

# Policies on Regional Water Quality Improvement Projects and Supplemental Environmental Projects

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# Addressing LAO Concerns Regarding SEPs

- Use of SEPs by Regions reduces funding available for Statewide projects
- Regions regularly permit SEPs in excess of 50% of the total monetary value of the assessed liability
- State Water Board should have a role in SEP fiscal oversight
- SEP data should be publicly available
- Use of trust funds to hold funds for future SEPs should be addressed

# REGIONAL WATER QUALITY IMPROVEMENT PROJECTS

## Goal of Proposed Provisions:

To provide Regional Water Boards with a mechanism other than SEPs to 1) make funding available from the Cleanup and Abatement Account to fund regional water quality improvement projects; including funding for water quality projects for small disadvantaged communities, and 2) promote appropriate administrative civil liability assessments.

If this Policy is adopted, the Regional Water Boards will have two different mechanisms by which to address projects of interest to them – regional water quality improvement projects or SEPs. Which mechanism is more appropriate can be evaluated on a case-by-case basis.

# Summary of Proposed Policy:

1. Provides that 50% of all civil liability assessments placed into the Cleanup and Abatement Account (after repayment of enforcement costs) will be reserved for “regional water quality improvement projects”. This amount would be reduced where the chooses to allow a SEP instead.
2. Regional Boards will identify “regional water quality improvement projects” for planning purposes. Such projects include, but are not limited to, projects to address the needs of small communities with financial hardships.

# Summary of Policy (continued)

3. The Policy relies on the procedures used by DFA to oversee projects funded by the CAA.
4. Regional Boards have three years from the date that funds are set aside to expend the funds. If there is no expenditure within the designated time period, the funds are available for any purpose authorized for expenditure from the Cleanup and Abatement Account.
5. Policy does not affect State Water Board authority to address emergencies or to use unexpended funds set aside for regional projects in the event of an emergency.

# SUPPLEMENTAL ENVIRONMENTAL PROJECTS

## Goal of Proposed Revisions to SEP Policy:

- To allow the Regional Water Boards to continue to utilize SEPs when resolving enforcement actions, while also insuring that a reasonable portion of monetary liability assessments from every civil liability enforcement action is available for statutorily-authorized purposes and priorities as determined by the State Water Board.
- To require greater accountability for those engaged in SEPs so that the Water Boards and the public can have confidence that the SEPs resulted in an actual project with actual environmental benefit.

# Regional SEPs in 2006 and 2007

Total ACLs Issued in 2006 and 2007							
RB	Total Assessed	Liability (monetary amount of penalty)		Supplemental Environmental Projects		Compliance Projects	
		Assessed	% of Total Assessed	Amount	% of Total Assessed	Amount	% of Total Assessed
1	\$ 3,354,568	\$ 1,072,850	32%	\$ 684,250	20%	\$ 1,597,468	48%
2	\$ 2,684,800	\$ 624,800	23%	\$ 2,060,000	77%		0%
3	\$ 548,689	\$ 255,286	47%	\$ 293,403	53%		0%
4	\$ 4,737,187	\$ 1,181,452	25%	\$ 3,555,735	75%		0%
5F	\$ 1,107,000	\$ -	0%		0%	\$ 1,107,000	100%
5R	\$ 695,270	\$ 655,270	94%	\$ 40,000	6%		0%
5S	\$ 4,211,500	\$ 2,143,000	51%	\$ 1,528,500	36%	\$ 540,000	13%
6T	\$ 476,340	\$ 178,180	37%	\$ 298,160	63%		0%
6V	\$ 5,603,000	\$ 643,869	11%	\$ 4,959,131	89%		0%
7	\$ 651,000	\$ 212,000	33%	\$ 247,000	38%	\$ 192,000	29%
8	\$ 2,020,157	\$ 1,501,099	74%	\$ 519,059	26%		0%
9	\$ 2,347,661	\$ 1,417,861	60%	\$ 920,500	39%	\$ 9,300	0%
<b>Total</b>	<b>\$ 28,437,172</b>	<b>\$ 9,885,667</b>	<b>35%</b>	<b>\$ 15,105,738</b>	<b>53%</b>	<b>\$ 3,445,768</b>	<b>12%</b>
Total Excluding CPs	\$ 24,991,405	\$ 9,885,667	40%	\$ 15,105,738	60%		
Total Excluding CPs and 1 SEP in Region 6	\$ 20,032,274	\$ 9,885,667	49%	\$ 10,146,607	51%		

# Summary of Proposed Revisions:

1. Limits the amount of a SEP relative to the overall monetary assessment – Current policy has no limitation. Two options are presented:
  - a) Option 1 – Hard cap of 50%, after repayment of enforcement costs, of total monetary value of settlement.
  - b) Option 2 – “Soft” ceiling of 50% (after repayment of enforcement costs). The 50% limit can be exceeded with approval of the State Water Board in “exceptional circumstances”.

Cap is consistent with LAO recommendation in 2008 Budget Analysis to restrict use of SEPs over 50% of total value.

# Summary of Proposed Revisions (continued)

2. Prevents Regional Boards from establishing SEP accounts which they manage independently of the State Water Board without express approval.
3. Provides that SEPs can be audited.
4. The cost of Water Board oversight, if any, of the SEP is not included in the value of the SEP.
5. Discharger will be required to pay for SEP oversight as a condition of SEP acceptance, including cost of oversight by Water Board staff or oversight by a third party. Other provisions are included that reduce the costs of Water Board oversight.

# Summary of Proposed Revisions (continued)

6. Requires that SEPs be fully completed before discharger satisfies its obligation.
7. Refines the list of acceptable SEPs to emphasize the nexus requirements for a SEP and promote SEPs that enhance compliance or remedy adverse environmental impacts from water quality violations.
8. SEPs addressing education are clarified to identify compliance training and compliance education for regulated entities or enforcement personnel.

# Summary of Proposed Revisions (continued)

8. Requires recovery of economic benefit enjoyed by discharger from its noncompliance in the penalty portion of any settlement in which a SEP is utilized.
9. Creates annual reporting obligations for Water Boards regarding the status of SEPs.

# CAA AND SEP OPTIONS COMPARED

## Available Allocations

Both generally provide for an allocation in the range of 50% of the total monetary assessment after reimbursement of enforcement costs

**CAA :** Fixed amount of 50% of total monetary assessment for regional water quality improvement projects. Potentially more funds available for regional projects including small disadvantaged community projects

**SEPS :** General ceiling of 50% with potential for higher percentage under “exceptional circumstances”

## Management and Oversight of Projects

**CAA :** State Water Board staff

**SEPs :** Regional Board staff or third-party reporting to regional board staff

# CAA AND SEP OPTIONS COMPARED (continued)

## Selection of Projects

**CAA : Regional Boards for regional water quality improvement projects**

**State Water Board for all other projects funded from CAA**

**SEPs : Regional Boards and dischargers through settlement agreement with endorsement by State Water Board in exceptional circumstances**

## Public Reporting on Status of Projects funded by SEPs or CAA

**CAA : State Water Board staff based on direct oversight of projects**

**SEPs : State Water Board staff based on receipt of copies of progress reports by dischargers using uniform reporting system**