

**INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
NONRULE POLICY DOCUMENT**

Title: IDEM Response to HEA 1339 (1997)

Identification Number: OPS-001-R1-NPD

Date Originally Adopted: 7/22/97

Date Revised: 12/31/98

Other Policies Repealed or Amended: None

Brief Description of Subject Matter: Consideration of economic need and displacement of private sector services in source reduction and recycling grants.

Citations Affects: IC 13-20-22-2.1

This nonrule policy document is intended solely as guidance and does not have the effect of law or represent formal Indiana Department of Environmental Management (IDEM) decisions or final actions. This nonrule policy document shall be used in conjunction with applicable laws. It does not replace applicable laws, and if it conflicts with these laws, the laws shall control. A revision to this nonrule policy document may be put into effect by IDEM once the revised nonrule policy document is made available for public inspection and copying. IDEM shall submit revisions to the Indiana Register for publication.

Background

HEA 1339 was adopted by the 1997 General Assembly. Section 10 of HEA-1339 established IC 13-20-22-2.1 which states that IDEM shall adopt and make available a policy concerning the award of grants pursuant to IC 13-20-22-2. IDEM refers to these grants as its source reduction and recycling grants. These grants do not include the household hazardous waste grants authorized by IC 13-20-20-1. The policy must include the following considerations:

1. No private sector services will be displaced if an equipment grant is awarded.
2. The economic need of the solid waste management district (SWMD) must be a consideration in awarding a grant.

The statute was effective July 1, 1997. IDEM suspended its source reduction and recycling grants program until the policy was adopted. This nonrule policy document fulfills the statutory directive of IC 13-20-22-2.1. The policy will be effective July 31, 1997.

In 1993, IDEM modified its previous practice of offering periodic competitive grants to local units of government, non-profits, and SWMDs. Competitive grants are ones where the individual project is carefully scrutinized. Non-competitive grants rely on a formula to award grants rather than case-by-case review of each application. The new program provided five categories of grant opportunities. Each option was tailored to provide specific opportunities to grant recipients to help the state reach the 50% source reduction and recycling goal by 2001. The categories are:

1. Regional cooperative category - competitive regional grants negotiated with IDEM.
2. Model projects category - competitive grants for projects that would serve as models within the region of the state or across the state.
3. Traditional projects category - competitive grants for projects that would benefit source reduction and recycling in the community.
4. Equipment purchase category - non-competitive grants for specific pieces of recycling equipment where a prescriptive formula for need was met.
5. Jumpstart category - non-competitive grants to SWMDs to provide basic support in various program areas. No equipment is available through the jumpstart category.

Businesses are only eligible for model project grants that implement innovative source reduction activities. No equipment is directly available to the business through the grants program. IDEM encourages the use of public-private partnerships where a local unit of government receives the grant to fund equipment and leases the equipment to a private sector company.

Displacement of Private Sector Services by Equipment Grants

IDEM interprets "equipment grants" in IC 13-20-22-2.1 to refer to the equipment purchase category of its source reduction and recycling grants program. IDEM reached this conclusion for the following reasons:

1. IDEM traditionally referred to the equipment purchase category as the "equipment grants." This reference was made in many publications describing the program. Many of these publications were distributed to members of the General Assembly. It was also made in presentations to the Solid Waste Planning Advisory Council. This council was created by the General Assembly in 1990. Therefore, when the General Assembly used the term, IDEM believes that it intended the reference to apply only to the equipment purchase category.
2. The equipment purchase category relied on a detailed needs-formula to provide support to local units of government, non-profits, and SWMDs. Displacement was not considered in this formula. For the other categories where funding for equipment was available (i.e. model projects, traditional projects, and regional cooperative categories), IDEM has always considered the displacement issue. However, the focus of this consideration was typically limited to considering whether the project increased overall recycling or would only shift current recycling from one person to another. This evaluation included displacement between units of government. Only grants applications that increased overall recycling have been considered for funding. Therefore, IDEM believes the directive from the General Assembly to consider displacement in equipment grants was intended to focus only on the equipment purchase category.
3. In September of 1996, IDEM suggested eliminating the equipment purchase category since demand had waned. After further discussion, IDEM proposed this elimination in December of 1996. Applicants seeking equipment would apply through the traditional projects category and be scrutinized through a review process. In February of 1997, IDEM finalized this decision. IDEM believes that HEA-1339's reference to "equipment grants" was intended to reaffirm IDEM's decision to terminate the category.

Therefore, this policy formalizes IDEM's decision to terminate the equipment purchase category and implements IC 13-20-22-2.1(b)(1).

Based on public comments received by IDEM while developing this policy, IDEM has determined that it will go beyond the mandate of HEA-1339. It will enhance its consideration of potential displacement in grant applications where the grant recipient requests funds to purchase equipment to be used for recycling and composting of solid waste. Grants could still be used to purchase equipment for purposes other than waste management services (primarily educational equipment) without undergoing this additional review. IDEM will continue to prohibit the use of grant funding to purchase equipment for other waste management services. Only equipment with a value of \$1000 or more will undergo this review. Grants could also be used to provide funding for projects that involve the purchase of equipment where the grant funds are not used toward the equipment purchase. The purchase of equipment could be used as the local cash match to the IDEM grant.

IDEM will not award a grant that includes funds to purchase recycling and composting equipment if the grant project will result in the significant net displacement of a non-governmental service of comparable scope and size to the project for which funding is requested. In making this evaluation, IDEM will consider the anticipated impact of the project when it is fully operational. The non-governmental service could be provided by for-profit corporations, non-profit corporations (including universities), sole proprietorships, partnerships, etc. However, the displacement must be more than hypothetical. The non-governmental service must be more than just offered. The service must be occurring before the specifics of the proposed grant funded service were publicly announced. IDEM will consider the scope and size of displacement on a case-by-case basis. In general this evaluation will compare the types of materials being collected, the method of collection, the source of the materials, the waste diversion achieved, and the extent of the displacement.

Replacement equipment grant requests for continuing programs are exempt from the requirements of this policy. The grant applicant will need to demonstrate that the purchase of replacement equipment is only a nominal expansion of the services rendered in the current program. For instance, the replacement equipment must collect or process a similar type of material(s) and have comparable capacity. If the proposed replacement equipment expands the service capacity through geographic service area or type of customer serviced then the project must undergo this review process to consider private sector displacement. While grants requesting replacement equipment may not need to go through the review required by this policy, the project will undergo heightened review by IDEM to ensure the project is sustainable. For instance, the grant review process may include consideration of age and care of equipment to be replaced, if originally grant funded or locally funded, and cash match offered.

IDEM will consider a displacement claim by a non-governmental service provider where the service provider raises the issue in writing to the grant applicant in response to a public notice published by the grant applicant. If the non-governmental service provider does not raise the issue to the applicant prior to the deadline (described below), the applicant may presume that there are no complaints. The deadline for non-governmental service providers to submit the written comments vary with each type of grant applicant.

1. For local units of government, these written comments must be submitted prior to or at the meeting where the decision-making body votes to submit the grant application. This decision-making process must follow all local and state public notice requirements including IC 5-14-1.5. The public notice must state that the grant application is being considered and the board or council is contemplating private sector displacement.
2. For SWMDs, the written comments must be submitted prior to or at the meeting where the Board considers adoption of a resolution making a determination under IC 13-21-3-14.5(d). To make this determination, the Board must find that:
 - a) the solid waste management service is not currently available in the SWMD at a reasonable cost; and
 - b) providing the solid waste management services by means of its own work force or by contract will benefit the public health, welfare, and safety of residents of the SWMD.If the district follows the decision making process outlined in IC 13-21-3-14.5 then it will satisfy the requirements of this policy. If the proposed district activity involves an equipment purchase and is exempt from this process, it must follow the procedures outlined for local units of governments.
3. For non-profits, the written comments must be submitted prior to the organization's Board of

Directors decision to submit the grant application. The organization must mail a notice to all potentially affected non-governmental service providers at least 14 days prior to the announced decision date. IDEM will maintain a list of these providers and their service region to help the non-profit complete this process. Mailing to providers on this list will be presumed to meet the notice requirement unless the organization was aware of potentially affected providers not on the list.

No option is needed for applications by businesses since businesses cannot directly receive funding for equipment. If they lease grant-funded equipment through a public-private partnership with a grant recipient (typically a SWMD, city or town), the displacement will be considered in the application by the grant recipient.

For IDEM to consider a grant application requesting funds for recycling or composting equipment, the applicant must include in the application:

1. Copies of the public notice or other notices provided;
2. A description of efforts to notify non-governmental service providers including a list of the non-governmental service providers notified in writing;
3. Copies of all written comments submitted by non-governmental service providers; and
4. A finding that all written comments received were carefully evaluated and that the equipment will not result in the significant net displacement of a non-governmental service of comparable scope and size. The evaluation of significant net displacement must consider the following:
 - a. types of materials collected;
 - b. method of collection;
 - c. source of materials;
 - d. waste diversion achieved; and
 - e. extent of displacement.

For all competitive grants except regional cooperative projects with no equipment purchases, IDEM presents the grant application to an external grants review committee for comment and a recommendation. The review committee will evaluate the grant application for any potential displacement issues and make a recommendation to IDEM based on the documentation presented and the individual circumstances involved. Given the recommendation from the review committee, IDEM will make the final determination of all grant awards. Once a grant agreement is formally signed by the state, all decisions are final. IDEM will strive to have a broad representation of interested and knowledgeable parties to serve on its review committees. Specifically, IDEM will invite representatives from SWMDs and haulers of recyclables for each review committee. IDEM may change or rotate the invited representatives to ensure a variety of viewpoints are present. Regional cooperative projects that address at least 10 counties or 700,000 citizens are negotiated with IDEM on a case-by-case basis. Regional projects often involve negotiations with potential partners with project timelines that may not be met with a rigid review process. Regional cooperative grant requests receive a greater internal review because they often address IDEM goals and objectives. They may, but do not necessarily, go through an external review committee.

Economic Need of District

IDEM interprets the requirement to consider the economic need of the district in awarding a grant to apply only to grant applications submitted by a SWMD. IDEM does not believe that the General Assembly intended that the economic need of a SWMD should be a factor in considering a grant application from another applicant (i.e. business, not-for-profit, city, town, county) within the district. The economic need of the district will not be considered for model projects and regional cooperatives. A regional cooperative project must address 10 counties *or* 700,000 citizens. Model projects must serve

as a model within the region of the state or across the state. These categories address the need of a region, not just a district. While a single district may apply, the impact and benefits of model projects are intended to go beyond the district.

IDEM will consider the economic need of the district before deciding whether to award a grant under the following circumstances:

1. Where a district has a solid waste management fund cash and investment balance of more than \$350,000 excluding tax deposits received during December; or
2. Requests grant funds in excess of \$25,000,

For purposes of this review, the solid waste management fund cash and investment balance must be documented on the district's State Board of Accounts financial report consistent with report instructions and be expenses related to the powers of the district. (In reference to the December 31, 1997 report, refer to Part 1, column "F", row titled "Solid Waste Management Fund.") To facilitate this process, all districts requesting grants must supply a copy of their latest State Board of Accounts financial report (SWMDAR-1) with their grant application to verify their district solid waste management fund cash and investment balance.

Under the circumstances identified above, the district must provide a statement of why it believes it needs the grant funding. All grant applications from districts must indicate this balance from the most recent budget approved by the State Board of Accounts in order to be considered for funding.

The grants review committee will evaluate the issue and provide a recommendation to IDEM before a decision is made on the grant request. For districts with a balance higher than \$350,000 or a grant request of more than \$25,000, IDEM has developed a series of criteria to evaluate for consideration of grant funding eligibility. This criteria includes consideration of;

1. The cash balance required to maintain sufficient cash flow for district operations,
2. One-time capital purchases impacting the current fiscal period,
3. Cash match required for approved grant funded activities, and
4. Declining district revenue patterns.

IDEM will review each district's eligibility on a case-by-case basis.

IDEM considers a district with an average per capita income in the lower quarter (25%) of SWMDs to be a district that needs financial flexibility. Therefore, for these districts, the jumpstart funding match is reduced to 10 cents to the grant dollar instead of the standard dollar for dollar match. For competitive grants, IDEM will reduce the match to 25 cents to each grant dollar awarded on a case-by-case basis for these districts. IDEM will base the average per capita income on the most current statistics from the State Data Center for evaluation.

Implementation Issues:

IDEM will periodically conduct workshops and training sessions to help applicants and other interested parties better understand the process. In addition, for grant agreements that have not been signed, IDEM will carefully review each application already received before this policy was effective to ensure that the displacement and economic needs issues are fairly considered. Most applicants will need to revise their application and go through the public notice process on the displacement issue. For applicants who have gone through the process but received oral and not written comments, IDEM will develop a case-by-case response.