

State of Oregon
Department of Environmental Quality

Memorandum

Date: Jan. 28, 2011

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item N, Informational item: Supplemental environmental projects
February 16-18, 2011, EQC meeting

Purpose of Item The purpose of this information item is to familiarize the commission with DEQ's use of supplemental environmental projects to mitigate civil penalties.

Background Persons who have been assessed civil penalties for environmental violations may reduce penalties owed to the state by agreeing to fund projects that benefit public health and the environment in Oregon. These projects, called supplemental environmental projects, keep civil penalty dollars in the community to fund projects that provide benefits locally. Penalties may be mitigated dollar for dollar up to 80 percent of the total penalty. The remaining 20 percent is paid into the state's General Fund. DEQ does not directly receive any civil penalty money from its enforcement actions.

DEQ's authority to settle civil penalties is established at ORS 468.130 and OAR 340-012-0170. DEQ has had a formal supplemental environmental project policy in place since the mid 1990s, with the latest revision approved by Director Pedersen in October 2007.

In 2007, DEQ's Office of Compliance and Enforcement launched an effort to increase the use of supplemental environmental projects for penalty settlements. Staff researched EPA and other states' policies and programs for ideas to improve DEQ's process and generate greater awareness of the supplemental environmental project program. As a result, the supplemental environmental project policy was changed to reduce or ease some of the requirements and implemented new strategies to inform penalty recipients of the SEP program. Some of these strategies included:

- Connecting penalty recipients to third-party nonprofit environmental, local government or community organizations that had existing funding needs for specific already-scoped projects
- Developing a project idea and contact list
- Developing a frequently asked questions sheet that is sent with

- every civil penalty assessment
- Developing a clearer application process.

These efforts greatly increased the number of supplemental environmental projects performed each year. The average number of projects per year completed in 2005–2007 averaged nine, with a total average spent of \$170,924 per year. After the policy changes, the average number of projects per year completed in 2008-2010 was 28, with a total average spent of \$563,294 per year.

Next steps DEQ will post the project application, idea list and pre-approved third-party applications on the Office of Compliance and Enforcement webpage.

Attachments

- A. Frequently asked questions
- B. Supplemental environmental projects idea list
- C. Summary of projects completed in 2010

Approved:

Division: _____

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What is a Supplemental Environmental Project?

Many of DEQ's enforcement actions result in settlement agreements. DEQ offers respondents the option of funding a supplemental environmental project to reduce the penalties. Penalties may be mitigated dollar for dollar up to 80 percent depending on the cost of the project and type of benefits derived.

Who/what projects qualify?

- Project must primarily benefit the public health or the environment in Oregon.
- Respondent's contribution to the project is worth at least as much as the penalty reduction
- Project must not be an activity or result that is already required by law or one that is set to become a future requirement
- The portion of the project attributable to penalty reduction is not funded by government contracts, loans or grants
- The responsibilities of the respondent under the SEP are commensurate with the respondent's expertise and capabilities, if respondent is doing the work
- Project does not result in DEQ's controlling the funds or implementing the SEP, nor can the SEP fulfill statutory obligations or circumvent statutory prohibitions of DEQ
- Project does not create a significant market or economic advantage for the violator
- Project must provide for a final report
- DEQ prefers that projects relate to the same environmental program and in the same geographic area in which the violation occurred.

Are there examples of past successful projects or ideas available?

Yes, DEQ is currently maintaining and updating a list of possible project ideas. Contact the Office of Compliance and Enforcement or visit its website for more information on past projects: <http://www.deq.state.or.us/programs/enforcement/SEP.htm>

Can a third party conduct the project if I commit the funds?

Absolutely. Many successful projects have been conducted through third party nonprofit organizations, such as local communities, cities, watershed councils, etc. There must be a defined project that is approved by DEQ before the penalty can be mitigated.

How do I get started?

Contact the Office of Compliance and Enforcement through the project website, <http://www.deq.state.or.us/programs/enforcement/SEP.htm>, and discuss your options with an environmental law specialist. Identify a project, fill out the SEP application as completely as possible and submit it to DEQ's Office of Compliance and Enforcement at 811 SW 6th Avenue, Portland, Oregon 97204. **Please be sure to include the enforcement case name and number.**

SEP Ideas

Pollution Prevention:

Air Quality

- **Woodstove change out programs.**

Contribute funds to programs that typically either provide financial assistance to low income individuals or families to replace uncertified woodstoves with an EPA-certified woodstove, insert, pellet stove, or gas, oil or electrical systems; or that provide no-interest loans or rebate programs for these upgrades.

Contacts:

Bend:

Heidi Kennedy, City of Bend, 541-388-5580
Email: hkennedy@ci.bend.or.us

Burns:

Bill Guindon, City of Burns, 541-573-5622

Pendleton:

Karen King, City of Pendleton, 541-966-0249
Email: Karen.King@ci.pendleton.or.us

Klamath County:

Delbert Bell, Klamath County Environmental Health, 541-882-1122

Betty Riley, Executive Director, South Central Oregon Economic Development District, 541-884-5593
Email: betty@scoedd.org

Lakeview:

Christy Sarina, Town of Lakeview, 541-947-4957

Jackson County:

Daniel Hough, Jackson County Environmental Health
541-774-7843

Josephine County:

Jenny Zeltvay
Josephine County Public Health, 541.474.5325 ext. 2228

- **Clean Diesel retrofits**

- Contribute funds to a local school district to upgrade older school buses to clean diesel technology to significantly reduce diesel

particulate emissions. **School districts in Oregon are now eligible to receive 70 percent matching funds from the State for school bus retrofits/replacements, further enhancing the value of a SEP.**

Contact your local school district's transportation department for more information.

- Contribute funds to a nonprofit organization that provides low-interest funding to individual Oregon semi-truck owner/operators to upgrade older trucks to clean diesel technology. **Contact:** Sándor Lau, Cascade Sierra Solutions, 541-302-0900 x211, [sandorlau @cascadesierrasolutions.org](mailto:sandorlau@cascadesierrasolutions.org).

Hazardous Waste

- **Fund a community mercury exchange (e.g. thermometers) program or collection event.**
- **Fund a household hazardous waste collection event.**
- **Assist a local school in recycling outdated laboratory chemicals.**

Resource Efficiency:

- **At schools, libraries, municipal buildings,**
 - Conduct an energy audit, and
 - Purchase and install solar panels and/or
 - Purchase and install daylighting systems.

Environmental Restoration and Protection:

Water Quality

- **Stream bank restoration projects to reduce erosion, provide shading and increase natural habitat.** Often projects can be identified by contacting local watershed councils, governments and other environmental nonprofit entities.
- **Construct bioswales around parking lots and along roadways to collect and filter storm water run off.**

Solid Waste/Waste Tires

- **Clean-up abandoned garbage dump areas or tire piles on public lands.**
- **Food Donation Program.** Provide funds to a nonprofit group that collects and distributes food from local businesses that would otherwise end up in the waste stream.

Central Oregon:

Central Oregon Food Donation Program

Steve Murray, NeighborImpact

541 548-2380 or email: stevem@neighborimpact.org

Lane County;
FOOD for Lane County/ Food Rescue Express
Gretchen Bray
541 343-2822 or email: development@foodforlanecounty.org.

Josephine County
Josephine County Food Bank
Toni Drew
541-479-5556 or email: toni.drew@ucancap.org

Other possible project partners:

Grande Ronde Model Watershed Foundation (501c3)
Stream restoration and fish enhancement projects in the Grande Ronde River Basin
(Union and Wallowa Counties)
Contact: Jeff Oveson
541-663-0570
jeff@grmw.org

The Freshwater Trust
Contact: Alan Horton, Managing Director
503-222-9091, ext. 22
alan@thefreshwatertrust.org

SOLV
Contact: Denise Smith
503-844-9571, ext. 314
denise@solv.org
For current SOLV projects go to their website at www.solv.org

Friends of Trees (tree planting and natural area restoration)
Contact: Brighton West, Program Director
3117 NE MLK Blvd.
Portland, OR 97212
503-282-8846
www.friendsoftrees.org

Columbia Slough Watershed Council
Contact: Jane Van Dyke, Executive Director
503-281-1132
www.columbiaslough.org/

Cape Arago Audubon Society
Community-based habitat restoration projects.
Contact: Russ Namitz
541-266-8714

Oregon Coast Community Action
Coos Bay, OR
Contact: Patricia Gouveia
541-888-1514
pgouveia@orcca.us

Oregon Toxics Alliance
Contact: Lisa Arkin, Executive Director
541-465-8860
larkin@oregontoxics.org

Supplemental environmental projects completed in 2010

Ronald Buwalda contributed \$1,515 to Sunridge Middle School in La Grande to fund its Air Education Program at the school. Additionally, he contributed \$8,537 to the City of Pendleton woodstove replacement program fund. Residents can borrow up to \$3,500 with no interest to be paid back within five years to remove old, uncertified woodstoves and replace with new, cleaner energy-efficient heating systems.

Washington Demilitarization Company LLC contributed \$222,978 to Neighbor Impact toward a \$350,000 project to expand their food recovery and waste reduction program by purchasing, operating, and maintaining a refrigerated truck, walk-in freezer, and expanding their warehouse. The program keeps solid waste from Central Oregon landfills by recovering primarily perishable food at stores in Bend, Redmond, Sisters, Terrebonne, La Pine, Madras and Prineville, and delivering it to local food banks. With completion of this project, the program collects an average of 47,000 pounds a month.

Oregon City spent \$22,641 to conduct a project to restore wetlands at the headwaters of Newell Creek by removing invasive species and planting native trees, shrubs, and plants in their place in order to reduce temperature and improve habitat for fish and wildlife.

IRS Environmental worked with SOLV by contributing \$5,400 towards a riverside and beach cleanup event at multiple locations in the Corvallis area. The event occurred Oct. 25, 2010, and included cleaning up litter, removing invasive plants and replanting native trees and plants to improve water quality by reducing erosion, cooling water temperatures, filtering runoff and providing wildlife habitat.

Mac's Radiator & Repair Inc worked with SOLV by contributing \$2,280 towards a riverside and beach cleanup event at multiple locations in the Portland area. The event occurred on Sept. 25, 2010, and included cleaning up litter, removing invasive plants and replanting native trees and plants to improve water quality by reducing erosion, cooling water temperatures, filtering run-off and providing wildlife habitat.

Neary Investment Property spent \$2,553 on a project that cleaned up property on a hill near Maupin, Oregon, directly above the Deschutes River where a former mill dumped metal, garbage and equipment. The project involved removing the solid waste to eliminate the threat that metals and other garbage would eventually end up or leach into the river.

Ronald Nunn contributed \$3,120 to the Josephine County Food Bank's food recovery program. The program collects perishable food from local businesses and stores, and stores and distributes that food to households in need. This program reduces the food waste that would otherwise end up in the waste stream and increases awareness by making food waste more apparent to food industry, so that they can increase efficiency and reduce the amount of waste generated.

ConAgra Foods contributed \$6,932 to the Athena-Weston School District to retrofit two diesel school buses with closed crankcase ventilation devices. This project reduced an estimated 90 to 100 percent of crankcase emissions, the largest source of PM 2.5 emissions from buses, helping to reduce health impacts of children riding the buses and residents near bus routes and schools.

The city of Astoria contributed \$21,840 to the Columbia River Estuary Taskforce for a project at Alderbrook Lagoon Natural Area in Astoria. The project involved removing noxious weeds and invasive plants in the lagoon and along the bank, and replanting with native trees and plants to improve water quality and provide stormwater filtration and erosion control. The project also involved a group of local school children who helped with replanting along the trail, learning about water quality issues and native salmon habitat in the process.

Robert John Emrick/Western Oregon Waste spent \$193,000 on a project to construct a roof structure over the public waste tipping area and stormwater catch basin at the solid waste transfer station in Astoria. The outflow from the catch basin will be rerouted to the site's septage system, eliminating stormwater discharge and runoff from the area where the most business activity takes place at the facility. \$3,446 will be put towards mitigating a portion of a DEQ civil penalty.

Pacific Shrimp Inc. contributed \$31,251 to the University of Oregon Institute of Marine Biology to purchase and install solar panels and a power inverter unit to provide clean power and light in the Charleston Marine Life Center, a new museum and aquarium on the University of Oregon Marine Biology Campus in Charleston.

The city of Portland contributed \$6,720 to the Heron Rookery Columbia Slough project to remove invasive species, and conduct habitat enhancement and stormwater treatment improvements.

Container Management Services LLC donated 86 steel drums to Metro for their Portland Metro Area household hazardous waste collection events, at a value of \$2,955. The project enables Metro to provide greater collection capacity to reduce household hazardous wastes from being improperly disposed of in a manner that could pose a threat to the environment or public health.

Glenn Davis and Sharil Snyder contributed \$2,763 to the City of Bend woodstove change-out incentive program. Removing old, uncertified woodstoves reduces emissions of fine particulate in the airshed.

205 Auto Salvage Inc. contributed \$2,475 towards a project with the Columbia Slough Watershed Council for improvements at Whitaker Ponds and Whitaker Slough, on a side channel of the Columbia Slough. The project included removing a culvert and sloping a bank to improve water flow between the ponds and the slough. Increased flow enhances water quality to support native fish, wildlife and plants.

LKQ Foster Auto Parts worked with the Johnson Creek Watershed Council and Leach Botanical Gardens by contributing \$7,653 for a riparian restoration project along Johnson Creek at Leach Botanical Gardens. The project included the removal of invasive weeds and replanting native

vegetation to improve water quality, provide stream bank stabilization and reduce water temperature to improve habitat for aquatic species.

Far West Fibers, Inc., in partnership with the Portland Water Bureau and other entities, contributed \$3,300 for a project with Friends of Trees. The project included planting 80 native trees and 100 native shrubs in the Columbia Slough watershed area at NE 158th Avenue in Portland. Trees and shrubs help stabilize riparian zones to reduce erosion, help absorb and filter stormwater contaminants, provide shade to reduce temperatures, provide wildlife habitat, and release oxygen and absorb air pollution. The project has a total estimated value of \$6,500.

Nestucca Ridge Development Inc., in partnership with the Nestucca, Neskowin & Sand Lake Watersheds Council, provided equipment and labor to pull, cut, pickup, haul and dispose of invasive Scotch Broom along McPhillips Road in Pacific City. The Scotch Broom had taken over and was choking off native rhododendrons and other plants important to prevent erosion and absorb stormwater. The company's total contribution was valued at approximately \$3,602.

LDN Excavation, Inc. contributed \$5,280 to Cascade Sierra Solutions to assist independent owners/operators to upgrade their semi-trucks to clean diesel technology to reduce diesel particulate and greenhouse gas emissions.

Kinzua Resources worked with the city of Pilot Rock by contributing \$1,120 for a community improvement project valued at \$968,831. The project included planting new trees and shrubbery along the Highway 396 corridor near the Kinzua mill to reduce dust and noise and to provide shade, reduce temperatures and provide wildlife habitat.

Wayde Elliot is contributed \$4,500 to the Scappoose Bay Watershed Council for a riparian restoration project along McNulty Creek and a half-acre of connected seasonal wetlands near Warren, Oregon. Invasive plant species were removed and replaced with native, locally grown trees and shrubs to help filter stormwater runoff and provide better habitat for both in-stream organisms and resident wildlife.

Timberlake LLC, in partnership with the city of Rockaway, contributed \$1,790 for removal of Milfoil, an invasive, aquatic vegetation, in Lytle an Crescent Lakes and Maroney Canal in Rockaway. Milfoil removal facilitates native aquatic plant and fish habitat restoration.

Harry Richard Snow contributed \$5,026 to the Umatilla Watershed Council for a project at the base of McKay Reservoir Dam valued at over \$58,000. The project included converting an irrigation ditch from an open ditch to a trenched and covered PVC pipeline to reduce water loss from leaks and evaporation, and contamination from surface runoff, resulting in less water being diverted for agricultural use. The project also saves energy by eliminating the need for irrigation pumps. This project is scheduled to be completed in May 2011.

Tarr Acquisition contributed \$2,576 to the Columbia Slough Watershed Council, in partnership with Multnomah County and Portland Parks and Recreation among others, on a project at Whittaker Ponds Nature Park in northeast Portland. The project included redesigning and rebuilding an old culvert to improve water flows and prevent flooding and erosion. The project

also included planting native plants in the riparian zone to improve stream bank stabilization and to improve water quality and wildlife habitat.

Wheeler County Road Department spent \$4,013 on a project to stabilize a stream bank along Searcy Creek by adding clean river rock, clean fill soil and planting native willow trees to reduce erosion into the creek. The trees also provide shade and wildlife habitat.

The city of Portland contributed \$565,086 toward four projects:

Errol Creek Restoration Project

This project abandoned and removed fish barriers and day-lighted the section of Errol Creek that previously ran beneath SE 44th Avenue to improve fish passage. The confluence of Errol and Johnson Creek was moved 50 feet south and a new, longer, more sinuous channel was created. The first 50 feet of the old channel was left in place to provide high flow refuge and flood water storage. The project also included improvements to wetland habitat and a generous replanting of native trees and shrubs to stabilize the bank, filter stormwater and improve fish and wildlife habitat.

Beaverton-Hillsdale Water Quality Swale

This project included building a stormwater facility consisting of a 150-foot-long, 12-foot-wide vegetated water quality swale and pretreatment facility known as a sedimentation forebay. The forebay removes sediment prior to discharge into the swale and serves to redirect stormwater from the existing storm pipe to the swale. The facility will treat stormwater from 8.6 acres, including Beaverton-Hillsdale Highway and adjacent properties.

Portland Community College Rain Garden

This project consisted of the construction of a vegetated rain garden to treat stormwater runoff from 16,200 square feet of impervious roadway and parking area at the Portland Community College Sylvania campus. The rain garden was constructed within an existing landscape area by modifying the existing drainage system to divert water into the garden. The constructed garden covers 1,440 square feet and included the planting of 350 wet-tolerant plants and shrubs. The garden treats runoff and reduces flow rates through sedimentation, filters pollutants through vegetation and infiltration and detains flow and is expected to improve Fanno Creek.

Cathedral Park Boat Ramp Parking Lot

The stormwater management improvements at the Cathedral Park boat ramp parking lot consisted of five landscaped facilities that capture and cleanse stormwater runoff before it enters the Willamette River. Over 3,000 square feet of impervious surface was removed and replaced with vegetation. Five parking stalls were converted to curbed planter facilities and a sixth was installed at the west end of the parking lot. A portion of the stream bank was re-contoured and seeded to enhance an existing swale for treatment of runoff.