

# DEPARTMENT POLICY

DATE: September 23, 2005

POLICY # 21

**SUBJECT:** Supplemental Environmental Projects (SEP)

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Director

This policy supersedes all previous Departmental policy statements concerning this subject.

## I. PURPOSE

The mission of the Wyoming DEQ is: “to protect, conserve and enhance the quality of Wyoming’s environment for the benefit of current and future generations.” One way to improve the environment through enforcement actions is to obtain additional relief in the form of projects which prevent or remediate the adverse environmental consequences of pollution. Such projects may be included in an enforcement settlement to improve the environment. As part of the settlement, the violator may commit to undertake environmentally beneficial expenditures which are not otherwise required by law (“Supplemental Environmental Projects”).

This policy defines when Supplemental Environmental Projects (“SEPs”) are appropriate and the practices of the Department of Environmental Quality (“DEQ”) in determining to implement SEPs. It is solely within DEQs discretion to approve or deny implementation of a SEP. This policy sets out an approach for DEQ to use in exercising its enforcement discretion. In some cases, application of this policy may not be appropriate. The DEQ has authority, under Wyoming Statute §35-11-701(c), to endeavor to promptly eliminate the source or cause of a violation by conference, conciliation and persuasion. The DEQ, under Wyoming Statue §35-11-901(a)(ii), also has authority to negotiate stipulated settlements involving the payment of a penalty, implementation of compliance schedules, or other settlement conditions in lieu of litigation. A SEP is such a condition.

All fines and penalties collected under the Environmental Quality Act are paid to the State Treasury and credited as provided in W.S. 8-1-109. This does not preclude the agency from entering into settlement agreements, as set out in W.S. 35-11-901(a)(ii)

## II. DEFINITION & TYPES OF SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEP)

SEP (Supplemental Environment Project) - An environmentally beneficial project that a violator voluntarily agrees to perform as part of an enforcement settlement.

**Environmentally Beneficial Project** - A project that will improve or protect the environment at large or reduce environmental risks to public health.

## III. SEP CRITERIA

All SEPs must meet the following criteria:

New Project: A SEP must be a project that the alleged violator has not historically undertaken. An alleged violator may not propose and receive retroactive credit for a project which has been undertaken before negotiation of the settlement agreement. A project that an alleged violator has routinely or historically done is not an acceptable SEP.

**Enforcement Status:** Any violator against whom DEQ has taken an enforcement action may consider a SEP at any time before resolution of the action. DEQ will consider both the status of the action and the resources that have been committed to the action before deciding whether to accept a SEP proposal. For example, if settlement of the action has been achieved in concept, DEQ may not agree to reopen discussions to consider a SEP.

**Compliance History:** The violator's compliance history must be examined during the evaluation of a SEP proposal. If the violator has a history of violations, the deterrence objectives of an enforcement case may not be served by allowing the violator to undertake a SEP.

**Technical and Economic Resources:** DEQ must consider whether the violator has the technical and economic resources needed to successfully implement the SEP. DEQ should reject a SEP proposal if the violator does not have the resources. In addition, if the violator claims to be unable to pay a civil penalty, this factor should weigh against the violator's ability to successfully complete a SEP. Benefit of a Supplemental Environmental Project: SEPs are not intended to reward the violator for undertaking activities which are obviously in its economic self-interest such as updating or modernizing a plant to become more competitive. Projects which have been completed, or which the violator has already committed to before settlement discussions with DEQ are not eligible.

**Management/Oversight:** DEQ will provide oversight to ensure that a project is implemented pursuant to the provisions of the settlement, and will retain legal recourse if the SEP is not adequately performed. A SEP may require reimbursement of the costs of overseeing implementation of the project as a component of the SEP.

**Scope:** The cost and nature of each project will be determined in the signed consent agreement or other settlement document. This may include a specific project identified by either the violator or DEQ and agreed to by both parties, or funding for a future project to be determined by DEQ. Such future project may include but not be limited to reclamation, monitoring, special studies and orphan site remediation. A violator may fund a future SEP, if the future SEP project will be determined by DEQ and the violator provides funding at the time of the signed consent agreement, in accordance with Section V., FUNDING, of this policy.

#### **IV. CATEGORIES OF SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

The following categories of projects will be considered as potentially acceptable SEPs, subject to meeting the above criteria and the additional criteria described in the succeeding sections:

**Environmental Restoration, Protection, and Ambient Monitoring:** These projects may be used to restore, replace, improve or protect the environment. This category also includes projects that provide for the protection of threatened or endangered species such as developing conservation programs or protecting habitat critical to the well-being of a species endangered by the violation.

Projects may involve reclamation, monitoring, special studies and orphan site remediation. This includes the removal/mitigation of contaminated materials, such as soils, asbestos and leaded paint, which could be a continuing source of releases and/or threat to individuals.

**Pollution Reduction:** A pollution reduction project is one that results in a decrease in the amount and/or toxicity of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise being released into the environment by a means that does not qualify as "pollution prevention." A pollution reduction SEP may include the installation of more effective end-of-process control or treatment technology. It may also include "out-of-process recycling," where industrial waste collected after the manufacturing process and/or consumer waste materials are used as raw materials for production off-site, thereby reducing the need for treatment, disposal, or consumption of energy or natural resources.

**Pollution Prevention:** A pollution prevention project is one that would reduce the generation of pollution through "source reduction," that is, a practice that reduces the amount of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise being released into the environment before recycling, treatment or disposal.

Source reduction may include equipment or technology modifications; process or procedure modifications; reformulation or redesign of products; substitution of raw materials; improvements in housekeeping; maintenance; training; inventory control, or other operation and maintenance procedures. Pollution prevention also includes protection of natural resources through conservation or increased efficiency in the use of energy, water or other materials. In all cases, for a SEP project to meet the definition of pollution prevention, there must be an overall decrease in the amount and/or toxicity of pollution released to the environment, not merely a transfer of pollution among media. This decrease may be achieved directly or through increased conservation in the use of energy, water or other materials.

**Outreach and Education:** An outreach or education project is one that would provide assistance, either through direct contracting or through funding to a non-governmental organization, to prepare, publish, produce, and/or distribute outreach, training, or educational materials on environmental issues significant to Wyoming. Products produced under an outreach or educational project become the property of DEQ. Other Types of Projects: Other acceptable SEPs would be those that have environmental merit but do not fit within the categories listed above. These types of projects must be fully consistent with all other provisions of the SEP Policy and be approved by the Director of DEQ and the

Attorney General's Office.

**V. FUNDING:**At DEQ's option a violator may be allowed to directly fund a SEP under the oversight of the DEQ or a violator may choose to fund a SEP through DEQ's "Trust and Agency account", officially known as a Special Revenue Account.

If a violator chooses to fund the SEP through DEQ, funding will be held in the "Trust and Agency account" and used by the DEQ for a SEP. If a specific SEP project is specified in the settlement agreement, DEQ will earmark and encumber the funds for that specific SEP. If the settlement agreement specifies that the funding may be used by DEQ for a, "Future Unspecified SEP" then DEQ will deposit and hold the funds in the Trust and Agency account for future SEP expenditures. In all cases the SEP funding provide will be treated by DEQ as held revenue for a SEP.

## **VI. FINES AND PENALTIES**

When a settlement includes a SEP, DEQ may still require the payment of a stipulated penalty. Such penalties will be handled in accordance with W.S. §35-11-424 and deposited with the State Treasurer as required in W.S. §8-1-109. Any administrative settlement in which a SEP is proposed must be approved by the Director and the Attorney General's Office before the settlement is finalized.

This Supplemental Environmental Projects Policy is solely for the use of DEQ personnel. DEQ reserves the right to change this policy at any time without notice, or to act in variance with this policy. This policy does not create any rights in third persons or parties. It is solely within DEQ discretion whether to allow any SEP.