



SUPPLEMENTAL ENVIRONMENTAL PROJECT GUIDELINES

Introduction

Supplemental Environmental Projects (“SEPs”) are a tool utilized by the Indiana Department of Environmental Management’s (“IDEM”) Office of Enforcement in negotiating settlements of enforcement cases. A SEP is an environmentally-beneficial project that improves, protects, or reduces risks to public health or the environment, which a regulated entity agrees to undertake in further settlement of an enforcement action, but which the regulated entity is not otherwise legally required to perform. In certain cases, and consistent with IDEM’s SEP policy (see, *Supplemental Environmental Project Policy*, Enforcement-08-003-NPD (June 20, 2008)), IDEM agrees to allow a respondent to make a cash payment of an agreed-upon dollar amount (“SEP Funds”) directly to the Indiana Finance Authority (“Authority”) in lieu of an assessed civil penalty for use on a brownfield project in the city, town or county in which the violation underlying the enforcement action occurred¹. Once notified by IDEM’s Office of Enforcement that a respondent has been approved to undertake a brownfield SEP, the Indiana Brownfields Program (“Program”) coordinates with the beneficiary community (“SEP Recipient”) to select a brownfield property at which to utilize the SEP Funds consistent with these guidelines; priority will be given by the Program to sites that are not privately-owned.

As part of IDEM’s underlying enforcement order, the Program establishes a site or community-specific account within the Environmental Remediation Revolving Loan Fund managed by the Authority, into which the respondent’s payment of SEP Funds is deposited. The Authority then executes a financial assistance agreement (“Agreement”) with the SEP Recipient (or another eligible Indiana political subdivision (as defined by Indiana Code (“IC”) 13-11-2-164(c)) on behalf the SEP Recipient) and the consultant(s) it retains to undertake site work, through which the eligible SEP project activities are reimbursed by the Authority from the site or community-specific account following Program approval of project activities and expenditures. Examples of political subdivisions that qualify for financial assistance from the Authority can be found on the Program’s web site at: <http://www.brownfields.in.gov>. Not-for-profit or for-profit corporations may be involved in the assessment, remediation or redevelopment project at the brownfield site at which SEP Funds will be spent, but will not directly receive SEP Funds from the Program as all awards are made only to the political subdivision involved in a project. Any shortfall of funding to complete environmental assessment or remediation or redevelopment efforts on the selected brownfield may be supplemented by other financial assistance awarded by the Program or a site/project-specific determination by the Program under these guidelines to provide funding to supplement the SEP Funds in order to facilitate completion of the work needed to allow site’s beneficial reuse.

¹ More information on the availability and scope of SEPs can be found on IDEM’s web site at: <https://www.in.gov/ifa/brownfields/2366.htm>

Eligibility Criteria

This section contains the criteria that ensure the SEP Recipient (or another eligible Indiana political subdivision accepting SEP Funds on behalf the SEP Recipient) and the site are eligible to receive SEP Funds. The statements listed below must be true with respect to the brownfield site to which the SEP Funds will be dedicated:

- The SEP Recipient did not generate or transport hazardous substances, pollutants, or contaminants at or to the site;
- The SEP Recipient did not own the site or operate any facility at the site at the time of disposal of hazardous substances, pollutants and contaminants at the site;
- All disposal of hazardous substances, pollutants and contaminants at the site occurred before the SEP Recipient acquired the site (if applicable);
- The SEP Recipient has not caused, contributed to, or exacerbated the release of hazardous substances, pollutants or contaminants on or from the site; and,
- No other stakeholder involved at the site (e.g., private property owner, developer) is a financially viable party that is potentially liable to remediate on-site contamination unless such stakeholder demonstrates the applicability of an exemption from liability (e.g., landowner liability protection such as bona fide prospective purchaser (“BFPP”) or involuntary acquisition by a political subdivision) or, at the discretion of the Program, for the purposes of awarding SEP Funds only, a stakeholder satisfies the criteria to qualify as a BFPP but for having purchased the Site that is the subject of the Agreement prior to January 11, 2002, so long as the stakeholder can satisfy all the other BFPP requirements listed below:
 - All disposal of hazardous substances at the site occurred before the stakeholder acquired the site.
 - The owner must not be liable in any way for contamination at the site or affiliated with a responsible party. Affiliations include familial, contractual, or corporate relationships that are the result of a reorganization of a business entity with potential liability.
 - The owner must have made all appropriate inquiries (AAI) in to the prior ownership and uses of the site prior to purchase. AAI, typically satisfied with an ASTM-based Phase I environmental assessment, cannot be more than one year old at time of purchase and must be updated, prior to purchase, if it is more than six months old at time of purchase. Please see EPA’s AAI Final Rule (70 FR 66070) (<http://www.epa.gov/brownfields/regneg.htm>).
 - The owner must take appropriate care (reasonable steps) regarding any hazardous substances found at the site, including preventing future releases and exposures to hazardous substances on the site.
 - The owner must provide all legally required notices and cooperate with authorized response persons in the event of a discovery or release of any hazardous substances at the site.
 - The owner must comply with any land-use restrictions associated with response actions at the site.

In addition to the above, the following must also be true of SEP Recipient and/or the site at which SEP Funds will be dedicated:

1. The property meets the definition of a brownfield.²
2. The SEP Recipient (or entity executing the Agreement on behalf of the SEP Recipient) meets the definition of political subdivision (as defined by IC 13-11-2-164(c)).
3. The site is not subject to an open or pending state or federal enforcement action.
4. The site is not under Resource Conservation and Recovery Act Corrective Action.
5. The site does not present an imminent threat to human health or the environment.
6. If the SEP Recipient intends to use SEP Funds to perform asbestos abatement activities, it has submitted its “IDEM Notification of Demolition and Renovation Operations” (State Form 44593 (R2/8-99) to IDEM’s Office of Air Quality (“OAQ”) for review and has received acknowledgment (notice confirming its receipt) from IDEM OAQ. The “IDEM Notification of Demolition and Renovation Operations” requires a start date be included on the form; this date should be no earlier than three (3) months from the date of notification regarding the availability of SEP Funds in order to allow for the Agreement administrative process to run its course should SEP Funds be awarded.
7. The current owner of the brownfield, if not the SEP Recipient, has provided written consent to the SEP Recipient for site access to perform the activities on which SEP Funds will be spent. Access to the brownfield must be given to the State, any consultant(s), the SEP Recipient, and any of their respective representatives or agents for the duration of the Agreement performance period (two (2) years from the execution date of the Agreement).

Note: For purposes of threshold eligibility review, the Program, if necessary, may seek clarification of SEP Recipient information and/or consider information from other sources, including IDEM, the Authority, or United States Environmental Protection Agency files. In addition, a determination of eligibility to receive SEP Funds from the Authority under these guidelines does not release any party from obligations under any federal or state law or regulation, or under common law, and does not impact or limit state or EPA enforcement authorities against any party.

Stipulations

1. Investment (match requirement): SEP Recipients intending to spend SEP Funds on a privately-owned brownfield site will be required to demonstrate a certain level of investment within a two-year period following the execution of an Agreement. The required investment will be determined based upon an SEP Recipient’s population and Median Household Income (MHI) from the 2000 census data. Please refer to the following chart to determine a SEP Recipient’s required investment:

| | Population < 10,000 | 10,001 to 20,000 | 20,001 + |
|------------------|---------------------|---------------------|----------------------|
| MHI < 30,000 | \$ -0- | \$.25 per \$1 Grant | \$.50 per \$1 Grant |
| 30,000 to 40,000 | \$.25 per \$1 Grant | \$.50 per \$1 Grant | \$.75 per \$1 Grant |
| 40,000+ | \$.50 per \$1 Grant | \$.75 per \$1 Grant | \$1.00 per \$1 Grant |

² A threshold issue evaluated by the Program is whether the property on which SEP Funds are sought to be spent meets the definition of a brownfield, which is a parcel of real estate that is abandoned or inactive; or may not be operated at its appropriate use; and on which expansion or redevelopment is complicated because of the presence or potential presence of a hazardous substance, a contaminant, petroleum, or a petroleum product that poses a risk to human health and the environment. IC 13-11-2-19.3.

In-kind services will be considered “investment” for matching funds only if such services are directly related to the SEP Recipient’s project and/or work performed at the project site. Permanent jobs created at the redeveloped project site will receive a credit of \$1,000 per job created. Temporary jobs (e.g., construction related) may not be counted. While not limited to the following, other potential investment can include costs associated with remediation, demolition, infrastructure, and construction. SEP Recipients have two years from the date of execution of their Agreement to demonstrate the required investment. SEP Funds not matched within the two-year period following execution of the Agreement with the Program will become a loan required to be repaid over a five year term. Requests for an extension of the investment deadline and an alternative investment credit (e.g., investment in adjacent properties) must be made in writing to the Program and will be evaluated on a case-by-case basis. The Program reserves the right to determine if the activities the SEP Recipient applies to this investment stipulation satisfy the requirement. A fact sheet on the investment requirement is available at <http://www.brownfields.in.gov>.

2. Competitive Bidding: SEP Recipients must demonstrate services to be reimbursed with SEP Funds have been/will be competitively bid. Professional services need to be procured in compliance with IC 5-16-11.1, and activities other than professional services are required to be procured in compliance with IC 36-1-12. Program Project Managers may assist in developing bid specifications for work to be performed with SEP Funds. By signing a Disbursement Request Form when seeking reimbursement from the Authority, the SEP Recipient will be affirming that the invoiced services submitted for payment were bid pursuant to Indiana law.

Eligible Uses of SEP Funds; Disbursement Procedures

SEP Funds can be used for costs associated with eligible and approved assessment, cleanup and redevelopment activities (“Project Activities”). Costs eligible for SEP Funds include:

- Inventory survey of brownfield sites
- Phase I Environmental Site Assessments (ASTM E1527-05)
- Phase II Environmental Site Assessments and related activities
- Asbestos surveys
- Lead-based paint surveys
- Remediation Work Plan development
- Soil, sediment and/or groundwater remediation activities
- Asbestos abatement
- Demolition of existing site structures
- Construction of a cap such as a parking lot or biking trail
- Supply a water purification system for a home with a contaminated drinking water well
- Supply a vapor mitigation system to address contaminated indoor air

Project Activities must be conducted consistent with IDEM’s Risk Integrated System of Closure (“RISC”) guidelines and local, state and federal regulations as applicable and in effect at the time the Program approves the proposed Project Activities. RISC is a set of health-based standards used to evaluate cleanup options and contaminants based on detailed site data and proposed site end use to determine the

appropriate cleanup option and contaminant reduction level necessary. All activities conducted with SEP Funds must receive Program approval *prior* to implementation.

Disbursements of SEP Funds will be made by the Program to the political subdivision for payment to the consultant(s) after the Program receives and approves invoices for work performed consistent with Program-approved Project Activities. Alternately, a SEP Recipient may request that the Program disburse payments directly to its consultant(s). Specific information about eligible uses of SEP Funds, ineligible activities and expenses, and disbursements is available in the *Financial Assistance Disbursement Guidelines- State Funding* and can be found at <http://www.brownfields.in.gov>.

Ineligible Uses of SEP Funds

SEP Funds cannot be used for any activities conducted *prior* to execution of an Agreement without prior approval by the Program. In addition, costs incurred due to specific requirements of the IDEM Voluntary Remediation Program (i.e., consultant oversight fees, application fees, etc.) or pursuit of historic insurance coverage will not be covered by SEP Funds.

Further Information

We welcome comments on brownfield SEPs at any time. Questions regarding these guidelines can be directed to the Indiana Brownfields Program's Senior Environmental Manager at (317) 234-0968. These guidelines may be modified at any time by the Authority Board to address issues to promote the effective and efficient administration of the Indiana Brownfields Program.