Supplemental Environmental Projects Webinar
Hannah Allen, Environment and Development Planner II
North Central Texas Council of Governments
Tuesday, November 12, 2019
Supplemental Environmental Projects ("SEPs")

IMPROVING THE TEXAS ENVIRONMENT

Ryan Rutledge, SEP Attorney
Betty Sanders, SEP Coordinator

TCEQ Office of Legal Services
Important SEP Information

https://www.tceq.texas.gov/compliance/enforcement/sep/sep-main
Presentation Objectives

- Supplemental Environmental Project ("SEP")
- SEP Offset
- Types of SEPs
- Third-Party Administrator
- SEP Numbers
- Contact Information
A **respondent** is an entity that is in violation of TCEQ rules or Texas law. The respondent is any entity regulated by TCEQ, including individuals, governments, and non-profits.

An **Agreed Order** is an agreement between TCEQ and the respondent, in which the respondent agrees to pay a penalty and come into compliance.
Supplemental Environmental Project (“SEP”)

An environmental enhancement project that offsets an administrative penalty in an enforcement matter
Purpose of SEPs

- **Prevent** pollution
- **Reduce** the amount of pollutants reaching the environment
- **Enhance** the quality of the environment
- **Contribute** to public awareness of environmental matters

Texas Water Code § 7.067(b)(2)
Violation Media = SEP Media

- Air Violations = AIR (AQ SEPs)
- Water Violations = WQ, MWD, EAQ, PWS, WR (WQ SEPs)
- Waste Violations = MSW, IWD, IHW, PST (WQ SEPs)
SEP Preference

Projects that benefit the ‘community’ in which the alleged violation occurred
Levels of Community

- City
- County
- Texas River Basin (WQ)
- Texas Aquifer (WQ), or
- Texas Air Control Region (AQ)
Texas River Basins
Major Aquifers of Texas
Texas Air Quality Control Regions
SEP Offset

- RESPONDENT may perform or contribute to a SEP in lieu of paying an assessed penalty to the General Revenue Fund.
- SEP Credit is **earned** by:
  - Performing a Compliance or Custom SEP; and/or
  - Contributing to a Third-Party Administrator SEP
- SEPs do not reduce penalty amount
- SEPs are not GRANTS!!!
How SEP Offsets are Determined

- **Type of Organization**
  - For Profit (Corporations)/Individuals
  - Local Governments/Nonprofit Organizations

- **Environmental Benefit**
  - Direct
  - Indirect
  - Mixed
Penalty Percentage Offset

<table>
<thead>
<tr>
<th></th>
<th>Corporation</th>
<th>NFP/Govt</th>
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<tbody>
<tr>
<td>Indirect benefit</td>
<td>33% 67%</td>
<td>33% 67%</td>
</tr>
<tr>
<td>Mixed benefit</td>
<td>50% 50%</td>
<td>50% 50%</td>
</tr>
<tr>
<td>Direct benefit</td>
<td>50% 50%</td>
<td>100%</td>
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**Legend**
- Pay to TCEQ
- SEP offset
Types of SEPs

- **Compliance SEP or C- SEP**  
  (Local Government Only)

- **Custom SEP**  
  (Any Respondent)

- **Contribution to Pre-Approved SEP**  
  (Any Respondent)
General SEP Policy

The commission may consider a respondent's willingness to contribute to a supplemental environmental project that is approved by the commission, giving preference to projects that benefit the community in which the alleged violation occurred.
The commission may **not** approve a project that is necessary to bring a respondent into compliance with environmental laws or necessary to remediate environmental harm caused by the respondent’s alleged violation.
*Compliance SEP (C-SEP)

The commission may approve a supplemental environmental project that is necessary to bring a respondent into compliance with environmental laws or that is necessary to remediate environmental harm caused by the respondent’s alleged violation if the respondent is a local government (“LG”)
Local Government Defined As:

- School district
- County
- Municipality
- Junior college district
- River authority
- Water district or other special district (not water supply corporation)
- Political subdivision created under the constitution or Texas statute

Texas Water Code § 7.067(b)(1)
Two paths to a C-SEP: Automatic or Financially Qualified

Performed by the Respondent (LG) as part of a TCEQ Agreed Order

NEED FOR CORRECTIVE ACTION
Automatic C-SEP

- The LG has not previously committed a violation at the same site with the same underlying cause in the preceding 5 years, as documented in a TCEQ order; and
- Did not agree, before the date the commission initiated the enforcement action, to perform the project.

(SB 394, 84th Legislature, effective June 19, 2015)
Financially Qualified C-SEP

The LG does not qualify for an automatic C-SEP and must undergo a financial assessment.

(HB 2694, 82nd Legislature, effective September 1, 2011)

For Financial Assessment:

- Contact Financial Administration Division
- Or call, 512.239.0300
C- SEPs

- Repair structure(s) or equipment that may be the cause of the LG’s non-compliance with an environmental law

OR

- Remediation of environmental harm caused by LG’s alleged violation, such as a cleanup of a spill
Custom SEPs

- Performed by the respondent as part of a TCEQ Agreed Order

- Projects most considered
  - DIRECT quantifiable benefit to the environment

- Projects must be fully completed within 365 days from the effective date of the Agreed Order to earn SEP Credit
Custom SEPs

- **Failure to complete** a Custom SEP will result in the Respondent paying the entire assessed penalty in addition to whatever funds were spent on the project.

- Custom SEPs usually **cost more** than the assessed penalty (SEP Offset Amount).
Custom SEPs

- SEPs **must** be accepted **PRIOR** to any
  - Feasibility study
  - Budgeting discussions
  - Planning
  - Implementation (NO REIMBURSEMENTS)

*Information gathering is okay!*
Types of Custom SEPs

- Extend first time **water service** to low-income residents who are using shallow or contaminated wells
- Extend first time **sewer service** to low-income residents who are using failing septic systems
- **Dam repairs** for dams from the Agency’s list of high risk dams
- **Collection events** for proper disposal at NO COST TO CITIZENS
  - Used Tires
  - HHW (Batteries, used paint, used oil, antifreeze)
  - Electronics
  - Large municipal solid waste (appliances without Freon)
- **Erosion control** project on a creek, river, or lake with a natural embankment (Photos and maps are required with application)

Beautification and flood control projects are NOT considered as Erosion Control Projects!
Reporting:
C-SEPs and Custom SEPs

- Typical Reporting Documents required for Compliance and Custom SEPs:
  - Itemized list of expenses
  - Paid receipts, invoices, and matching payment records
  - Work logs for contracted labor
  - Detailed map showing location(s) of the project
  - Dated photographs: before, during and after the project
  - Certified/notarized Quantifiable Environmental Benefit

TRANSPARENCY!
TRANSPARENCY!
TRANSPARENCY!
Compliance and Custom SEPs: Unallowable Costs

- SEPs will **not** cover administrative costs or organization’s operating costs including:
  - Reporting expenses
  - Handling of finances
  - Project coordination
  - Liability, or
  - Equipment breakdowns
Electronics Collection Event
Recycle old computers
Millions of Tires

Several tire graveyards are located throughout the state of Texas
Wastewater Projects (Cont’d)

Before

After
Third-Party Administrators

Third-Party SEPs are performed by a LG or nonprofit organization that has a SEP Agreement with TCEQ and are called “Third-Party Administrators”
Third-Party Administrator SEPs

- Types of Third-Party SEPs
  - **Cleanup Projects**: Collection events (tires, HHW, etc.)
  - **Air Projects**: School bus replacement, energy efficiency upgrades, air monitoring networks, etc.
  - **Water Quality Projects**: Wastewater and drinking water assistance for low-income households, water quality monitoring networks, etc.
  - **Habitation Restoration, Preservation, and Acquisition Projects**
Third-Party Administrator SEPs

- LG or nonprofit organization submits application to become a Third-Party Administrator

- TCEQ reviews the submission and if approved, a SEP Agreement is executed
  - Includes details of the project and an estimated budget with all allowable costs
  - Preference for direct benefit SEPs

- Project is included in the Pre-Approved List on SEP website and available for contributions from respondents
  - Contributions are voluntary; NO GUARANTEE OF FUNDING
Third-Party Administrator SEPs

- Respondent contributes allowable SEP Offset Amount to Third-Party Administrator within Respondent’s community
  - Only after a SEP has been approved by the Commission, do not pay early

- Third-Party Administrator must have separate FEE-FREE and NON-INTEREST-BEARING BANK account for all SEP funds
  - No commingling of funds
  - Must pay vendors from SEP bank account

- Third-Party Administrator performs the SEP and reports quarterly to TCEQ
  - No other obligation from Respondent
Third Party Administrator SEPs: Quarterly Reports

- Identify whether SEP contributions have been received
- Identify whether SEP Funds are being spent timely
  - Within one year
  - Reasonable extensions available
- Ensure SEP expenditures are allowable under the SEP Agreement
- Verify that SEP Funds are not being commingled with non-SEP Funds
Third Party Administrator SEPs: Quarterly Reports

Documentation required:
- Completed Quarterly Report Form
- Copy of bank statement for the bank account holding SEP Funds
- Invoices for allowable costs
- Paid receipts for allowable costs
- Work logs for contracted labor
- Any other documentation required under the SEP Agreement
Third-Party Administrator SEPs: Allowable Costs

- Types of Allowable Expenses
  - Supplies
  - Materials
  - Equipment
  - Contracted labor

- Types of Allowable Admin Costs (≤10% of the direct cost of the project)
  - Salary and fringe benefits
  - Travel and per diem
  - Overhead costs
## Third-Party Administrator SEPs: Current Third-Party Administrators

<table>
<thead>
<tr>
<th>AQ SEPs</th>
<th>WQ SEPs</th>
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<tr>
<td>• Houston-Galveston AERCO</td>
<td>• Armand Bayou Nature Center</td>
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<tr>
<td>• Southeast Texas Regional Planning Commission</td>
<td>• Galveston Bay Foundation</td>
</tr>
<tr>
<td>• Texas Congress of Parents and Teachers (PTA)</td>
<td>• Gulf Coast Waste Disposal Authority</td>
</tr>
<tr>
<td>• Texas Association of RC&amp;D</td>
<td>• National Audubon Society</td>
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Third-Party Administrator SEPs

To see a complete list of Pre-Approved Third-Party Administrator SEPs:

https://www.tceq.texas.gov/compliance/enforcement/sep/pre-approved-seps.html
Armand Bayou Nature Center
Volunteers planting seedlings of native grasses
Armand Bayou Nature Center

Replanting reeds in nearby bayou to restore ecosystem
Galveston Bay Foundation
Placing reef domes to restore ecosystem in bay area
Oyster Lake Shoreline Protection and Wetlands Restoration Project Phase 1

Galveston Bay Foundation

Sign has enforcement statement that reads, “Performed in part with penalty monies from a Texas Commission on Environmental Quality enforcement action.”
Total Administrative Orders

FY 2012, 1,826 Orders issued
FY 2013, 2,182 Orders issued

SEP Numbers:

Total Administrative Orders

2018: 1371
2019: 1307
SEP Numbers: Administrative Orders with SEPs

- $2,000,000
- $4,000,000
- $6,000,000
- $8,000,000
- $10,000,000
- $12,000,000
- $14,000,000

2018:
- $13,379,545
- $3,914,547

2019:
- $12,015,143
- $2,728,870

Penalties
SEPs
Contact Information

- **Third-Party Administrator SEP Applications & Contracts:**
  SEP Attorney
  Litigation Division
  - [Ryan Rutledge](mailto:ryan.rutledge@tceq.texas.gov)
  - 512.239.0630

- **Custom & Compliance SEPs/Reporting:**
  SEP Coordinator
  Litigation Division
  - [Betty Sanders](mailto:betty.sanders@tceq.texas.gov)
  - 512.239.3992
Contact Information

- **Custom & Compliance SEPs/Reporting**
  - SEP Coordinator
  - Litigation Division
  - **Betty Sanders** 512.239.3992
    betty.sanders@tceq.texas.gov

- **OCE SEP Coordinator**
  - Enforcement Division
  - **Stuart Beckley** 512.239.3565
    stuart.beckley@tceq.texas.gov
Thank you!

We appreciate your interest in the SEP Program!

Questions??

SEP Website:
https://www.tceq.texas.gov/compliance/enforcement/sep/sep-main
Contact

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