the SEP staff group is professional and courteous?

5 4 3 2 1

5. How satisfied are you with the handling of telephone calls by SEP staff?

5 4 3 2 1

6. If you had to leave a phone message, how satisfied are you with the timeliness of SEP staff in returning your phone call?

5 4 3 2 1

