

GLO Environmental Project Settlement Policy

The General Land Office (GLO) Commissioner may assess an administrative penalty against a Responsible Party (RP) for the release of oil into state waters after considering the factors identified under Texas Natural Resources Code (TNRC), Section 40.252. The Commissioner, after determining that the RP has shown a high degree of cooperation and low degree of culpability during the spill, and has an appropriate compliance history (including an assessment of the gravity of the spill and the history of spills and other violations), may, at the Commissioner's sole discretion, authorize the implementation of a beneficial project as part of an enforcement settlement. After considering the factors described herein, GLO program staff and legal counsel (Staff), may recommend that the Commissioner authorize implementation of an environmental project settlement. Staff's recommendation to the GLO Commissioner to authorize a settlement project will be guided by this policy.

Minimum Standards for a Settlement Project:

1. A settlement project must have a quantifiable and sustainable benefit to the community impacted by the spill(s) and be related to the impact the spill had on the community. The project must enhance the environment, public health or safety, spill response capability, and/or community recreation in the community or in the same or adjacent watershed where the impact of the spill occurred. For example, a spill that impacts wetlands would justify a restoration of wetlands project in that community, while a spill that impacts birds would justify a project that enhances wildlife rehabilitation that benefits the watershed or adjacent watersheds. A settlement project should also be consistent with state, regional or community priorities.
2. Credit for a settlement project shall not offset more than 50% of the settled penalty amount, as determined in accordance with the penalty policy.
3. When determining the rate of the recommended offset of the penalty, Staff will consider the quality of the project and its location. Staff will provide no less than a 1:1 offset for the penalty amount. The rate of offset will be based upon the environmental, health, safety, and/or recreational value of the project and its proximity to the community(ies) impacted by the spill. Examples of high-value projects that may qualify for a 1:1 ratio include projects that provide a direct benefit to the community of the spill by enhancing habitat or supporting wildlife rescue and rehabilitation in the watershed of the spill. Projects that may provide an indirect benefit will require more than a 1:1 offset including environmental education projects for the community or small businesses.
4. The project must be something that can be completed within 12 months from the effective date of the agreement, or, with GLO Staff's express approval, additional time may be given depending on project size and scope.
5. Other factors, as appropriate, may be considered by Staff in evaluating the sufficiency and value of a settlement project.

The Commissioner may make an exception to this policy if there is a project that provides an extraordinary or unique benefit to human health or the environment or addresses a special need for the community, or region that was or will be affected by the spill. Such cases will be evaluated individually.

Ineligible Projects:

Staff shall not recommend to the GLO Commissioner any project that appears to be necessary to bring an RP into compliance with environmental laws, to remediate environmental harm caused by the respondent's violation, address an obligation that the RP has to perform under state or federal law, or that the RP has already agreed to perform under another arrangement. Projects that are on the site of the RP or to the primary benefit of the RP are not allowed.

A project may not be used to perform or supplement a state or local governments implementation of a statutory obligation particularly if it is a task that is part of an appropriated budget.

GLO shall not be responsible for proposing a project or implementing any settlement project.

Third Party Implementation:

Under limited circumstances, Staff may recommend approval of a settlement project that includes the RP contributing money to a state agency, except the GLO, a local government, or a non-governmental organization for assistance in implementation of a project on behalf of the RP. In such cases, the Staff will, in addition to the factors described above, consider the viability, reliability, and expertise of the potential recipient when determining whether the project is appropriate and when establishing its value. In addition, no more than 10 percent of the RP's contribution/grant shall go to pay the third party's administrative costs, including overhead costs, personnel salary and fringe benefits, travel and per diem expenses, associated with implementing the settlement project. Money used for administrative costs under this subsection must be used in accordance with appropriate state standards, as agreed to by the GLO.

The RP must enter into a written agreement with the third party for performance of the settlement project. The RP shall retain full responsibility for ensuring that the settlement project is satisfactorily completed by the third party in accordance with the settlement agreement entered into between the GLO and the RP. The agreement must adequately describe the project, including the budget and timeline, that will be approved for the settlement project and specifically prohibit the RP and third party from publicizing the settlement project without prior written consent of the GLO. GLO's oversight of the settlement project will be limited to receiving sufficient information to ensure that the requirements of the settlement agreement are satisfactorily performed.

Environmental Project Settlement Agreement:

To request consideration of a settlement project, an RP should submit, in writing, a request to undertake a settlement project to Staff within 20 days of receiving a notice of violation. Within 60 days of GLO approval of the request, the RP must provide a detailed project plan, budget, timeline, and a letter of support from any partners that will be responsible for assisting the RP

with implementation of the project, and, where appropriate, evidence of community support for the project. Staff will review the proposed project and may negotiate the terms of development or implementation of the settlement project to ensure it provides the benefits required under this policy. If Staff believes that a request for a settlement project is being used to delay a penalty payment, Staff may, at its sole discretion, cancel settlement talks and reinstate enforcement actions.

Once Staff has agreed to recommend a settlement project to the Commissioner, the RP shall enter into a written agreement with the GLO. The agreement must include, without limitation, the penalty amount and the portion of penalty that will be suspended pending completion of the settlement project; a detailed description of the settlement project, budget, performance timelines, and reporting requirements; a description of any third party that will implement the settlement project and the third party's qualifications, where appropriate; restrictions on the RP to publicizing the settlement project; and stipulated penalty, plus interest, that must be paid if the project is not timely and otherwise satisfactorily completed or the value of the project is substantially below what is was identified in the agreement.

GLO response costs, as identified in the NOV, must be paid before the time a settlement project is proposed by the RP. The agreed penalty must be paid in full at the time of signature of the agreement by the RP.

Oversight:

Reporting will be provided to Staff by the RP as provided by the settlement agreement.

- Interim reporting by the RP will be required for large projects or projects that take more than 6 months to implement.

- A final report will be provided to the GLO when a settlement project is completed. The report must include a description and photos of the settlement project, as completed, or, where appropriate, an as-built design; invoices in support of the money spent on the project; and certification by an appropriate corporate official, as determined by the GLO, that the settlement project is complete in accordance with the settlement agreement and meets the terms of the agreement.

Staff will do a review of reports and other documentation and may do a site visit prior to approval of project completion. After approval of the completed settlement project, the Staff will provide written confirmation of satisfactory completion of the project.
