# TCEQ Interoffice Memorandum

**To:** Commissioners

**Thru:** Phillip Ledbetter, Director
Office of Legal Services

Gitanjali Yadav, Deputy Director
Litigation Division

**From:** Adena Crider, SEP Program Work Leader
Litigation Division

**Date:** July 20, 2026

**Subject:** **Revisions to the Supplemental Environmental Projects (SEP) Program Guidance Document; Publication GI-352, Docket No. 2026-0807-MIS**

Background:

The SEP Program's Guidance Document was last revised in October 2015. Since that time, the SEP Program has participated in two work sessions, March 2022 and June 2024, with discussion of how to increase participation and streamline processes. The SEP Program was also audited by TCEQ's Chief Auditor's Office in FY 2023, whose findings included the SEP Program's Guidance Document being outdated.

Stakeholder Process and Summary of Comments:

The SEP Program held a hybrid informational meeting in Austin on April 29, 2026. At the meeting, the SEP Team accepted questions and informal comments, with formal comments due by 11:59 p.m. on April 30, 2026. The SEP Team received 12 formal comments.

Attendees and commentors were generally supportive of the proposed revisions, including the removal of the media alignment requirement and increasing the indirect benefit offset amount from 33% to 50%. Other comments expressed concerns that were outside the scope of changes in the proposed guidance document, such as increasing penalty amounts, enforcing stronger technical requirements, and removing the 30-day deadline to allow respondents to participate in the SEP program. These changes relate to the enforcement process within the Enforcement Division and therefore no changes were made here.

Changes made in response to comments are addressed in summary of changes 5, 6, and 7 below, and attached in redline form as Attachment B.

Summary of Changes:

Below is a summary of the changes and expected benefits from implementing them.

1. **Updated language to align with current agency practices and program verbiage** – These changes update the Guidance Document to plain language, improve clarity and conciseness, and update outdated practices as recommended by the Chief Auditor's Office.

2. **Eliminated the media type restriction for SEP Contributions** - This will allow penalties from Air Cases to go to Water/Waste SEPs, and vice/versa, as long as they go to SEPs in the communities where the violations occurred. This also provides respondents, particularly in certain counties, greater flexibility to contribute to SEPs located closer to their communities, rather than being directed to state-wide projects solely due to media restrictions. The media type restriction is not required by statute but is only a current program requirement. Stakeholders have expressed interest in and support for this change.
3. **Added a footnote to allow deviations from the standard application process, to streamline negotiations with enforcement cases** – This will allow a respondent to elect to perform a SEP using alternate methods. During the work sessions, discussion included developing a simplified application process to increase participation and minimize settlement time, including the potential use of a "check box." This footnote will bridge our current guidance update to the "check box" project we intend to make available.
4. **Adjusted the offset limitation for indirect benefit SEPs from 33% to 50%** - At the June 2024 work session, the SEP Program proposed increasing the offset limits to 100% for all respondents and benefit types, up from various percentages that depended on the type of respondent in the enforcement case and whether the SEP's environmental benefit is direct, indirect, or mixed. Appreciating fiscal concerns with that prior proposal, we now more narrowly recommend increasing the offset limitation for Indirect Benefit SEPs only, from 33% to 50%. This change will streamline processes and increase participation in these types of SEPs, while causing minimal other impacts. It will also make this offset limitation consistent with how "Mixed-Benefit SEPs" are already treated. All proposed indirect benefit projects will continue to undergo thorough review and approval processes to ensure they meet statutory, programmatic, and policy requirements.

   The definition of SEPs in Tex. Water Code § 7.067(b)(2) clearly states that SEPs include projects that contribute to public awareness of environmental matters. This proposed change to offset limits should increase interest in these types of projects from the general community and encourage participation from potential Third-Party Administrators, such as those supporting licensing education for drinking water systems.
5. **Removed references to the SEP panel** - The SEP panel as it came to exist more recently did not provide sufficient substantive value when reviewing new applications and determining if the projects provided a significant environmental benefit, aligned with agency priorities, or addressed regional needs. The SEP Program has instead found that perspective and value by reaching out to agency subject matter experts. In response to comments received, we have adjusted the proposed language to align with current agency practices and more accurately reflect the now comprehensive review through which applications are considered.
6. **Public Participation** - A commentor noted we removed the following sentence from the guidance document: "Opportunities for public comment are available during the enforcement process." This removal was perceived as the SEP Program

eliminating the ability for the public to participate in the SEP process. This was not intended and has been added back.

7. **Modified the exception to SEP policy** – The SEP Program received several comments that raised concerns regarding how to interpret the term "community". The comments described how SEP funds may be directed too far from the neighborhoods impacted by respondents' violations. The SEP Program does not intend to change how we interpret "community," because this could shrink or narrow the environmental benefits each project proposes and limit the number of SEPs available for any given enforcement case. To address this concern, the SEP Program modified the exceptions provision in the guidance document, to encourage more respondents to perform Custom SEPs, which more often provide a direct benefit to the local communities affected by their violations.

Recommendation:

The Executive Director's staff is seeking approval to implement revisions to the Guidance Document, as proposed in Attachment A, to incorporate the changes as discussed above.

Attachments:
SEP Guidance Document Final Draft (Attachment A)
SEP Guidance Document Redline Post Stakeholder Comment (Attachment B)

# Attachment A:

# SEP Guidance Document Final Draft

# Supplemental Environmental Projects (SEPs)

***Putting Penalties to Work Closer to Home***

Prepared by
Litigation Division

DRAFT

TCEQ GI-352
Revised July 2026

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# Introduction

If someone or an entity is found to be in violation of state environmental laws or regulations, they may be assessed a monetary penalty by the Texas Commission on Environmental Quality (TCEQ or Commission). 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, and through negotiations with TCEQ, may allow a portion of the penalty to be used towards a project which helps improve environmental quality in Texas. This option is called a Supplemental Environmental Project, or SEP.

## *What Is a SEP?*

A SEP allows a respondent (a person or organization against whom TCEQ's executive director is seeking an administrative enforcement order) to voluntarily participate in a project that enhances, protects, and improves the Texas environment. A SEP is a settlement tool that can only be included within an Agreed Order, they cannot be included in a default or litigated order. If a SEP is approved, a respondent may offset a portion of its assessed penalty to conduct its own environmental-enhancement project or to contribute to an existing project performed by a preapproved third-party administrator for the program. Under Texas law, TCEQ may consider the respondent's willingness to contribute to a SEP in the settlement of an enforcement action, benefiting the community where the alleged violation occurred. SEPs advance the goals of cleaner air, cleaner water, and the safe management of waste throughout Texas. They also enhance the environment in communities affected by environmental violations.

## *Types of Supplemental Environmental Projects*

There are three types of SEPs: Contribution, Custom, and Compliance. All must be included in a settlement agreement with TCEQ's executive director (referred to as an Agreed Order). Of these, a Contribution SEP offers the simplest process for the respondent. By contrast, choosing a Custom or Compliance SEP requires more complex processes for the respondent to propose a project, and for TCEQ staff to review the application and incorporate the project's terms into an Agreed Order. Custom or Compliance SEPs allow a respondent to construct a project tailored to the respondent's capabilities and the community's environmental needs.

### Contribution SEPs

Contribution SEPs utilize projects that are fully designed and ready to be implemented or are already in progress. These projects are referred to as "preapproved SEPs," and are implemented by third-party administrators such as nonprofit organizations and government entities. Rather than paying a penalty to the Texas General Revenue Fund to resolve an enforcement case, a respondent can opt to contribute a portion of its penalty to a preapproved SEP. A benefit of contributing to a preapproved SEP is that the respondent does not need to plan and propose its own project; it can simply choose a project from an approved list and send its penalty offset to the third-party administrator of the project. TCEQ maintains a list of preapproved SEPs online.

### Custom SEPs

A Custom SEP is a project that the respondent designs, proposes, and implements after approval from TCEQ. A Custom SEP must have a significant, enduring, and quantifiable environmental benefit. A respondent's 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.

## Compliance SEPs

Compliance SEPs are available, but only to "local governments"[1] that:

1. Have not previously committed a violation at the same site with the same underlying cause in the preceding five years, as documented in a TCEQ order, *and* have not agreed to perform the project before the date TCEQ initiated the enforcement action, or
2. That qualifies after a financial analysis is conducted by TCEQ's Financial Administration Division.

An eligible local government respondent may apply to perform a Compliance SEP to put its entire penalty toward bringing it into compliance with environmental laws or that is necessary to remediate environmental harm caused by its violations. For example, a city that is under enforcement for its wastewater discharges exceeding effluent limitations may propose to use its penalty dollars for a Compliance SEP to repair or replace its wastewater treatment plant equipment in a manner that would address the cause of the exceedances. The respondent must agree to complete the project regardless of whether the costs turn out to exceed the penalty amount.

# *Allowable Offset Amounts*

There is a set of formulas for determining the percentage of an enforcement penalty that can be offset through a SEP. The formula applied in each case depends on:

1. 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; *and*
2. The nature of the respondent organization—local government, nonprofit, for-profit entity, or individual. Table 1 shows the percentage of a penalty that can go towards Contribution and Custom SEPs for governments and nonprofits versus for-profit organizations and individuals.

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.

**Table 1—Allowable SEP Offset Amounts by Type of Respondent**

| | Direct-Benefit SEPs | Mixed/Indirect-Benefit SEPs |
|---|---|---|
| Governments and Nonprofit Organizations | 100% | 50% |
| For-Profit Organizations and Individuals | 50% | 50% |

## 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 nonprofit organizations may offset up to 100% of the penalty by performing a direct-benefit SEP. For-profit businesses and individuals may offset only up to 50% of their penalty with a direct-benefit project. Examples include

[1] For purposes of TCEQ's SEP program, a "local government" is limited to "a school district, county, municipality, junior college district, river authority, water district or other special district, or other political subdivision created under the constitution or a statute of this state." Tex. Water Code 7.067(b)(1).

removing exotic invasive species from an affected habitat, and collecting and disposing of community household hazardous waste.

### 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 may offset up to 50% of any respondent's penalty. General examples include licensing education and public-awareness projects.

### Mixed-Benefit SEPs

A mixed-benefit SEP is one that has both indirect and direct benefits. Mixed-benefit projects can offset up to 50% of the penalty, no matter the type of respondent. An example includes a project that involves both collecting household hazardous waste and educating the public on proper disposal methods.

## *Who's Eligible to Participate?*

All settling respondents in TCEQ's enforcement process are eligible to use a Contribution or Custom SEP. Only eligible local governments may participate in Compliance SEPs. TCEQ encourages all respondents to consider undertaking or contributing to a SEP. However, TCEQ must evaluate each case individually to determine whether a SEP is appropriate. During the evaluation, TCEQ may consider a number of factors, including the respondent's history of completing SEPs, good-faith participation in settling of the enforcement action, and degree of culpability for the violations at issue. In each case, TCEQ tries to bring the enforcement process to a conclusion as soon as reasonably possible while providing the respondent with an opportunity to perform a SEP. 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.

## *What Makes for an Acceptable SEP?*

A SEP must meet the following three principal criteria:

1. The Project Must Be Environmentally Beneficial

   The project must improve and protect the environment and reduce environmental risks to the public, or contribute to public awareness of environmental matters. TCEQ prefers projects that are directly beneficial to the environment. However, if the proposed project would provide a direct benefit to the respondent, the project may not be allowable unless it is a Compliance SEP.

2. The Project Must Be Performed as a Result of TCEQ Initiating Enforcement

   In most scenarios, the project must follow TCEQ initiating the enforcement action, not precede it. A respondent cannot offset its penalty with a Custom SEP project that the respondent has already completed or already committed to undertake. For example, a city cannot offset a penalty amount with a project for collecting household hazardous waste if it had previously committed to implement such a project, or received grant funds to do so. However, if that same city proposed to extend a waste collection project beyond its previous commitments by expanding it to include additional neighborhoods, then the project may be appropriate. Furthermore, Custom SEPs cannot begin until after TCEQ approves and makes final the Agreed Orders associated with the SEPs.

   Compliance SEPs, on the other hand, can begin any time after the local government respondents' violations happen, and Compliance SEPs can even be completed prior to the

associated Agreed Order becoming final. If the proposed Compliance SEP occurs prior to TCEQ issuing a Notice of Enforcement, it may be appropriate when it demonstrates efforts to expeditiously resolve the violations.

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

A Contribution or Custom SEP must benefit the environment above and beyond legal compliance requirements, but Compliance SEPs 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 Contribution or Custom SEP. Nor can a respondent use a Contribution or Custom SEP to fix the problems that are the basis of the enforcement action taken against the respondent by TCEQ. For example, if a respondent is in enforcement for discharging waste into a river, the respondent cannot use a Contribution or Custom SEP to clean up the discharge.

TCEQ may consider other factors when determining whether a SEP can be approved, including but not limited to:

- Does the project meet state, regional, or community environmental priorities?
- Will the project be carried out in or near the community where the violation occurred? TCEQ follows a statutory preference for SEPs to benefit the same community where the violation occurred. A "community" can be defined in different ways and may include areas in the same river basin, watershed, airshed, or nonattainment area where the violation occurred.

## *Exceptions to SEP Policy*

In limited circumstances, 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 individually and must directly benefit the people, community, or area potentially or actually affected by the violations of TCEQ requirements, or otherwise address environmental priorities of the state, region, or community. For example, an exception may be granted when a proposed project has a connection to the same environmental media as the violation and localized community affected by the violation.[2] Any exception to the policy must ultimately be approved by TCEQ commissioners before the project can be implemented.

## *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 communities where the violations occurred, including projects that provide environmental enhancement to the same watershed, river basin, airshed, or nonattainment area. Except as described below, a SEP generally cannot be located at the same property that is the subject of the enforcement case, and a SEP cannot be located outside of Texas.

### On-Site SEPs

On-site SEPs are performed at the same site or facility where the respondent's violations occurred, which are generally prohibited except as follows:

- Any respondent under enforcement may perform a Custom or Contribution SEP on-site when the benefit to the environment far outweighs the benefit to the respondent, as long as

[2] Such an exception is unavailable if the project remediates the specific harm caused by the respondent's violation or brings the respondent into compliance with environmental laws. *See* Tex. Water Code 7.067(a).

the SEP is not necessary to bring the respondent into compliance with environmental laws and is not necessary to remediate the respondent's environmental harm.

- Local governments may be eligible for Compliance SEPs, which may take place on-site regardless of whether the SEP is necessary to achieve compliance.

### Trans-Boundary 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. The Texas Legislature has given TCEQ the authority to consider for approval some projects that operate across the international boundary with Mexico. In limited circumstances, a respondent may propose to undertake a project in Mexico, if that project would also benefit the environment in Texas. There are additional factors that TCEQ must consider before approving a trans-boundary SEP:

- The project cannot benefit a city in Mexico at the expense of its sister city in Texas.
- 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 should assume direct responsibility for oversight and implementation of the project.

# How Does the Application Process Work?

When a respondent's case is referred to Enforcement, the respondent will receive a proposed Agreed Order[3] as an offer to settle the matter. The cover letter accompanying the proposed order will explain what the respondent needs to do to participate in the SEP program. If the respondent desires to perform or contribute to a SEP, it should inform the enforcement coordinator or attorney assigned to the case as soon as possible, including by any deadline provided in TCEQ's correspondence.

## *Submission of a SEP Application[4]*

To add a SEP into an Agreed Order, a respondent must first submit an application, and it must do so by stated deadlines during TCEQ's enforcement process. If TCEQ does not receive a timely SEP application, the case will likely be settled without a SEP or forwarded to TCEQ's Litigation Division if no settlement is otherwise reached. If the application is for a Custom or Compliance SEP, the respondent may be given additional time to develop the details of the project, but an application must still be submitted timely. SEP applications are available on TCEQ's website.

[3] If entered into by a respondent and TCEQ's executive director, and then approved by TCEQ, an Agreed Order becomes legally binding. It sets forth the respondent's violations, any corrective actions required to resolve the violations, and the assessment of an administrative penalty. If a respondent elects to participate in a SEP, the SEP is incorporated into the Agreed Order.

[4] The agency may, at its discretion, authorize the use of an alternative submission method such as a checklist, short form, or verbal confirmation to facilitate Contribution SEPs.

## Review and Approval of a SEP Application

Once a SEP application is submitted, it will proceed through TCEQ's process for review. If the application is approved, the SEP must be incorporated into the Agreed Order.

## Contribution SEPs

To allow use of a Contribution SEP in an Agreed Order, TCEQ staff will review the application and other relevant information to ensure it's appropriate under program requirements—e.g., that the Contribution SEP serves the community where the respondent's violation occurred; that the respondent does not have a previous obligation to make the contribution; that no conflicts of interest exist; and that the SEP's third-party administrator is accepting contributions.

## Applying for a Compliance or Custom SEP

The application for a Compliance or Custom SEP 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. Once the details of the project are complete, the SEP program will review the project to determine that it meets applicable criteria, and staff will confer with TCEQ program areas and regional offices as necessary to evaluate the environmental benefits of the SEP for the community where the SEP is to be located.

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:

- Information on the respondent, including name, facility, and contact information.
- Compliance history and information regarding the enforcement action.
- Details of the project, including implementation plan, site information, description, and performance schedule.
- A line-item budget, including all expenses for the project, item quantity, 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.
- 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 funded through a preexisting agreement with a governmental entity.

## Incorporating the SEP Into the Agreed Order

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, its requirements, and its budget.

The agency will send the Agreed Order incorporating the SEP to the respondent. It must be signed and returned to the agency within the time frame established by TCEQ in the mailing's associated cover letter. Once the agency receives the signed Agreed Order, it will be scheduled for presentation to TCEQ's commissioners or executive director for approval.

The agency will notify the respondent when the Agreed Order has been approved so the respondent may begin implementing the associated SEP. As noted above, the respondent should not begin the Custom SEP until the Agreed Order is approved by the commission or executive director. Compliance SEPs can begin prior to the Agreed Order being approved and made final.

# What Are the Performance and Reporting Requirements?

Performance and reporting requirements vary according to the type of SEP being implemented—Contribution, Custom, or Compliance.

## *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 implementing the SEPs, reporting dates, and deadlines for completing the SEPs. Specific reporting requirements will vary by project but, in general, both Custom and Compliance SEPs require certain information to be reported to TCEQ regularly to ensure the SEPs are implemented according to their governing agreements.

## *Performance and Reporting for Contribution SEPs*

Agreed Orders for respondents with Contribution SEPs will include a deadline for the respondents to contribute their SEP offset amounts to the third-party administrators. The respondents must also demonstrate to TCEQ that they have provided the contributions to the third-party administrators.

## *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, SEP credit will not be given for any work, equipment, or materials that are not included in the budget.

# Third-Party Administrators

As mentioned above, TCEQ can enter into agreements with third-party nonprofit and governmental organizations to conduct environmental enhancement projects known as preapproved SEPs. A list of preapproved SEPs that respondents may contribute towards is maintained on TCEQ's website.

## *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, as listed above. In addition, eligible third-party organizations must have status under Internal Revenue Code Section 501(c)(3) as a nonprofit organization, or be a governmental organization, and must be able to:

- Demonstrate to TCEQ that the purpose of the project is to prevent pollution, reduce the amount of pollutants reaching the environment, enhance the quality of the environment, or contribute to public awareness of environmental matters.
- Receive and manage SEP funds and report to TCEQ on the use of these funds with supporting documentation.
- Maintain SEP funds in a separate bank or book 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).
- Submit detailed SEP quarterly reports for the project each quarter, reporting on each contribution and expenditure and providing supporting documents, as further explained below.

TCEQ may consider other factors, such as experience in implementing and managing environmental enhancement projects, when determining the appropriateness of entering into a third-party agreement.

## *Third-Party Proposal*

The application for a Third-Party Administrator SEP is available on TCEQ's Website.
The following information is required by the application:

- Information regarding the third-party administrator, including contact information and type of organization (e.g., government or nonprofit).
- Previous experience with SEPs or with managing funds and ability to maintain SEP funds in a separate account. In some circumstances, the SEP program may allow for maintenance of the SEP funds via a leger system.
- Insurance information.
- Total project cost and minimum contribution acceptable from enforcement case respondents.
- Project description, 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 the review process, each application is evaluated collaboratively by the SEP program, TCEQ subject matter experts, and regional staff, as appropriate, to ensure the proposed SEP aligns with program criteria, agency priorities, and regional environmental needs. All applications are evaluated on a case-by-case basis, with careful consideration of the proposed environmental benefit, project type, geographic distribution, and the potential impact to the affected communities. Approved SEPs are then signed by signatories for TCEQ and the third-party administrator. After agreements are signed, SEPs are added to the preapproved SEP list on TCEQ's website. The list of preapproved SEPs is submitted to TCEQ Commissioners annually.

## *Reporting Requirements for Third-Party Administrators*

The third-party administrator will receive a reporting form that must be completed and submitted each quarter. The specific information required in the SEP quarterly reports may vary by project, but the following information is typically required:

- SEP funds received
- Expenditures
- Balance of SEP funds
- Bank statements for the SEP-funds 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
- Maps showing locations of SEP sites

At the conclusion of the project, a SEP 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, and any additional information TCEQ requires. Within 30 days after the due date of the final quarterly report, any remaining funds must either be transferred to another Third-Party Administrator in the same community or returned to TCEQ to be deposited into general revenue.

### For Further SEP Assistance

The SEP program can be reached at 512-239-2223 or via email at SEPReports@tceq.texas.gov. SEP applications and other important information regarding the program can be found online.

# Attachment B:

# SEP Guidance Document Redline Post Stakeholder Comment

# Supplemental Environmental Projects (SEPs)

***Putting Penalties to Work Closer to Home***

Prepared by
Litigation Division

DRAFT

TCEQ GI-352
Revised July 2026

**Deleted:** April 2026

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# Introduction

If someone or an entity is found to be in violation of state environmental laws or regulations, they may be assessed a monetary penalty by the Texas Commission on Environmental Quality (TCEQ or Commission). 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, and through negotiations with TCEQ, may allow a portion of the penalty to be used towards a project which helps improve environmental quality in Texas. This option is called a Supplemental Environmental Project, or SEP.

## *What Is a SEP?*

A SEP allows a respondent (a person or organization against whom TCEQ's executive director is seeking an administrative enforcement order) to voluntarily participate in a project that enhances, protects, and improves the Texas environment. A SEP is a settlement tool that can only be included within an Agreed Order, they cannot be included in a default or litigated order. If a SEP is approved, a respondent may offset a portion of its assessed penalty to conduct its own environmental-enhancement project or to contribute to an existing project performed by a preapproved third-party administrator for the program. Under Texas law, TCEQ may consider the respondent's willingness to contribute to a SEP in the settlement of an enforcement action, benefiting the community where the alleged violation occurred. SEPs advance the goals of cleaner air, cleaner water, and the safe management of waste throughout Texas. They also enhance the environment in communities affected by environmental violations.

## *Types of Supplemental Environmental Projects*

There are three types of SEPs: Contribution, Custom, and Compliance. All must be included in a settlement agreement with TCEQ's executive director (referred to as an Agreed Order). Of these, a Contribution SEP offers the simplest process for the respondent. By contrast, choosing a Custom or Compliance SEP requires more complex processes for the respondent to propose a project, and for TCEQ staff to review the application and incorporate the project's terms into an Agreed Order. Custom or Compliance SEPs allow a respondent to construct a project tailored to the respondent's capabilities and the community's environmental needs.

### Contribution SEPs

Contribution SEPs utilize projects that are fully designed and ready to be implemented or are already in progress. These projects are referred to as "preapproved SEPs," and are implemented by third-party administrators such as nonprofit organizations and government entities. Rather than paying a penalty to the Texas General Revenue Fund to resolve an enforcement case, a respondent can opt to contribute a portion of its penalty to a preapproved SEP. A benefit of contributing to a preapproved SEP is that the respondent does not need to plan and propose its own project; it can simply choose a project from an approved list and send its penalty offset to the third-party administrator of the project. TCEQ maintains a list of preapproved SEPs online.

### Custom SEPs

A Custom SEP is a project that the respondent designs, proposes, and implements after approval from TCEQ. A Custom SEP must have a significant, enduring, and quantifiable environmental benefit. A respondent's 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.

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### Compliance SEPs

Compliance SEPs are available, but only to "local governments"[1] that:

1. Have not previously committed a violation at the same site with the same underlying cause in the preceding five years, as documented in a TCEQ order, *and* have not agreed to perform the project before the date TCEQ initiated the enforcement action, or
2. That qualifies after a financial analysis is conducted by TCEQ's Financial Administration Division.

An eligible local government respondent may apply to perform a Compliance SEP to put its entire penalty toward bringing it into compliance with environmental laws or that is necessary to remediate environmental harm caused by its violations. For example, a city that is under enforcement for its wastewater discharges exceeding effluent limitations may propose to use its penalty dollars for a Compliance SEP to repair or replace its wastewater treatment plant equipment in a manner that would address the cause of the exceedances. The respondent must agree to complete the project regardless of whether the costs turn out to exceed the penalty amount.

## *Allowable Offset Amounts*

There is a set of formulas for determining the percentage of an enforcement penalty that can be offset through a SEP. The formula applied in each case depends on:

1. 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; *and*
2. The nature of the respondent organization—local government, nonprofit, for-profit entity, or individual. Table 1 shows the percentage of a penalty that can go towards Contribution and Custom SEPs for governments and nonprofits versus for-profit organizations and individuals.

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.

**Table 1—Allowable SEP Offset Amounts by Type of Respondent**

| | Direct-Benefit SEPs | Mixed/Indirect-Benefit SEPs |
|---|---|---|
| Governments and Nonprofit Organizations | 100% | 50% |
| For-Profit Organizations and Individuals | 50% | 50% |

### 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 nonprofit organizations may offset up to 100% of the penalty by performing a direct-benefit SEP. For-profit businesses and individuals may offset only up to 50% of their penalty with a direct-benefit project. Examples include

[1] For purposes of TCEQ's SEP program, a "local government" is limited to "a school district, county, municipality, junior college district, river authority, water district or other special district, or other political subdivision created under the constitution or a statute of this state." Tex. Water Code 7.067(b)(1).

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removing exotic invasive species from an affected habitat, and collecting and disposing of community household hazardous waste.

### 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 may offset up to 50% of any respondent's penalty. General examples include licensing education and public-awareness projects.

### Mixed-Benefit SEPs

A mixed-benefit SEP is one that has both indirect and direct benefits. Mixed-benefit projects can offset up to 50% of the penalty, no matter the type of respondent. An example includes a project that involves both collecting household hazardous waste and educating the public on proper disposal methods.

## *Who's Eligible to Participate?*

All settling respondents in TCEQ's enforcement process are eligible to use a Contribution or Custom SEP. Only eligible local governments may participate in Compliance SEPs. TCEQ encourages all respondents to consider undertaking or contributing to a SEP. However, TCEQ must evaluate each case individually to determine whether a SEP is appropriate. During the evaluation, TCEQ may consider a number of factors, including the respondent's history of completing SEPs, good-faith participation in settling of the enforcement action, and degree of culpability for the violations at issue. In each case, TCEQ tries to bring the enforcement process to a conclusion as soon as reasonably possible while providing the respondent with an opportunity to perform a SEP. 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.

## *What Makes for an Acceptable SEP?*

A SEP must meet the following three principal criteria:

1. The Project Must Be Environmentally Beneficial

   The project must improve and protect the environment and reduce environmental risks to the public, or contribute to public awareness of environmental matters. TCEQ prefers projects that are directly beneficial to the environment. However, if the proposed project would provide a direct benefit to the respondent, the project may not be allowable unless it is a Compliance SEP.

2. The Project Must Be Performed as a Result of TCEQ Initiating Enforcement

   In most scenarios, the project must follow TCEQ initiating the enforcement action, not precede it. A respondent cannot offset its penalty with a Custom SEP project that the respondent has already completed or already committed to undertake. For example, a city cannot offset a penalty amount with a project for collecting household hazardous waste if it had previously committed to implement such a project, or received grant funds to do so. However, if that same city proposed to extend a waste collection project beyond its previous commitments by expanding it to include additional neighborhoods, then the project may be appropriate. Furthermore, Custom SEPs cannot begin until after TCEQ approves and makes final the Agreed Orders associated with the SEPs.

   Compliance SEPs, on the other hand, can begin any time after the local government respondents' violations happen, and Compliance SEPs can even be completed prior to the

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associated Agreed Order becoming final. If the proposed Compliance SEP occurs prior to TCEQ issuing a Notice of Enforcement, it may be appropriate when it demonstrates efforts to expeditiously resolve the violations.

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

A Contribution or Custom SEP must benefit the environment above and beyond legal compliance requirements, but Compliance SEPs 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 Contribution or Custom SEP. Nor can a respondent use a Contribution or Custom SEP to fix the problems that are the basis of the enforcement action taken against the respondent by TCEQ. For example, if a respondent is in enforcement for discharging waste into a river, the respondent cannot use a Contribution or Custom SEP to clean up the discharge.

TCEQ may consider other factors when determining whether a SEP can be approved, including but not limited to:

- Does the project meet state, regional, or community environmental priorities?
- Will the project be carried out in or near the community where the violation occurred? TCEQ follows a statutory preference for SEPs to benefit the same community where the violation occurred. A "community" can be defined in different ways and may include areas in the same river basin, watershed, airshed, or nonattainment area where the violation occurred.

## *Exceptions to SEP Policy*

In limited circumstances, 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 individually and must directly benefit the people, community, or area potentially or actually affected by the violations of TCEQ requirements, or otherwise address environmental priorities of the state, region, or community. For example, an exception may be granted when a proposed project has a connection to the same environmental media as the violation and localized community affected by the violation.[2] Any exception to the policy must ultimately be approved by TCEQ commissioners before the project can be implemented.

## *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 communities where the violations occurred, including projects that provide environmental enhancement to the same watershed, river basin, airshed, or nonattainment area. Except as described below, a SEP generally cannot be located at the same property that is the subject of the enforcement case, and a SEP cannot be located outside of Texas.

### On-Site SEPs

On-site SEPs are performed at the same site or facility where the respondent's violations occurred, which are generally prohibited except as follows:

- Any respondent under enforcement may perform a Custom or Contribution SEP on-site when the benefit to the environment far outweighs the benefit to the respondent, as long as

[2] Such an exception is unavailable if the project remediates the specific harm caused by the respondent's violation or brings the respondent into compliance with environmental laws. *See* Tex. Water Code 7.067(a).

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the SEP is not necessary to bring the respondent into compliance with environmental laws and is not necessary to remediate the respondent's environmental harm.

- Local governments may be eligible for Compliance SEPs, which may take place on-site regardless of whether the SEP is necessary to achieve compliance.

### Trans-Boundary 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. The Texas Legislature has given TCEQ the authority to consider for approval some projects that operate across the international boundary with Mexico. In limited circumstances, a respondent may propose to undertake a project in Mexico, if that project would also benefit the environment in Texas. There are additional factors that TCEQ must consider before approving a trans-boundary SEP:

- The project cannot benefit a city in Mexico at the expense of its sister city in Texas.
- 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 should assume direct responsibility for oversight and implementation of the project.

# How Does the Application Process Work?

When a respondent's case is referred to Enforcement, the respondent will receive a proposed Agreed Order[3] as an offer to settle the matter. The cover letter accompanying the proposed order will explain what the respondent needs to do to participate in the SEP program. If the respondent desires to perform or contribute to a SEP, it should inform the enforcement coordinator or attorney assigned to the case as soon as possible, including by any deadline provided in TCEQ's correspondence.

## *Submission of a SEP Application[4]*

To add a SEP into an Agreed Order, a respondent must first submit an application, and it must do so by stated deadlines during TCEQ's enforcement process. If TCEQ does not receive a timely SEP application, the case will likely be settled without a SEP or forwarded to TCEQ's Litigation Division if no settlement is otherwise reached. If the application is for a Custom or Compliance SEP, the respondent may be given additional time to develop the details of the project, but an application must still be submitted timely. SEP applications are available on TCEQ's website.

[3] If entered into by a respondent and TCEQ's executive director, and then approved by TCEQ, an Agreed Order becomes legally binding. It sets forth the respondent's violations, any corrective actions required to resolve the violations, and the assessment of an administrative penalty. If a respondent elects to participate in a SEP, the SEP is incorporated into the Agreed Order.

[4] The agency may, at its discretion, authorize the use of an alternative submission method such as a checklist, short form, or verbal confirmation to facilitate Contribution SEPs.

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## Review and Approval of a SEP Application

Once a SEP application is submitted, it will proceed through TCEQ's process for review. If the application is approved, the SEP must be incorporated into the Agreed Order.

## Contribution SEPs

To allow use of a Contribution SEP in an Agreed Order, TCEQ staff will review the application and other relevant information to ensure it's appropriate under program requirements—e.g., that the Contribution SEP serves the community where the respondent's violation occurred; that the respondent does not have a previous obligation to make the contribution; that no conflicts of interest exist; and that the SEP's third-party administrator is accepting contributions.

## Applying for a Compliance or Custom SEP

The application for a Compliance or Custom SEP 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. Once the details of the project are complete, the SEP program will review the project to determine that it meets applicable criteria, and staff will confer with TCEQ program areas and regional offices as necessary to evaluate the environmental benefits of the SEP for the community where the SEP is to be located.

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:

- Information on the respondent, including name, facility, and contact information.
- Compliance history and information regarding the enforcement action.
- Details of the project, including implementation plan, site information, description, and performance schedule.
- A line-item budget, including all expenses for the project, item quantity, 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.
- 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 funded through a preexisting agreement with a governmental entity.

## Incorporating the SEP Into the Agreed Order

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, its requirements, and its budget.

The agency will send the Agreed Order incorporating the SEP to the respondent. It must be signed and returned to the agency within the time frame established by TCEQ in the mailing's associated cover letter. Once the agency receives the signed Agreed Order, it will be scheduled for presentation to TCEQ's commissioners or executive director for approval.

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The agency will notify the respondent when the Agreed Order has been approved so the respondent may begin implementing the associated SEP. As noted above, the respondent should not begin the Custom SEP until the Agreed Order is approved by the commission or executive director. Compliance SEPs can begin prior to the Agreed Order being approved and made final.

# What Are the Performance and Reporting Requirements?

Performance and reporting requirements vary according to the type of SEP being implemented—Contribution, Custom, or Compliance.

## *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 implementing the SEPs, reporting dates, and deadlines for completing the SEPs. Specific reporting requirements will vary by project but, in general, both Custom and Compliance SEPs require certain information to be reported to TCEQ regularly to ensure the SEPs are implemented according to their governing agreements.

## *Performance and Reporting for Contribution SEPs*

Agreed Orders for respondents with Contribution SEPs will include a deadline for the respondents to contribute their SEP offset amounts to the third-party administrators. The respondents must also demonstrate to TCEQ that they have provided the contributions to the third-party administrators.

## *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, SEP credit will not be given for any work, equipment, or materials that are not included in the budget.

# Third-Party Administrators

As mentioned above, TCEQ can enter into agreements with third-party nonprofit and governmental organizations to conduct environmental enhancement projects known as preapproved SEPs. A list of preapproved SEPs that respondents may contribute towards is maintained on TCEQ's website.

## *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, as listed above. In addition, eligible third-party organizations must have status under Internal Revenue Code Section 501(c)(3) as a nonprofit organization, or be a governmental organization, and must be able to:

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- Demonstrate to TCEQ that the purpose of the project is to prevent pollution, reduce the amount of pollutants reaching the environment, enhance the quality of the environment, or contribute to public awareness of environmental matters.
- Receive and manage SEP funds and report to TCEQ on the use of these funds with supporting documentation.
- Maintain SEP funds in a separate bank or book 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).
- Submit detailed SEP quarterly reports for the project each quarter, reporting on each contribution and expenditure and providing supporting documents, as further explained below.

TCEQ may consider other factors, such as experience in implementing and managing environmental enhancement projects, when determining the appropriateness of entering into a third-party agreement.

## *Third-Party Proposal*

The application for a Third-Party Administrator SEP is available on TCEQ's Website.
The following information is required by the application:

- Information regarding the third-party administrator, including contact information and type of organization (e.g., government or nonprofit).
- Previous experience with SEPs or with managing funds and ability to maintain SEP funds in a separate account. In some circumstances, the SEP program may allow for maintenance of the SEP funds via a leger system.
- Insurance information.
- Total project cost and minimum contribution acceptable from enforcement case respondents.
- Project description, 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 the review process, each application is evaluated collaboratively by the SEP program, TCEQ subject matter experts, and regional staff, as appropriate, to ensure the proposed SEP aligns with program criteria, agency priorities, and regional environmental needs. All applications are evaluated on a case-by-case basis, with careful consideration of the proposed environmental benefit, project type, geographic distribution, and the potential impact to the affected communities. Approved SEPs are then signed by signatories for TCEQ and the third-party administrator. After agreements are signed, SEPs are added to the preapproved SEP list on TCEQ's website. The list of preapproved SEPs is submitted to TCEQ Commissioners annually.

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## *Reporting Requirements for Third-Party Administrators*

The third-party administrator will receive a reporting form that must be completed and submitted each quarter. The specific information required in the SEP quarterly reports may vary by project, but the following information is typically required:

- SEP funds received
- Expenditures
- Balance of SEP funds
- Bank statements for the SEP-funds 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
- Maps showing locations of SEP sites

At the conclusion of the project, a SEP 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, and any additional information TCEQ requires. Within 30 days after the due date of the final quarterly report, any remaining funds must either be transferred to another Third-Party Administrator in the same community or returned to TCEQ to be deposited into general revenue.

### For Further SEP Assistance

The SEP program can be reached at 512-239-2223 or via email at SEPReports@tceq.texas.gov. SEP applications and other important information regarding the program can be found online.

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