

Supplemental Environmental Projects Policy

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Supplemental Environmental Projects

- In lieu of payment of a monetary penalty
- Benefits public health or the environment in the geographic area affected by the violation
- Mitigates adverse impacts or prevents repeat of the violation in question
- Is not required under any regulatory obligation
- Is mandatory under a settlement with penalties for failure to perform
- May be implemented by respondent or a third party government or nonprofit agency

Draft Policy Statement

“Maricopa County Air Quality Department (MCAQD) will, where appropriate and feasible, accept SEPs in lieu of fines paid directly to the department.”

Statutory Standard

A.R.S. §49-117. Supplemental environmental project; requirements; nexus

A supplemental environmental project that is initiated or accepted by the department shall comply with this section, shall advance at least one of the objectives of the environmental statutes that are the basis of the enforcement action and shall have an adequate nexus. A nexus exists only if any of the following apply. The proposed project:

1. Is designed to reduce the likelihood that similar violations will occur in the future.
2. Reduces the adverse impact to public health or the environment to which the violation contributes.
3. Reduces the overall risk to public health or the environment potentially affected by the violation.

Draft Policy Contents

1. Purpose, Statement & Definitions
2. SEP Applicability
3. SEP Project Categories
4. SEP Proposal and Submittals
5. Limitations on MCAQD Involvement
6. SEP Proposal Review Process
7. Criteria for SEP Approval
8. Third Party SEP Selection
9. Authorization and Implementation
10. Evaluation of Project Costs
11. Documentation of SEPs in Orders of Abatement
12. Respondent Reporting
13. SEP Compliance
14. Department Discretion; Limitations
15. Appendices - Application Forms

Some Significant Features

- Simplified penalty approach
 - Maximum 80% of total penalty of at least \$12,500
 - No formulas – straight \$ for \$, regardless of type of project and implementing organization
- Environmental audits excluded as eligible projects
- Independent review committee for third-party projects

SEP Projects

- Categories:
 - Pollution Prevention
 - Pollution Reduction
 - Environmental Compliance Promotion or Research
 - Public Health
 - “Beyond Compliance” assessments
 - Environmental Management Systems
- List of pre-approved concepts and third party SEPs will be maintained

Responsibilities of Respondent

- Preparing a detailed plan and budget for the SEP that addresses all SEP requirements
- Assuring approval is acquired prior to implementation
- Assuring implementation of the SEP is accomplished
- Sending regular progress reports, including expenditures
- Maintaining a segregated finances to account for SEP expenditures
- Maintaining compliance with all applicable MCAQD rules and ordinances

Responsibilities of MCAQD

- Develop and maintain a library of “off-the-shelf” SEPs
- Determine whether a SEP is appropriate
- Negotiate in good faith with respondent
- Monitor SEP performance
- Follow up activities
 - Timely review of reports
 - Communicate regularly with respondent on performance

How Do SEPs Get On the Pre-approval List?

- Call for proposals will be made to eligible agencies
 - political subdivisions and nonprofits
- Proposals will be vetted by an independently appointed review committee that includes external subject matter experts; e.g.,
 - ADEQ Vehicle Emissions representative for mobile source technology related proposals
 - MC DPH for public health and health services proposals

Bases for Approval will apply to all proposed SEPs

- Threshold demonstration – compliance with A.R.S. §49-117
- Strength of the proposal – thoughtful, logical, detailed, implementable
- Capacity to successfully complete the SEP
- Detailed and feasible implementation schedule

Bases for Approval (continued)

- Adequate and itemized budget
- Benefits appropriately gauged, satisfactorily documented, and based on reliable sources
- Community input
 - Critical if direct services will be rendered to communities affected by the violation

Schedule

- Draft policy is still available on the MCAQD Web site: www.maricopa.gov/aq/news/EventsDetailPublishers.aspx ... See posting for August 28, 2012 workshop
- Comment period closed September 17, 2012 – none were received
- Target for adopted policy: October 12, 2012
- Third party SEP proposals workshops following
- Queen Creek Landfill settlement air quality projects process
 - Test run on the project review and approval process

Final SEP Policy will be posted at:

www.maricopa.gov/aq/divisions/planning_analysis/Policies.aspx

For more information, contact

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