

AB 1071: SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEP)

CRITERIA FOR PROPOSED PROJECTS & CATEGORIES OF ACCEPTABLE PROJECTS

CalRecycle will make available on its website a form to complete in which nonprofit community-based organizations and individuals can submit potential SEP proposals. The online proposal will be reviewed by CalRecycle, and if the online proposal is deemed to satisfy minimum criteria to qualify for consideration, the organization will be contacted with a request for further documentation of the project as outlined below.

SEP Proposal & Application for List Consideration

All SEP proposal applications must include the following:

- A. Include or reference a scope of work, including a budget.
- B. Require periodic reporting on the performance of the SEP by the respondent or third-party to CalRecycle to monitor the timely and successful completion of the SEP.
- C. Include a time schedule for implementation with single or multiple milestones and that identifies the amount of the penalty that will be permanently suspended or excused upon the timely and successful completion of each milestone. Except for the final milestone, the amount of the penalty suspended for any portion of a SEP cannot exceed the projected cost of performing that portion of the SEP.
- D. Contain or reference performance standards and identified measures or indicators of performance in the scope of work.
- E. Specify that the respondent is ultimately responsible for meeting these milestones, standards, and indicators.
- F. Require that whenever the respondent, or any third party with whom the respondent contracts to perform a SEP, publicizes a SEP or the results of the SEP, it will state in a prominent manner that project is being undertaken as a part of the settlement of a CalRecycle enforcement action.

SEP Proposal Qualification Criteria & Evaluation

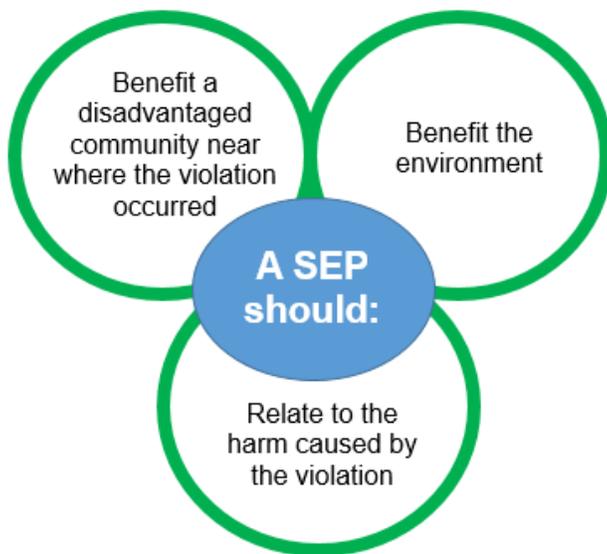
Nothing in the policy restricts CalRecycle from establishing additional, more stringent criteria for SEPs.

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

- A. There are two entities who may administer the SEPs following their inclusion in enforcement orders: (1) SEPs performed by the respondent; and (2) SEPs performed by third-parties contracted by the respondent. Third-party entities that are paid to perform a SEP must be independent of the respondent.
- B. A SEP should only consist of measures that go above and beyond the otherwise applicable obligations of the respondent. The SEP will not be an action, process, or product that is otherwise required of the respondent by any rule or regulation of any federal, state, or local entity or is proposed as mitigation to offset impacts of a respondent's project(s).
- C. A SEP should, whenever possible, directly benefit disadvantaged communities and will improve the environmental conditions of these communities.
- D. Community-based organizations which propose SEPs or are contracted by the respondent to perform a SEP must be a nonprofit 501(c)(3) organization.
- E. There must be a relationship between the nature or location of the violation and the nature or location of the proposed SEP. A nexus exists if the project remediates or reduces the probable overall environmental or public health impacts or risks to which the violation at issue contributes, or if the project is designed to reduce the likelihood that similar violations will occur in the future.
- F. The SEP, when appropriate, should include documented support by other public agencies, public groups, and affected persons.

SEP Proposal Qualification Criteria & Evaluation (continued)

- G.** The SEP proposal, considering the nature or the stage of development of the project, should include documentation that the project complies with the California Environmental Quality Act.
- H.** The SEP proposal should address whether it can be the basis for additional funding from other sources.
- I.** The entity identified as responsible for completing a SEP should have the institutional stability and capacity to complete the SEP. Such consideration should include the ability of the entity to accomplish the work and provide the products and reports expected.
- J.** The SEP proposal should include, where appropriate, success criteria and requirements for monitoring to track the short and long-term success of the project.



SEP Payment, Tracking, Reporting, & Oversight Provisions

SEPs which are selected from the approved SEPs list for inclusion in the settlement of an enforcement action must adhere to the following provisions for project payment, tracking, reporting, and oversight as follows.

- A.** Based on its resource constraints, CalRecycle may require the respondent to select and hire an independent management company or another third party, which reports solely to CalRecycle, to oversee implementation of the SEP in lieu of

oversight by CalRecycle staff. If no arrangement for the payment for necessary oversight can be made, the SEP will not be approved, except under extraordinary circumstances. As a general rule, such oversight costs are not costs that should be considered part of the direct cost of the SEP for settlement purposes unless CalRecycle expressly finds that such costs should be considered part of the SEP.

- B.** A written acknowledgement and other appropriate verification and enforceable representation to CalRecycle by each third-party performing the SEP that any SEP funds it received from the respondent will be spent in accordance with the terms of the order. The third-party performing the SEP must agree to an audit of its SEP expenditures, if requested by CalRecycle.
- C.** The respondent must provide CalRecycle with a final completion report, submitted under penalty of perjury, declaring the completion of the SEP and addressing how the expected outcome(s) or performance standard(s) for the project were met. Where a third-party performed the SEP, that entity may provide the report and the certification.
- D.** The respondent must provide CalRecycle a final, certified, post-project accounting of expenditures, unless CalRecycle determines that such an audit is unduly onerous and CalRecycle has other means to verify expenditures for the work. Such accounting must be paid for by the respondent and must be performed by an independent third-party acceptable to CalRecycle.
- E.** CalRecycle will not directly manage or administer the SEP. The respondent or the contracted third party will manage and administer the SEP.
- F.** CalRecycle will not manage or administer the suspended penalty funds to a third-party performing or administering the SEP. The respondent is responsible for spending the suspended penalty funds for the competition of the SEP, as appropriate.
- G.** Where appropriate, it is permissible for a SEP funding agreement between a respondent and a third-party to require pre-approval of invoices or confirmation of completed work by CalRecycle before escrowed or set-aside funds are disbursed to the party performing the work.

CalRecycle's SEP Categories

There are several categories of projects that CalRecycle will consider for potential SEPs:

Waste Prevention & Source Reduction Projects

A waste prevention project is one which reduces the generation of waste through "source reduction," which is any practice which reduces the amount of a waste material entering a waste stream or otherwise being released into the environment prior to recycling or disposal.

Source reduction projects may include equipment or technology modifications, process or procedure modification, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, inventory control, or other operation and maintenance procedures. For a project to meet the definition of waste prevention, there must be an overall decrease in the amount of waste released to the environment, not merely a transfer of waste among media.

EXAMPLE: Implementation of a food recovery program, to prevent edible non-perished food from disposal and repurposing that food for consumption.

Waste Reduction Projects

A waste reduction project is one that results in a decrease in the amount of any substance entering any waste stream, or otherwise being released into the environment by an operating business facility. A waste reduction approach is appropriate if a waste stream already exists. These projects employ recycling, treatment, containment or disposal techniques. Projects may include the installation of more effective end-of-process control or treatment technology.

EXAMPLE: Providing the public with a convenient collection location for household hazard waste such as paint, electronic devices, used motor oil, batteries, and mercury-containing thermostats.

Community Environment Restoration and Protection Projects

A community environment restoration and protection project is one that goes beyond repairing the damage caused by the violation to enhance the condition of the immediate geographic area adversely affected. These projects may be used to restore or protect natural or man-made environments. This includes the removal or mitigation of waste materials, which are a continued burden to individuals and communities.

EXAMPLE: Cleanup and proper disposal of illegally dumped solid waste, tires, and/or electronic waste that would otherwise become a public health hazard.

Environmental Compliance Promotion Projects

An environmental compliance promotion project may include trainings or technical support to members of a regulated community or the public to identify, achieve, or maintain compliance with applicable statutory and regulatory requirements or to reduce the generation, release, or disposal of waste beyond legal requirements. An environmental compliance promotion project may also involve the promotion of environmental literacy and environmental stewardship.

EXAMPLE: Distribution of CalRecycle's Education and the Environment Initiative (EEI) curriculum materials to K-12 classes and/or fund the training of teachers to present the EEI curriculum.

Other

CalRecycle will consider other projects that do not fit within the above categories if the proposed project meets all criteria for a SEP.

Unacceptable Projects

Projects that are already required by law or regulation and projects that do not meet all of the required criteria are not eligible proposals for SEPs.