



DEQ POLICY STATEMENT PS25-03

SUPPLEMENTAL ENVIRONMENTAL PROJECTS

PURPOSE

By statute, the imposition or computation of monetary penalties for an enforcement action brought under the Environmental Protection and Health Act (EPA), Idaho Code §§ 39-101, et. seq., or the Hazardous Waste Management Act of 1983 (HWMA), Idaho Code §§ 39-4401, et. seq., may take into account an enforceable commitment by the person against whom the penalty is directed to implement a supplemental environmental project. For these purposes, “supplemental environment project” (SEP) is defined as an environmentally beneficial project that the person is not otherwise required to perform and falls into at least one of four categories: pollution prevention, pollution reduction, public awareness, and general enhancement of the quality of the environment (Idaho Code §§ 39-108(5)(b), -4414(1)(c)). Environmentally beneficial means a SEP must improve, protect, or reduce risks to public health or the environment.

STATEMENT OF POLICY

As a general policy, DEQ encourages the use of SEPs as a way of furthering the objectives of the EPA and HWMA while deterring noncompliance with the provisions of those statutes and the administrative rules that implement them. At the same time, DEQ’s consideration of a particular SEP proposal must take into account the scope of DEQ’s authorities under Idaho law and federal requirements. While this consideration must necessarily be conducted on a case-by-case basis, this policy provides a framework to be applied when a SEP is proposed to resolve or partially resolve an administrative enforcement action initiated by DEQ under the EPA or HWMA. By developing a consistent approach to SEPs, DEQ can ensure fairness and consistency in the use of SEPs as a settlement option.

This document is to be used as a tool in settlement negotiations and is not intended to create substantive or procedural rights or legal obligations. This policy does not change or affect any existing obligation to remedy damage caused by a person’s noncompliance or to ensure future compliance. This policy may be considered in all enforcement actions filed after its effective date and in all pending actions in which DEQ and the person against whom a penalty is directed have not reached agreement in principle on the specific terms of a SEP.

This policy will be used by authorized DEQ staff to determine the types of projects that are permissible as SEPs, penalty mitigation appropriate for a particular SEP, and terms and conditions under which a SEP may become part of a settlement. Subject to statutory and constitutional limitations, DEQ's decision to accept or reject a particular SEP as part of a settlement is discretionary. Although a proposal appears to satisfy all of the provisions of this policy, the federal requirements, and Idaho law, DEQ may decide, for one or more reasons, that the SEP is not appropriate. Acceptance of a particular SEP proposal must be made only after review by, and consultation with, the Office of the Attorney General and the DEQ director. This policy supersedes PS20-13.

Substantive Nexus

Preference may be given to those SEPs with an environmental benefit that has some relationship to the specific violations for which the enforcement action was brought or at least one of the broader objectives of the underlying statute(s). A project cannot be inconsistent with any provision of the underlying statute(s).

Geographic Nexus

Preference may be given to those projects with a benefit in the actual or general geographic location where the violations occurred.

Categories of SEPs

To be considered by DEQ, a SEP proposal must conform to one or more of the following categories:

- **Pollution Prevention:** A pollution prevention project reduces, at the source, the amount or toxicity of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment. These projects will often involve changing an industrial process, substituting fuels and raw materials, and closed loop recycling and reuse. Pollution prevention also includes any project that protects natural resources through conservation or increased efficiency in the use of energy, water, or other materials.
- **Pollution Reduction:** A pollution reduction project employs recycling, treatment, containment, or disposal techniques to reduce the amount or toxicity of a pollutant or waste stream that has already been generated or released.
- **Public Awareness:** Public awareness projects may include publications, broadcasts, or seminars aimed at the regulated community and underscoring the importance of environmental compliance and pollution reduction and/or prevention. These projects may be accomplished through donations to nonprofit groups or emergency planning and preparedness support or training to responsible state or local emergency response or planning entities.
- **Environmental Enhancement:** An environmental enhancement project goes beyond repairing environmental damage caused by the violation to protect, restore, or otherwise enhance the environment. Cleanups required by law do not fall under this category. Included in this category are proposals to donate money to a local government or

nonprofit entity to advance the goals of a specific environmental program or project or to conduct qualifying research.

A study or assessment may be a viable SEP if it is designed to explore pollution prevention or reduction and the person making the proposal commits to implementing one or more of the study solutions. Consideration of a SEP proposal including a study or assessment must account for the likelihood that technically feasible and cost-effective solutions can be identified.

Contents of the SEP Proposal

As fully as possible, DEQ requires that the details of a SEP are defined before signing the consent order rather than left open for negotiation after the primary agreement is signed. (Model consent order language is included in Appendix A.) To the extent practicable, the SEP proposal must provide an itemized projected budget for the project, including a detailed breakdown of equipment, labor, and capital costs and a schedule, with specific dates, for implementing and completing the SEP. To be considered by DEQ, a SEP proposal must specifically identify the nature and amount of any tax or other direct, quantifiable, and traceable economic benefits that will be realized by the person proposing the SEP as a result of the SEP performance.

Not Otherwise Required to Perform

DEQ will only consider those SEP proposals describing activities the person is not otherwise required to perform by virtue of any local, state, or federal statute, regulation, rule, order, decree, permit, or other law or agreement. The person making the proposal cannot receive a credit for the SEP as part of another enforcement action or a grant from a state, federal, or local entity. A SEP must go beyond what a violator must do to achieve and maintain compliance; SEPs cannot include actions the person may be required to perform as injunctive relief in the instant case or as part of a settlement or order in another legal action.

SEP Proposals and Existing Agency Duties

DEQ will not consider a SEP proposal that conflicts with Idaho Const. Art. VII, § 13 (“No money shall be drawn from the treasury, but in pursuance of appropriations made by law”), or Idaho Code § 67-3516(2) (“An agency cannot supplement its appropriation with outside funds unless the agency has received prior approval from DFM”). Specifically barred from consideration are SEP proposals that (1) involve an activity a state agency is legislatively already required to perform; (2) provide a state agency with additional resources to perform an activity for which the legislature has specifically appropriated funds; or (3) appear to expand existing state programs.

DEQ Oversight of SEPs

SEPs that would be resource intensive for DEQ are unacceptable. DEQ will not consider SEP proposals that would require DEQ to manage funds, control SEP performance, or provide substantial oversight. If warranted by the SEP implementation schedule, a person performing a SEP will be required to submit periodic progress reports. Once implementation has been completed, the person must submit to DEQ a written statement of completion accompanied by appropriate documentation (such as invoices, receipts, or tax statements) that can be used by

DEQ to verify the amount of the expenditures made and the acceptable implementation and completion of the SEP. If actual expenditures for a SEP fall short of projected expenditures, the person performing the SEP may be required to submit the amount of the shortfall (or a percentage) to the state as a penalty payment.

Calculating SEP Value and Penalty Mitigation

The net present value of any economic benefits—including tax relief—identified in the SEP proposal will be deducted from the SEP value used to determine the appropriate amount of penalty mitigation. After the deduction of the identified economic benefits, a ratio of \$2 in project dollars for every \$1 in penalty dollars mitigated will generally be applied. To preserve the deterrent effect of enforcement, the amount of a penalty reduction a violator will receive in exchange for a commitment to undertake a SEP cannot generally exceed 75% of the total penalty amount. Under no circumstances can the cash penalty obtained, combined with the amount of penalty mitigation resulting from the SEP, exceed the statutory administrative penalty limit.

Failure of SEP Implementation and Completion

If a SEP is not timely implemented or completed as required by a settlement agreement, the person will be required to pay some or a portion of the penalty mitigation as a stipulated penalty.

Public Statements

DEQ requires that any public statement made about the SEP by the person implementing must (1) identify that the SEP is being or has been implemented as part of the settlement of a DEQ enforcement action and (2) specifically cite the statute violated.

RESPONSIBILITY

DEQ's Waste Management and Remediation Division administrator is responsible for maintaining this policy.

IMPLEMENTATION

This policy is effective immediately and will remain in effect for 5 years unless amended, replaced, or rescinded prior to expiration.

Dated this day of _____, 2025

 Jess Byrne
 Director, Idaho Department of Environmental Quality

Appendix A. Model Consent Order Language: Supplemental Environmental Projects

1. In partial settlement of the civil penalty for matters included in the NOV, **[owner/operator]** agrees to undertake a Supplemental Environmental Project (SEP) as specifically described in the plan, attached as Exhibit A; this plan is incorporated by reference into, and enforceable as part of, this Consent Order. The Department determined the proposed SEP is in accordance with and approvable pursuant to Idaho Code § 39-108(5)(b) **[and/or 39-4414(1)(c)]**. Performance of the SEP will benefit the environment, and it is a project that **[owner/operator]** is otherwise not required to perform. **[Owner/operator]** agrees to implement the SEP in accordance with the detailed plan attached as Exhibit A and the following terms and conditions.
 - A. The total expenditure for the SEP will not be less than \$_____. All costs of the SEP will be the responsibility of **[owner/operator]**. **[Owner/operator]** certifies that any economic benefit—including tax relief—that **[owner/operator]** will realize as a result of the SEP is detailed in the plan included as Exhibit A. For any SEP that is fully and completely implemented, to the extent the actual expenditures for the SEP totals less than 90% of \$_____, **[owner/operator]** will pay to the Department as a penalty, within 30 days of submission of the certificate of completion required below, the amount of the shortfall after it has been proportionately adjusted by the amount of any economic benefit realized and reduced by the ratio of penalty mitigation of SEP expenditure. The ratio is __:__. The penalty will be deposited by the Department into the Hazardous Waste Emergency Account as provided by paragraph ___ of this Consent Order.
 - B. The plan included as Exhibit A contains a time frame, including specific dates for the implementation of the SEP. **[Owner/operator]** will fully implement all aspects of the SEP within that time frame.
 - C. **[Owner/operator]** certifies that **[owner/operator]** is not otherwise required by virtue of any local, state, or federal statute, regulation, rule, order, decree, permit, or other law or agreement, to develop or implement the SEP. **[Owner/operator]** further certifies that **[owner/operator]** has not received, and presently is not negotiating to receive, a credit for the SEP as part of any other enforcement action or any grant from the state, EPA, or any other entity.
 - D. If **[owner/operator]** fails to fully and completely implement the SEP as provided herein to the reasonable satisfaction of the Department, the Department will provide written notice to **[owner/operator]** of the nature of the deficiency. **[Owner/operator]** will have 30 days from receipt of the notice to submit documentation that the deficiency has been corrected. If the deficiency is not corrected to the satisfaction of the Department, **[owner/operator]** will be in violation of this Consent Order and will be required to pay to the Department a stipulated penalty of the amount of penalty mitigation originally

allowed as a result of the SEP. The amount of the stipulated penalty may be reduced or waived by the Department if **[owner/operator]** made good faith and timely efforts to complete the project. Any stipulated penalty payment received will be deposited by the Department into the Hazardous Waste Emergency Account as provided by paragraph _____ of this Consent Order. Payment under the terms of this paragraph will satisfy **[owner/operator's]** obligation to complete the SEP. **[Owner/operator]** agrees that the Department has sole discretion to make the following determinations: (1) whether the SEP has been satisfactorily completed; (2) whether a timely, good faith effort has been made to implement the SEP; and, (3) the amount, if any, to be paid as a stipulated penalty.

- E. **[Owner/operator]** agrees that any public statement, oral or written, referencing the SEP will include the following language: “This project was undertaken in connection with the settlement of an enforcement action taken by the Idaho Department of Environmental Quality for violations of **[citation to law violated]**.”
- F. After the effective date of this Consent Order, until completion of implementation of the SEP, **[owner/operator]** will provide the Department with a progress report every **[fill in the time]**. The progress reports will include a description of the SEP activities **[owner/operator]** performed in the prior **[fill in the name]** and a description of the SEP activities **[owner/operator]** expects to perform in the next **[fill in time]**.
- G. No later than 10 days after the completion of implementation of the SEP, **[owner/operator]** agrees to provide the Department with a statement certifying that the SEP has been implemented and completed in accordance with the terms and conditions of this Consent Order. The certification will be accompanied by appropriate documentation (such as invoice, receipts, or tax statement) to verify the amount of the expenditures made and actions taken. It will be the sole determination of the Department whether **[owner/operator]** has complied with the terms of this Consent Order through completion of implementation of the SEP as herein required.