

BOE – P – 04 – 040220

ACCEPTING SUPPLEMENTAL ENVIRONMENTAL PROJECTS IN LIEU OF ASSESSED CIVIL PENALTIES

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EFFECTIVE DATE: APRIL 2, 2020

SIGNATURES:


Greg Young, Deputy Commissioner


E. Joseph Sanders, Senior Legal Advisor, Drafter

PURPOSE

The purpose of this policy is to provide guidelines for TDEC Bureau of Environment staff on the acceptance of Supplemental Environmental Projects in lieu of assessed civil penalties.

DEFINITION OF A SUPPLEMENTAL ENVIRONMENTAL PROJECT

A Supplemental Environmental Project (SEP) is an environmentally beneficial project, which a violator agrees to implement as part of a settlement of an enforcement action, however, the violator *is not otherwise legally obligated to perform the project activity.*

Components of the definition of Supplement Environmental Project:

- (1) Environmentally beneficial: means the project must improve, protect, or reduce risks to public health or the environment.
- (2) Not obligated to perform: means the violator is not required to implement the project activity by any federal, state or local law or regulation, the activity is not required by contract, as part of a settlement of a private law suit, or as a result of injunctive relief or a court order.

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REQUISITES FOR A SUPPLEMENTAL ENVIRONMENTAL PROJECT

- The project meets the definition of a supplemental environmental project.
- The violator is not otherwise obligated to perform the project.
- The violator is not required to implement the project by a state, federal or, local agency.
- If the violator publicizes the project, he/she must include in the publicity medium, in a prominent location and manner, that the project is the result of an enforcement action.
- The Department may, but is not required to, reduce a civil penalty based on the actual cost or value of the SEP: the reduction for the SEP is not usually dollar-for-dollar; and, typically the penalty reduction to SEP value is a 2 for 1 ratio (\$2.00 SEP for \$1.00 assessed penalty).
- The SEP must usually address the same general type of harm caused by the underlying violations, the same media impacted by the violations, and the same geographical area as the violations.

TYPES OF SUPPLEMENTAL ENVIRONMENTAL PROJECTS (THIS IS NOT A COMPLETE LIST)

1. **Pollution Prevention Project** - a project that reduces the generation of pollution through source reduction [there must be an overall decrease in the amount and/or toxicity of pollution released into the environment, not just a transfer of pollution among media].
2. **Pollution Reduction** - a project which reduces the amount of a pollutant, if it has been generated and introduced into the environment, such as recycling, treatment, containment or disposal techniques which the violator is not otherwise required to implement.
3. **Restoration and Protection Project** - a project which implements remedial activity that extends beyond repairing the harm caused by the violation and actually enhances the condition of the ecosystem or the geographical area, i.e., restoration of a wetland, purchase and manage land in the watershed, clean up an abandoned dump in the immediate vicinity.
4. **Environmental Compliance Promotion** - a project that provides education, training or technical support to other members of the regulated community, or the general public to: 1.) identify, achieve and maintain compliance with environmental statutes; 2.) avoid the commission of violations of similar nature; or 3.) reduce the generation and the release of pollutants.

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Revision History Table

Revision Number	Date	Brief Summary of Change
0	1-27-99	New Policy
1	9-19-00	Minor update & Current Commissioner
2	1-18-03	Minor update & Current Commissioner
3	8-24-04	Minor update & Current Commissioner
4	12-4-06	Minor update & Current Commissioner
5	4-2-2020	Minor update & Current Commissioner