

VI. Recommendations

If the Regional Board continues to accept proposals and consider approval of funding for SEPs as part of settlement of enforcement actions, a standardized process to select and manage SEPs should be followed. A standardized SEP process should incorporate the following attributes:

1. **SEP Selection/Solicitation Process**

The Regional Board should consider developing general criteria for acceptable SEP projects. This would provide SEP proponents guidance regarding potential Regional Board approval of their proposals. Any such criteria should be revisited and updated periodically.

The Regional Board, with concurrence of a discharger, may suspend or divert a portion of a liability for the successful completion of SEPs. The current practice is that a third-party SEP proponent must first win the approval of the discharger. To include a SEP in a settlement offer, a discharger must describe the SEPs in sufficient detail for Regional Board evaluation.

In those instances when there is not sufficient opportunity for interested persons/project proponents to get their requests into the process soon enough to be considered, allow the discharger and/or any project proponent seeking approval of a SEP associated with a particular alleged violation to submit proposals to the Regional Board within a short time (no more than 60 days) after issuance of a Complaint. This would allow the discharger a reasonable opportunity to consider proposing settlement including the SEP.

If the Regional Board desires to utilize a “library” for the selection of SEPs, consider the following options:

(a) Recommend State Board Maintain Library.

Direct Executive Officer to request the State Water Resources Control Board to implement the process described in the Enforcement Policy to establish and maintain a library of proposed projects as that could be funded as SEPs.

(b) Limited Regional Board Inventory Option

Create a limited local inventory of pre-approved and/or already established projects that require limited or no Regional Board oversight.

2. Affirm Discharger Responsibility and Accountability:

Dischargers proposing to offset liability by funding a third-party SEP should retain responsibility for the SEP, in accordance with criteria established in the State Board's Enforcement Policy. The Regional Board should continue the practice of incorporating the specific details of the approved SEP in an Order imposing Administrative Civil Liability. The Order should establish that the discharger's responsibilities include the following:

- (a) Maintain continued responsibility for either completion of the SEP, that they proposed, or payment of the full amount of the discounted liability.
- (b) Demonstrate the SEP complies with water quality and nexus criteria established in the State Board's Enforcement Policy.
- (c) Provide a contract between discharger and SEP proponent.
- (d) Provide performance standards and other tools to track, monitor, and report on the timely completion of the SEP.
- (e) Fund an independent audit to track the implementation of the SEP. Discharger either hires an independent third party management company which reports solely to the Regional Board to audit implementation of the SEP, or pays the Regional Board an amount equal to the estimated cost for oversight of the SEP.
- (f) State in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action when publicizing a SEP or the results of the SEP.

3. SEP Funding Options

When the Regional Board has reached tentative settlement with a discharger that includes a SEP, but a viable SEP has not been selected, the Regional Board can:

- (a) Send the funds set aside for the SEP to the State Board Cleanup and Abatement Account (CAA) earmarked for a future SEP meeting a specific criteria. Applicants for funding would need to go through the State Board and comply with more stringent conditions and criteria; or
- (b) Allow a short window for a discharger proposing settlement to identify a SEP that is satisfactory to the Regional Board. If the discharger fails to propose a SEP to the Regional Board's satisfaction, these resources would automatically go to the CAA.

4. SEP Administrative Oversight Costs

Dischargers proposing SEPs should be directed to pay an additional amount, above the cost of the SEPs, to reimburse the State for the cost of the selection, approval, and oversight of the SEPs. This amount should range from no less than 15% to perhaps as high as 50% of the amount allocated for SEPs, depending on the complexity of the project(s).