

Supplemental Environmental Projects (SEPs)

What is a SEP?

- A SEP is an environmental enhancement project that offsets a Respondent's administrative penalty in a TCEQ enforcement matter.
- Texas Water Code § 7.067
- For more information, visit <u>https://www.tceq.texas.gov/compliance/enforcement/sep</u>





Purpose of SEPs



Prevent pollution

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Purpose of SEPs



Prevent pollution



Enhance the quality of the environment



Reduce the amount of pollutants reaching the environment



Contribute to public awareness of environmental matters

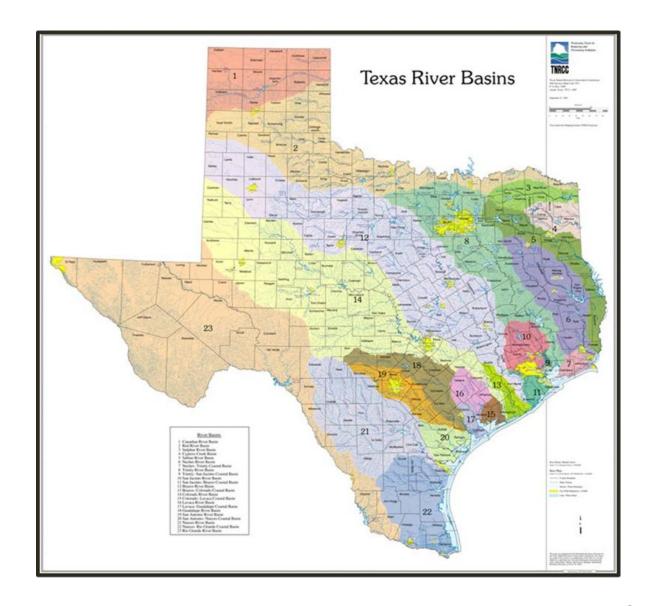
History of SEPs in Texas

- 1991: Texas Natural Resource Conservation Commission begins using SEPs to resolve enforcement actions
- 1993: SEPs authorized in statute in 73rd Legislature's "Good Works' Administrative Penalties" act, which amends the Water Code, Solid Waste Disposal Act, and Clean Air Act, HB 2429
- 1997: Statutory authorization for SEPs consolidated into its modern location, Tex. Water Code § 7.067
- 1999: Transboundary SEPs with activities in Mexico explicitly authorized, SB 828
- 2006: Guidance publication GI-352 released
- 2011: "Discretionary" C-SEPs authorized, HB 2694
- 2013: 10% administrative costs allowed for 501(c)(3) non-profits and local governments, HB 2290
- 2015: "Mandatory" C-SEPs required, SB 394
- 2015: Latest revision of guidance publication GI-352



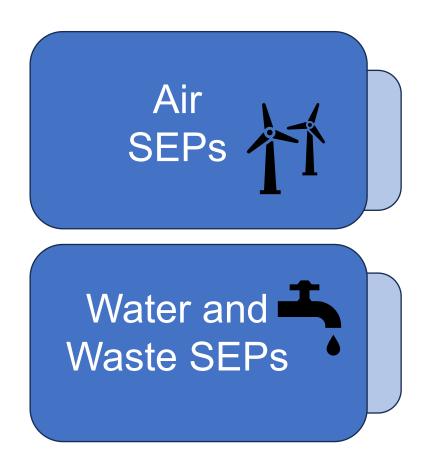
SEP Location

- Benefit the community in which the alleged violation occurred
- Community Examples:
 - City
 - County
 - Texas River Basin
 - Texas Aquifer
 - Texas Air Control Region





SEP Media





SEP Media

Air SEPs

Performed with penalty monies from air violations

Water and Waste SEPs

Performed with penalty monies from water and waste violations



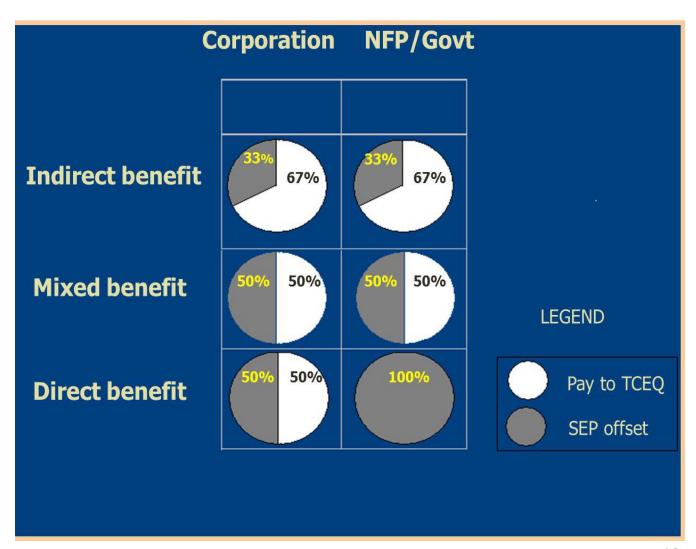
SEP Offset

- All SEPs are funded by TCEQ penalties assessed against Respondents
- Allowable SEP offset
 - Does not reduce the total penalty that a Respondent owes
 - Determined by type of Respondent and environmental benefit
- A Respondent can choose to:
 - Contribute amount to a Pre-Approved SEP or
 - Perform a Custom SEP or Compliance SEP expending at least the SEP offset amount



Penalty Percentage Offset

- Type of Respondent
 - Governmental entity/non-profit (NFP)
 100% offset
 - For-profit corporations or individuals
 50% offset
- Environmental Benefit
 - Direct—repair or replace wastewater treatment plant equipment or tire collection events
 - Indirect—educational and publicawareness projects
 - Mixed—a project that involves both collecting household hazardous waste and educating the public on proper disposal methods





SEP Types



Custom SEP

Any Respondent

SEP Types



Custom SEP

Any Respondent

SEP Types



Contribution to a Pre-Approved SEP

Any Respondent



SEP Types

Custom SEP

Any Respondent

Contribution to a Pre-Approved SEP

Any Respondent

Compliance SEP

Only Local Governments



Custom SEP

Any respondent can spend their allowable SEP Offset amount to implement an environmental enhancement project to address the specific needs within the community where the respondent's alleged violation occurred

- A Custom SEP cannot benefit the respondent
- Time consuming, but allows respondent to plan around specific environmental needs
- Must be fully completed within 365 days from the effective date of the Agreed Order
- Must be approved by Commission before commencement of the project can occur



San Antonio River Authority performed a household hazardous waste cleanup event in 2024 as a custom SEP, collecting over 55 tons of electronics, tires, hazardous liquids, and other materials.



Contribution to a Pre-Approved SEP

Any Respondent can choose to contribute their allowable SEP offset amount to a Third-Party Administrator that has an existing SEP Agreement with TCEQ to perform a SEP.

- Contributing is a simple way for respondents to give back to the community without having to undertake an environmental project themselves.
- Limited to a Pre-Approved SEP in the Respondent's community that matches the Respondent's violation media
- A Pre-Approved SEP cannot benefit the Respondent
- Must be approved by the Commission before contribution can occur



https://www.tceq.texas.gov/compliance/enforcement/sep/pre-approved-seps



Compliance SEP (C-SEP)



Rio Grande City, Texas installed a new Lift Station with backup pump at their facility, 2019

- A <u>Local Government (LG) respondent</u> can spend their allowable SEP Offset amount to implement an environmental enhancement project that is necessary to bring the LG respondent into compliance with environmental laws or necessary to remediate environmental harm caused by the LG respondent's alleged violation.
- Only an LG can perform a C-SEP
- LG defined within the SEP Statute; Texas Water Code § 7.067(b)(1): "school district, county, municipality, junior college district, river authority, water district or other special district, or other political subdivision created under the constitution or a statute of this state"



Compliance SEP (C-SEP)



City of Huntsville August 2024 Clarifier Rehabilitation

- A C-SEP can benefit the LG respondent
- A C-SEP can be performed prior to Commission approval
- Important that LG keeps receipts, pictures, and documentation of any projects performed to come into compliance or remediate environmental harm
- May not be used to directly resolve the violations that resulted from human error such as record keeping violations or hiring a licensed operator







Two types of C-SEPs



Two types of C-SEPs

1

Mandatory C-SEPs

TCEQ must include in an enforcement order if they meet <u>both</u> conditions and submits sufficient proposal.

- 1. The LG has not previously committed a violation at the same site with the same underlying cause in the preceding 5 years, and
- 2. The LG did not agree, before the date the Commission initiated the enforcement action, to perform the project.

20

Two types of C-SEPs

1

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2

Discretionary C-SEPs

If the two conditions are not met, TCEQ "prevent[s] regulated entities from systematically avoiding compliance" through use of C-SEPs by assessing the respondent's ability to pay the penalty and to come into compliance, per Texas Water Code § 7.067 (a-2).

Respondent SEP Options

Entity/Respondent	Maximum Offset	Custom SEP	Pre-Approved SEP	Compliance SEP
Individual	50%			-
For-Profit/Corporation	50%			-
Non-Profit	100%			-
Governmental Entity	100%			-
*Local Government	100%			



Respondent SEP Options

Inquiry from for-profit 50% SEP offset OR non-profit 100% SEP offset

Inquiry from local government 100% SEP offset

Contribution SEP

Respondent contributes to a Pre-Approved SEP that is performed by a 3rd Party

Custom SEP

Respondent designs and performs a SEP within their community

Compliance SEP

Local Government
performs a SEP that
brings it into compliance
with environmental laws
or remediates harm
caused by alleged
violation



Third-Party Administrators

Pre-Approved SEPs are performed by Third-Party Administrators that have an agreement with TCEQ to receive contributions from Respondents to perform an environmental enhancement project.

- Third-Party Administrators
 - Only governmental organizations and/or 501(c)(3) non-profit organizations
 - Must fulfill certain requirements, such as being able to receive and manage SEP funds in a separate bank account, providing a line-item budget, and complying with reporting



SEP funds from an Audubon Texas project were used to build a new dock for conservation activities at green island, 2022

(SEP No. 2011-52)

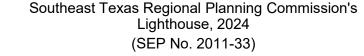


Third-Party Administrators

- To have a project on the Pre-Approved SEP list, the Third-Party Administrator must submit an application that will be reviewed by the SEP Program and a panel of TCEQ staff from various divisions to ensure program criteria and agency priorities are met.
- Once a SEP is approved by both TCEQ and the Third-Party Administrator, it is then listed on TCEQ's website and becomes available to receive funds.











Pre-Approved SEP Common Examples

- Air SEP Examples:
 - Air quality: School bus replacement, energy efficiency upgrades
 - Air monitoring: Establishing air monitoring networks
- Water and Waste SEP Examples:
 - Collection events: Tires, household hazardous waste
 - Habitat restoration, preservation, and acquisition projects
 - Water quality: Wastewater and drinking water assistance for low-income households, clean up events
 - Water monitoring: Establishing water monitoring networks
 - Public Water Systems Assistance Project



Angelina Beautiful Clean Household Hazardous Waste Collection Event, 2022 (SEP No. 2011-13)



Pre-Approved Projects FY 2024

Project Type	Available for Funding	Fully Funded or Currently Not Accepting Funds	Total Projects
Air Quality	8	7	15
Cleanup	1	5	6
Habitat/Restoration	5	4	9
Wildlife Conservation	1	0	1
Water Quality	4	4	8
Total	19	20	39



Allowable Third-Party Administrator SEP Expenses

- Direct cost of the project, including:
 - Supplies
 - Materials
 - Equipment
 - Contracted labor (to include engineering)
- Administrative costs (discretionary)
 - Limited to 501(c)(3) Non-Profits and Local Governments as defined in Texas Water Code § 7.067(b)(1)
 - Cannot exceed 10% of the direct cost of the project
 - Includes:
 - Salary and fringe benefits
 - Travel and per diem
 - Overhead costs





Texas A&M - Corpus Christi's AutoCheck, above, and Gulf Coast Authority's Trash Bash, Below (SEP No. 2011-34 and SEP No. 2010-002)



Enhance the Quality of the Environment

Tex. Water Code § 7.067(b)(2): "Supplemental environmental project" means a project that prevents pollution... enhances the quality of the **environment**..."

Not explicitly limited to TCEQ jurisdiction Tex. Water Code § 5.013

Rescue and Recovery Vehicles

SEP NO. 2024-02

Project Description for Rescue and Recovery Vehicles

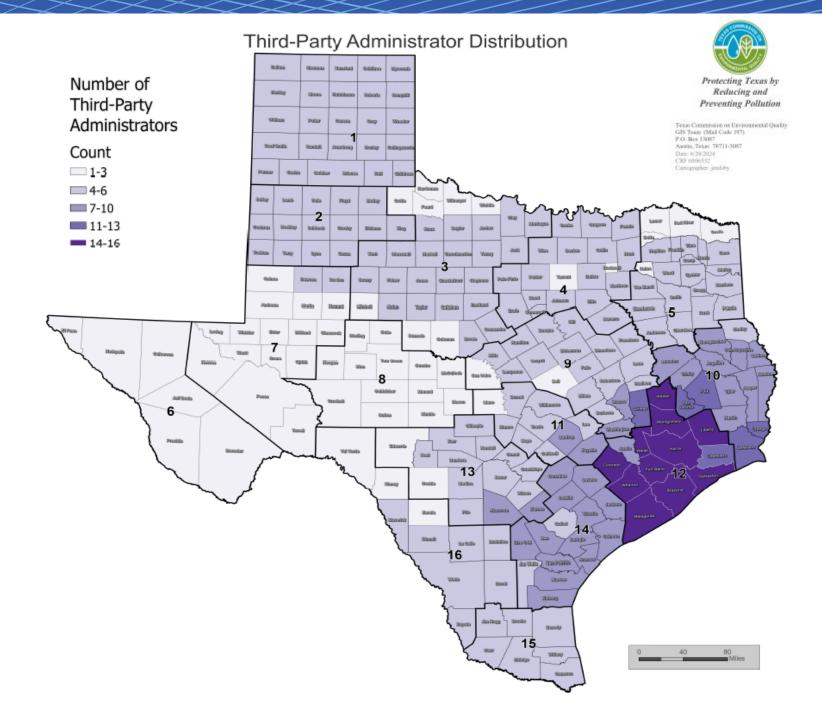
Facts/Purpose

The purpose of the project is to purchase specialized vehicles that would be used for responding to emergencies to rescue and rehabilitate wildlife. The vehicles included in this project are a boat and trailer, a refrigerated truck, and a flatbed truck.





Current Third-Party Administrators





SEP Program Developments

- New, standardized general terms and conditions for Pre-Approved SEPs
 - Additionally, agreements effective Fiscal Year 2024 and after will be available in their entirety on the Pre-Approved List on our website.
- TCEQ Commissioners' Work session on June 27, 2024
 - Upcoming guidance document edits; requests to streamline processes and policies
 - Make it easier to contribute to Pre-Approved SEP
 - Changes to current policy to increase and encourage more SEPs

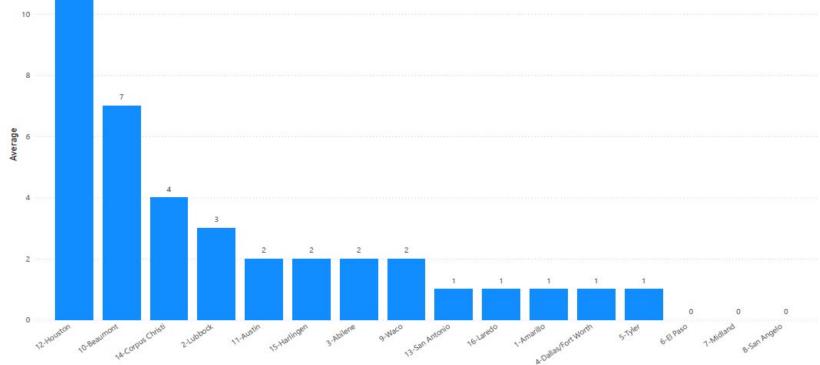


SEP Program Developments

More outreach to areas that have disproportionately fewer SEPs

Average Third-Party Administrators by Region







SEP Program Developments

- Efforts to increase transparency and public participation
 - Promoting success stories online
 - TCEQ Websites, Blogs, Social Media
 - How-to videos to assist in the application process



Texas A&M – Corpus Christi's AutoCheck (SEP No. 2011-34



SEP Participation

Fiscal Year	Number of SEPs	Sum of Offset Amount
2020	196	\$4,187,744
2021	139	\$2,383,549
2022	139	\$2,832,140
2023	145	\$3,954,808
2024	195	\$7,057,712
Total	814	\$20,415,953



Do you have an enforcement case with TCEQ?

- Are you a local government? You may qualify for a Compliance SEP to address the violations or come into compliance with environmental laws.
- Reach out to our team or let your enforcement coordinator know you are interested in performing a Compliance SEP to see if you qualify.
- Not a local government but want to perform a project in your community that you design and implement, a Custom SEP might just be right for you!





Consider contributing to Pre-Approved SEPs

- TCEQ Enforcement Action? Contributing to a preapproved SEP is easy!
- Fill out application online at <u>https://www.tceq.texas.gov/downloads/compliance</u> /enforcement/sep/20699-03-04-19.pdf
- For-profit entities: one check to TCEQ upon settlement, one check directly to Third-Party Administrator after Commission approval
- Improve relationship with community non-profits and local governments, keep penalty dollars in your community





Interested in Becoming a Third-Party Administrators

- Have you always wanted to perform a project but been unsure where to get funding?
- Do you have big ideas to help extend the SEP Program's reach with new projects?
- Apply to be a Third-Party Administrator!
 https://www.tceq.texas.gov/downloads/compliance/enforcement/sep/3rd-party-sep-application.pdf
- Contact <u>SEPReports@tceq.texas.gov</u> with questions







Texas Association of RC&D – Public Water Systems Assistance Project for City of Hamilton (SEP No. 2017-03)



SEP Team Contact Information

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