

# **DEPARTMENT OF PESTICIDE REGULATION**

## **SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP) POLICY**

### **I. Introduction**

To further the Department of Pesticide Regulation's (DPR) statutory mandate to protect public health and the environment from the use of pesticides, and assure consumers and users that pesticides are properly labeled and appropriate for the use designated by the product label, DPR has authority to take administrative enforcement actions against companies and individuals who sell unregistered or misbranded pesticide products; or pack, ship, or sell produce with illegal pesticide residue. The respondent typically pays a monetary civil penalty to deter future violations and promote compliance.

In certain instances, DPR may approve a Supplemental Environmental Project (SEP) to offset a portion of the civil penalties. SEPs are environmentally beneficial projects that a respondent agrees to voluntarily undertake or fund as part of the settlement of an enforcement action. SEPs can play an important role in improving the existing practices of pesticide use to minimize potential impact to people and the environment and ensuring future compliance. SEPs also provide a method for directing benefits to communities or geographical areas impacted by violations.

DPR's SEP Policy identifies the general principles guiding DPR's use of SEPs; outlines DPR's priorities for using SEPs; lists the permissible categories of projects; and establishes an allowable penalty offset for SEPs.

### **II. Definitions and Key Characteristics of a SEP**

Public Resources Code section 71118 defines a "Supplemental Environmental Project", or SEP, as an environmentally beneficial project that a person subject to an enforcement action voluntarily agrees to undertake in settlement of the action and to offset a portion of a civil penalty. The main components of this definition are outlined below.

"Environmentally beneficial" means a SEP must improve, protect, or reduce risks to public health or the environment at large. While in some cases a SEP may provide a respondent with certain benefits, the project must primarily benefit public health or the environment.

"In settlement of an enforcement action" means the respondent's commitment to perform the SEP is included in a legally enforceable settlement agreement.

Further, the SEP cannot be required by any federal, state, or local law or regulation or previous administrative or judicial order, and cannot include actions that the respondent is legally required to perform.

"Disadvantaged community" is a community identified by the California Environmental Protection Agency, as required by California Health and Safety Code section 39711, based on geographic, socioeconomic, public health, and environmental hazard criteria.

### **III. Priority for Disadvantaged Communities**

DPR recognizes that some communities are more vulnerable to the effects of pesticide exposure than others. DPR will prioritize the selection of SEPs that benefit disadvantaged communities in which potential or actual harm from the violations addressed by the settlement occurred.

### **IV. Discretionary Use of SEPs**

DPR has broad discretion to settle cases, including discretion to include a SEP as part of a settlement. Nothing in this Policy should be interpreted or construed as requiring the use of a SEP in the resolution of an enforcement case. Decisions to accept a proposed SEP as part of a settlement and the amount of penalty mitigated by a SEP are within DPR's sole discretion and may depend on the specific facts of a particular case. Even though a project may appear to satisfy all of the provisions of this Policy, DPR may decide, for one or more reasons, that a SEP is not appropriate for a particular case.

### **V. Solicitation of Potential SEPs and Project Selection**

DPR will make available on its website a form that members of the public, the regulated community, and disadvantaged communities can use to submit SEP proposals.

DPR will post an annual list of projects that it may consider as a SEP to settle a portion of an enforcement action. This list will be made available on both DPR and CalEPA's websites.

### **VI. Categories of Acceptable SEPs**

A proposed SEP must satisfy the requirements of at least one of these categories in addition to all of the other requirements in this Policy.

1. Projects that Reduce the Risks of Pollution or Health Impacts from Pesticide Use: Projects that could lead to a decrease in pesticide use or reduction in the potential risk of pollution or adverse impacts to public health from pesticide use. Projects in this category may include developing better application methods, promoting the use of alternative products or integrated pest management techniques (IPM), or funding a pesticide disposal event to collect unwanted or illegal pesticides.
2. Public Awareness Projects: Educational or environmental awareness projects that relate to DPR's regulatory responsibilities. Projects in this category may include funding for an organization that provides education and informational material to consumers about less toxic pesticide alternatives, developing outreach material to educate users of nonagricultural pesticides about proper use and disposal, or donating to the California Education and the Environment Initiative to develop pesticide-related curriculum in public schools.
3. Environmental Compliance Projects: Projects that improve agricultural pesticide product stewardship by providing training or technical support to the public or the

regulated community to identify, achieve, or maintain compliance with applicable statutory and regulatory requirements. For example, developing compliance assistance material for distribution or holding a compliance assistance event aimed at correcting widespread noncompliance within a particular industry.

4. Environmental Enforcement Enhancement Projects: Projects that assist local enforcement agencies to identify and address noncompliance with statutory and regulatory requirements relating to pesticides. For example, a project to fund or support a community-based violation reporting network.
5. Other Types of Projects: This category includes projects determined by DPR to have public health or environmental benefit and that do not fit within one of the categories above, but that are otherwise consistent with this Policy.

#### **Guidelines for the Use of SEPs**

1. A SEP must further DPR's purpose of reducing the risk posed to public health and the environment from the use of pesticides and preventing future pesticide violations.
2. A SEP must have a nexus to the violation, that is, be reasonably related to the type of setting where the pesticide is typically used (i.e. agricultural, non-agricultural, structural) or the community or communities affected by the violation.
3. Projects with a nexus to a community in which potential or actual harm from the violations occurred will receive preference over projects without such nexus.
4. A SEP cannot directly financially benefit DPR staff or family members of DPR staff.
5. A SEP cannot be used to satisfy DPR's or another governmental agency's statutory obligation to perform a particular activity.
6. SEPs shall be no more than fifty percent (50%) of the total monetary settlement determined as the appropriate penalties for the violation in the settlement agreement.

#### **VII. Settlement Agreement and Completion of SEP**

The settlement agreement in which the respondent agrees to perform the SEP in lieu of part of the penalty shall include a specific completion date, including the method by which such date could be extended if appropriate. Within 60 days of completion of a SEP, the respondent must submit a written completion report to DPR. DPR will then review the report and provide respondent with a written statement indicating whether the SEP has been satisfactorily completed.

The terms of the settlement agreement shall include a detailed description of the SEP and the consequences of failing to complete the SEP, and where appropriate, the scope of work, budget, periodic reporting requirements, agreed upon performance measures.

**VIII. Failure to Complete SEP and Stipulated Penalties**

If a SEP is not satisfactorily completed by the completion date specified in the settlement agreement or any extensions allowed under the agreement, the respondent shall be required to pay the amount of stipulated penalties for which the SEP was acting as a replacement. The amount of the stipulated penalties offset by the SEP that must be paid by the respondent in the event that SEP is not completed shall be determined by DPR.

**IX. Non-Confidentiality**

In each case in which a SEP is included as part of a settlement, an explanation of the SEP with supporting documents must be included as part of the settlement agreement. All SEP explanations and documentation is information that may be made available to the public and is not confidential.