

SEP Fact Sheet

What's the relationship between an Administrative Civil Liability and a Supplemental Environmental Project (SEP)?

Under the authority of the California Water Code (Water Code), the State or Regional Water Boards may issue administrative civil liability (ACL) complaints when a Discharger has allegedly caused a violation. ACL complaints may be issued when a Discharger (1) violates permit requirements, (2) submits late or incomplete reports, (3) falsifies or withholds information, (4) fails to meet time schedules, or (5) causes an unauthorized waste discharge to surface waters or groundwaters.

The process of imposing an ACL complaint involves the Water Board preparing a complaint that identifies the alleged violations and proposes a liability. Upon receipt of the ACL complaint, Dischargers can contest the complaint, or propose to settle the matter. Proposed settlements can include a SEP to offset a portion of the total liability. It must be the Discharger who proposes a SEP; the Water Board cannot impose a requirement on the Discharger to fund a SEP. When a proposed settlement includes a SEP, the SEP is included in an ACL Order that is presented to the Water Board at a public hearing. The Water Board can either accept or reject the ACL Order as proposed with the SEP. The Water Board may also request the SEP be modified and brought before the Board for consideration at a later hearing.

What is a SEP?

A SEP is a valuable water quality project that (1) enhances the beneficial uses of the waters of the State, (2) provides a benefit to the public at large, and (3) is not otherwise required of the Discharger at the time they are included in an ACL.

Examples of SEPs include pollution prevention projects, environmental restoration programs, environmental auditing, public awareness projects (community environmental education projects such as watershed curriculum, brochures, television public service announcements), compliance training for regulated communities, watershed assessments, water or soil treatment, conservation easements, and non-point source program implementation.

What are the general SEP Qualification Criteria?

All SEPs approved by the Water Board must, at a minimum, satisfy the following criteria:

- Be chosen by the Discharger, either through the Water Board's SEP list or on their own.
- Go above and beyond the normal obligations of a Discharger.
- Directly benefit or study the quality or quantity of groundwater or surface water, and the beneficial uses of water of the State.
- Not benefit the Water Board's staff.

To view additional SEP Qualification Criteria that should be evaluated by the Lahontan Water Board during final approval of a SEP click

http://www.waterboards.ca.gov/lahontan/water_issues/programs/enforcement/docs/AdditionalSEPCriteria.pdf

Additionally, SEPs approved by the Water Board must have a relationship between the nature or location of the violation and the nature or location of the proposed SEP.

How does a Discharger go about including a SEP in a proposed settlement?

It is up to a Discharger, if he so chooses, to propose a SEP to the Water Board to offset a portion of the total administrative civil liability. However, it is not a requirement that a SEP be included in the settlement of an enforcement action that assesses a monetary liability or penalty. The Water Board can not recommend that a proposed settlement include a SEP. However, the Water Board can make a list of potential SEPs available to the Dischargers. (Click http://www.waterboards.ca.gov/lahontan/water_issues/programs/wsp/potential-projects.php for current list of potential SEPs for the Lahontan Region.) Dischargers can view the list and consider whether to include one of the listed SEPs in a proposed settlement. The Discharger may also propose a project that is not listed on the Water Board's website.

All SEPs approved by the Water Board must satisfy the above-listed qualification criteria. As such, it behooves a Discharger to see that the required criteria are met before the SEP is submitted to Water Board staff for consideration in a proposed settlement.

Who is responsible for completing a SEP?

SEPs are either performed by the Discharger or performed by third-parties funded by the Discharger. Third-party entities that perform a SEP must be independent of both the Discharger and the Water Board. Any actual or apparent conflict of interest must be avoided.

Is there a list of potential SEPs for the Lahontan Region?

A list of potential SEP projects is available

http://www.waterboards.ca.gov/lahontan/water_issues/programs/wsp/potential-projects.php This list is updated on an as-needed basis.

Who can submit a SEP for inclusion on the SEP List posted on the Lahontan Water Board's website?

Any public or private party may submit a SEP proposal to the Water Board for inclusion on the SEP List. However, it is the Discharger who has been issued an ACL complaint that must propose to settle the matter by presenting to the Water Board a SEP to offset a portion of the total liability.

How do I submit a project for inclusion on the Lahontan Region's SEP List?

To submit a project to include on the SEP List, download the form located at http://www.waterboards.ca.gov/lahontan/water_issues/programs/enforcement/docs/Form-WebPosting.xls fill it out, and submit it either by mailing it to the Lahontan Water Board Office at 2501 Lake Tahoe Blvd., South Lake Tahoe, CA, 96150, attention Enforcement Unit or by attaching the Form to an email addressed to sferguson@waterboards.ca.gov.

The information you submit on the form should include:

1. A project title.
2. Organization proposing the project (project manager's name, email address and phone number; type of organization [public, private, non-profit, etc.]
3. A brief description of the project.
4. Total project cost, amount of SEP funding sought and other funding sources.
5. Project schedule, including anticipated start and completion dates.
6. End product (e.g., project reports, educational materials, brochures, water quality data, etc.)

Once you submit the completed SEP Form to the Lahontan Water Board, the Form will be reviewed by Water Board staff. Staff will determine if the project benefits or studies groundwater or surface water quality or quantity and the beneficial uses of waters of the State. If your proposed project satisfies these conditions, and other general SEP qualification criteria where applicable, it will be included on the Water Board's SEP List as an eligible project that could be selected and funded by Dischargers in lieu of a portion of a civil liability.

Who do I contact if I have additional questions?

If you need additional information or have questions regarding SEPs, please contact Water Board staff Scott Ferguson at (530) 542-5432 or at sferguson@waterboards.ca.gov.

You may view and print the SEP List, SEP Form, and SEP Criteria by accessing the links provided above or visiting the Lahontan Water Board's Internet home page at <http://www.waterboards.ca.gov/lahontan/>. From the Water Board's homepage, you may access information about SEPs by entering the Enforcement Tab.

You may also link to the State Board's Policy on Supplemental Environmental Projects at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/rs2009_0013_sep_finalpolicy.pdf