

Supplemental Environmental Project (SEP) Policy

Kansas Department of Health and Environment

**Division of Environment
Bureau of Air**

**April 8, 2014
revision**

I. Introduction

As part of an enforcement action settlement, an alleged violator of the Kansas Air Quality Statutes and Regulations may agree to participate in a Supplemental Environmental Project (SEP) to offset a portion of a civil penalty associated with the enforcement action. SEPs are an opportunity to improve the environment through projects that prevent, remediate, or reduce emissions of pollutants that adversely impact public health or the environment. SEPs, which Bureau of Air (BOA) will propose to KDHE management for approval, will be related to air quality control and air pollution prevention or reduction. However, KDHE may consider SEPs that benefit other environmental media. SEPs are environmentally beneficial projects that an alleged violator agrees to undertake as part of an enforcement action, but that the alleged violator is not otherwise legally required to perform. All SEPs must result in improvements to the environment or public health. KDHE and BOA follow certain criteria in consideration of what constitutes an acceptable SEP, the value of SEPs, and civil penalty offset. This document describes these criteria, and how SEPs are carried out. Each proposed enforcement action and/or SEP must be approved by the Director of BOA, the Director of the Division of Environment, and the Secretary of KDHE before becoming final. During the process of negotiating and proposing enforcement actions and/or SEPs, agency management may revise the proposed action at any time. This policy is intended to serve only as guidance, with final decisions made by KDHE management during the process.

II. SEP Approval Process

A. Enforcement Action

Once enforcement by KDHE has begun, the alleged violator will generally have the opportunity to resolve the case through a settlement agreement with KDHE. The settlement will be in the form of a Consent Agreement and Final Order of the Secretary (CAO) for the resolution of the enforcement action, and will include an agreed civil penalty to be paid by the alleged violator. Alleged violators will be offered a copy of this SEP policy during settlement negotiations. Mutually agreeable SEPs may be a component of the proposed CAO and offset a portion of the civil penalty.

B. Selection of Proposed Projects

Possible SEPs may be proposed by the alleged violator or from a suggested list provided by BOA. Ultimately, one or more acceptable SEPs may be determined to be mutually acceptable to all participants, and implementing details related to the SEPs are developed and mutually agreed upon. BOA consideration of a proposal is based on the criteria described in Section III, and offsetting penalties is described in Section IV. After review by the Air Compliance and Enforcement Section, the proposed SEP must be approved by the BOA director.

C. Approval Process

The mutually agreeable SEPs are incorporated into the proposed CAO, drafted by BOA. Within this draft CAO, the amount of civil penalty offset and conditions of the SEP are stated. The implementation requirements of the SEP will be set forth in the Schedule of Compliance section of the CAO. Progress

reports and progress deadlines are usually included as requirements. The document will be sent to the BOA Director, the Director of the Division of Environment, and the KDHE Legal office for review and approval, or suggested revisions. If the alleged violator is agreeable to all components and requirements of the proposed CAO, a responsible official of the organization will sign the agreement and return it to KDHE Legal office. Upon the final signature by the Secretary of KDHE, the CAO is executed and in force.

D. Implementation of Approved SEP

With the execution of the CAO, the progress of the SEP will be monitored by KDHE-BOA until completion. Failure to complete the SEP, or to submit required progress reports or meet conditions contained therein will be a violation of the CAO, with potential for additional enforcement action, including civil penalties. The agreement will contain provisions for emergency and unforeseen circumstances that cause a delay or failure in completion of the SEP or the CAO, such as *force majeure*, severe weather, fires, explosions, etc. at a facility. The alleged violator is responsible for presenting acceptable cause and effect statements related to force majeure or other delay in progress. The CAO also has provisions for Dispute Resolution between all parties. The CAO will be terminated when all requirements contained in the agreement has been met, as determined by KDHE.

III. Criteria for an Acceptable SEP

The following criteria are evaluated and serve as guidance by BOA when considering a SEP as a component to resolve enforcement actions:

A. Requirements:

- The SEP must be environmentally beneficial, to improve and protect the environment and reduce environmental risks to the public. The SEP must prevent emissions, remediate emissions or reduce emissions of pollution that adversely impact public health or environment.
- The SEP is undertaken in conjunction with the settlement of a CAO action only. An environmental project which has already been completed, for which a commitment has been made, or has been budgeted for by the violator is generally not acceptable for consideration as a SEP.
- The SEP must go beyond the minimum compliance with the law.
- SEPs must not adversely affect another environmental concern in the process of implementing the SEP.
- The CAO may require the source to have, or to develop an Environmental Management System (EMS) as a consideration for a mutually agreeable SEP within the CAO. Guidance as to what constitutes an EMS is found at EPA's Performance Track Web site:

http://www.epa.gov/performance/track/ind_assessment.htm, or from the Kansas Small Business Environmental Assistance Program (SBEAP) Web site: www.sbeap.org
Kansas Air Quality Program SEP Policy

B. Other Criteria:

- If a SEP is determined to be mutually acceptable, the CAO settlements will contain an amount of payable civil penalty, to deter future violations, but as a reduction
- SEPs to fund public works and other projects for the local community or county that will benefit the local environment may be considered. Projects which are not environmentally beneficial, or do not provide environmental education or outreach will not be considered for a SEP.
- Environmental restoration projects that exceed the requirements of environmental regulations to enhance the environment in the vicinity of the violator’s facility may be acceptable.
- The review, oversight or monitoring of SEPs must be within the resources and capabilities of BOA, and must provide enough environmental benefit to justify oversight by BOA.
- Pollution prevention projects may be acceptable, as well as projects which reduce pollutant emissions or otherwise improve the environment.

IV. Offsetting Penalties and Determination of the Value of a Proposed SEP

After BOA staff has reviewed a SEP proposal for the criteria listed in Section III, the penalty offset percentage will be determined by BOA. The penalty offset percentage is the percentage the penalty can be reduced by a SEP.

The SEP policy guidelines for the allowable penalty offset percentages are listed below. The table lists the maximum offset percentages and minimum amounts for facilities. Note: the maximum civil penalties in the table below are not frequently approved in CAO; the acceptable amounts of the civil penalty off-set are generally a lower amount, determined on a case-by-case basis by KDHE staff.

Allowable Penalty Offset Percentages for SEPs		
	For-Profit	Not-For-Profit
Maximum (in percent of civil penalty amount)	Up to 85%	Up to 95%
Minimum (in total dollars)	\$4,000	\$2,000
Minimum (in total dollars) for KS Green Schools only exception	\$2,000	\$2,000

Example: If a for-profit facility has a \$20,000 penalty, the penalty may be reduced by as much as 85% (\$17,000) of the civil penalty. If a SEP is to be used, the penalty offset is a minimum of \$4,000. A

proposed SEP valued at \$4,500 (85% of which is \$3,825) would not meet the minimum penalty offset and would not be an acceptable project.

Kansas Air Quality Program SEP Policy

The next step is to calculate the maximum amount the SEP can offset the civil penalty using the SEP Value Offset Ratio. The value of the SEP must equal or exceed the amount the penalty will be reduced. A SEP Value Offset Ratio of 1.25:1 means that a SEP value must be 1.25 times greater than the penalty amount that will be reduced. The SEP Value Offset Ratios for Not-for-Profit and For-Profit facilities are listed in the table below.

SEP Value Offset Ratio		
Benefit to Environment/Public Health	For-Profit	Not-for-Profit
High	1.25:1	1:1
Moderate	2:1	1.5:1
Low	3:1	2.5:1
KS Green School SEP only	1:1	1:1

Example: A for-profit facility and KDHE have agreed to a SEP of moderate benefit to the environment. The SEP ratio is 2:1; therefore a SEP of \$20,000 would offset \$10,000 of the civil penalty.

V. Contact Information

If you would like additional information, contact the Bureau of Air:

Bureau of Air
Air Compliance and Enforcement Section
Curtis State Office Building
1000 SW Jackson, Suite 310
Topeka, KS 66612-1366
785-296-1544

www.kdheks.gov/boa

VI. Approval of SEP Policy



Director, Bureau of Air



Date