

California Regional Water Quality Control Board
Santa Ana Region
Staff Report
July 14, 2006

ITEM: 19

SUBJECT: Prioritization of Supplemental Environmental Projects (SEPs)

BACKGROUND

Regional Board staff maintains a list of approved SEP projects. Currently there are 56 projects on this list. The Executive Officer is proposing to prioritize these approved SEP projects based on the relationship between the proposed projects and the emerging water quality issues within the Region.

INTRODUCTION

The Regional Board is authorized to issue administrative civil liability (ACL) complaints to dischargers under the California Water Code (CWC) in response to violations of waste discharge requirements, discharge prohibitions, enforcement orders, or other orders of the Regional Board. Assessments collected through the ACL process are required by the CWC to be paid to the State Water Resources Control Board (State Board) Cleanup and Abatement Account (CAA). The State Board administers the CAA, and funds are used to address important water quality cleanup and abatement activities throughout the state.

As an alternative to depositing ACL assessments in the CAA, the State Board's Enforcement Policy recognizes that ACL assessments may be used for important and valuable water quality improvement projects within the Region in which the assessment was made. These are known as Supplemental Environmental Projects (SEPs). SEPs have been used in this and every other region in the state. SEPs are projects that enhance the beneficial uses of the waters of the state, provide a benefit to the public at large, and that, at the time they are assessed, are not otherwise required or would be greatly accelerated by the funding provided by the ACL assessment. The Enforcement Policy also specifies a set of acceptance criteria for projects to be qualified as an acceptable SEP. These criteria include: (1) a SEP should only consist of measures that go above and beyond the obligation of the discharger; (2) the SEP should directly benefit or study groundwater or surface water quality or quantity and the beneficial uses of waters of the State; (3) the SEP shall not directly benefit the State Board or a regional board; (4) the SEP shall not be an action, process or product that is otherwise required of the discharger by any rule or regulation of any entity; (5) the regional board shall also consider the institutional stability, capacity and ability of the discharger or third party to accomplish the work and provide the

products and reports expected; (6) a SEP must have a nexus (connection or link) between the violation(s) and the SEP.

Examples of SEPs include pollution prevention projects, water quality improvement projects, environmental restoration programs, public awareness and education activities, watershed assessments, watershed management facilitation services, and non-point source pollution control programs.

In May 2001, Regional Board staff solicited proposals for SEPs from interested parties and the general public. Staff received a number of recommendations in response to this solicitation and created a master list of approved SEPs. SEP recommendations are accepted from interested parties on a continuous basis and all eligible projects are added to the list of approved SEPs. The approved list of SEPs for the Region is posted on its website.

DISCUSSION

If a discharger is assessed a penalty for violations of the Water Code and is interested in participating in a SEP project, the discharger is directed to the approved list of SEP projects to select a project from the list or to make another proposal for a SEP. In general this process has worked well for most of the ACL assessments and SEP projects. However, recently staff has been receiving an increasing number of requests from various entities to include a number of additional projects on the list of approved SEP projects for the Region.

Each year the Regional Board issues a limited number of ACLs to various dischargers. Most regional boards, including this Regional Board, allow a maximum of 50% of the assessed amount to be directed to an approved SEP project. The demand for SEP funding is high and the amount available is limited.

To address this issue, staff is proposing to prioritize the approved SEP projects based on the emerging water quality issues in the Region. Based on Board staff's evaluation of the Board's directives, the most important water quality issues for the Region include:

1. Investigation and cleanup of perchlorate contaminated groundwater basins in the Region.
2. Elimination of failing septic systems from various areas within the Region.
3. Implementation of approved TMDLs.
4. Investigation and prevention of bacterial contamination of Orange County beaches, the Santa Ana River and Canyon Lake.

5. Remediation of nitrate and salt problems in the Arlington, Chino and San Jacinto groundwater basins.
6. Restoration of natural aquatic resources in Newport Bay and other impacted areas.
7. Elimination of toxic pollutants in Newport Bay, Huntington Harbour and other areas.
8. Restoration of groundwater recharge basins in the Region.
9. Stabilization of streambeds and minimization of hydromodification.
10. Evaluation and selection of appropriate BMPs to control pollutants in runoff.
11. Data collection and analyses for integrated watershed management plans.
12. Conservation of natural streambeds, aquatic habitat areas and aquatic resources.

The approved SEP projects have been prioritized based on these priorities and are listed on Attachment "A". There are only two priority classes in this classification: (a) higher priority; and (b) all others. The Executive Officer proposes to approve contributions to SEP projects from the higher priority group as long as they also satisfy the nexus criteria. Other SEP projects would only be considered for SEP funding when a project from the list of higher priority projects does not meet the nexus criterion, or other rationale is provided to the Executive Officer demonstrating the benefits of funding a project from other than the higher priority list. However, if a discharger does not agree with the Executive Officer's determination regarding selection of a SEP project, the discharger always has the option of appealing the Executive Officer's determination to the Board.

STATEWIDE ENFORCEMENT POLICY

On February 19, 2002, the State Water Resources Control Board adopted a Revised Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are fair, firm and consistent. This Policy also includes criteria for SEP projects. The above-described SEP prioritization approach is consistent with the Statewide Enforcement Policy and the Regional Board's directives.

RECOMMENDATION

At this time Board staff is not requesting any action from the Board. The Executive Officer will continue to add SEP projects that meet the criteria to the

approved list of SEP projects. These projects will be classified as higher priority or other projects, based on the emerging water quality issues for the Region. On an annual basis, the Executive Officer will provide an update to the Board.