

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
NONRULE POLICY DOCUMENT

Title: Compliance and Technical Assistance Program Quality Assurance Guarantee

Identification Number: Water-007-NPD

Date Originally Effective: February 19, 2006

Dates Revised: None

Other Policies Repealed or Amended: None

Brief Description of Subject Matter:

To provide a quality assurance guarantee to an individual, municipality, business or other entity ("Regulated Entities") that has received confidential compliance assistance from the Compliance and Technical Assistance Program ("CTAP") of the Office of Pollution Prevention and Technical Assistance ("OPPTA") and upon which such Regulated Entity may have relied to its detriment.

Citations Affected: IC 13-28, 13-30-6

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. This nonrule policy document may be put into effect by IDEM 30 days after presentation to the appropriate board. Pursuant to IC 13-14-1-11.5, this policy will be available for public inspection for at least 45 days prior to presentation to the appropriate board. If the nonrule policy is presented to more than one board, it will be effective 30 days after presentation to the last. IDEM will submit the policy to the Indiana Register for publication. Revisions to the policy will follow the same procedure of presentation to the board and publication.

1. **PURPOSE:** To provide a quality assurance guarantee to an individual, municipality, business or other entity ("Regulated Entities") that has received confidential compliance assistance from the Compliance and Technical Assistance Program ("CTAP") of the Office of Pollution Prevention and Technical Assistance ("OPPTA") and upon which such Regulated Entity may have relied to its detriment.
  
2. **POLICY STATEMENT:** This policy applies in instances where CTAP assistance may have either directly or indirectly lead The Office of Compliance and Enforcement ("OCE") to allege non-compliance by the Regulated Entity. In such instance, the Indiana Department of Environmental Management ("IDEM") shall not issue either a Violation Letter or a Notice of Violation assessing a gravity-based penalty against a Regulated Entity upon learning that a Regulated Entity sought out, received, and relied upon written confidential compliance assistance provided by CTAP prior to the alleged violation.

3. **RESPONSIBILITIES:** When requested by a regulated entity, it is the responsibility of OCE, the Office of Air Quality (“OAQ”), the Office of Land Quality (“OLQ”), and the Office of Water Quality (“OWQ”) Compliance Branches to forward to CTAP written waivers of confidentiality regarding enforcement actions within ten (10) business days of receipt of such request. The request may be made at the time of an inspection or thereafter and be made by any written means (e.g. email, letter, facsimile). Upon receipt of a written waiver of confidentiality, CTAP will then provide documentation of its actions and will coordinate with OCE, OAQ, OLQ, and OWQ Compliance Branches to review and make an appropriate determination. It is the responsibility of CTAP to document the Regulated Entity’s detailed requests for compliance and technical assistance and to enter this information into the CTAP database. It is the responsibility of the Regulated Entity to provide relevant compliance-related information in sufficient detail to CTAP. CTAP staff must ensure the CTAP database entry includes all relevant and appropriate information as supplied by the Regulated Entity. The database entry must also include a summary of the compliance assistance given, including information obtained from program areas, interpretation and documentation of all responses and program area contacts. Upon receipt of the regulated entity’s written waiver of confidentiality, CTAP will provide OCE with the date of service, requested information, and response to the questions or issues. CTAP will also provide a means for the Regulated Entity to review the summary of information supplied to CTAP by the Regulated Entity and confidential compliance assistance given based on that information. This written summary will be generated by CTAP’s database.
  
4. **PROCEDURES:** If and when a Regulated Entity claims that it has received and relied upon confidential compliance assistance provided by CTAP and that such reliance has either directly or indirectly lead to an allegation of non-compliance by OCE, OAQ, OLQ or OWQ, a written request for waiver of confidentiality shall be sought from the Regulated Entity. If the Regulated Entity declines to waive confidentiality, then OCE, OAQ, OLQ or OWQ shall proceed with a relevant and appropriate compliance/enforcement response. If the regulated entity consents in writing to waiving confidentiality, then the confidential compliance assistance documentation maintained by CTAP shall be examined within five (5) business days after its receipt by appropriate representatives of OCE, OAQ, OLQ, OWQ and OPPTA to determine if the confidential compliance assistance provided by CTAP, and relied upon by the Regulated Entity, has either directly or indirectly lead to an allegation by OCE, OAQ, OLQ or OWQ of non-compliance against a Regulated Entity.

If the appropriate representatives of OCE, OAQ, OLQ, OWQ and CTAP agree that the confidential compliance assistance provided by CTAP and relied upon by the Regulated Entity has either directly or indirectly lead to an allegation

of non-compliance, then OCE shall not proceed with assessing a gravity-based civil penalty against the Regulated Entity. However, OCE may elect to assess a civil penalty solely based on economic benefit of non-compliance, consistent with IDEM's Civil Penalty Policy.

If it is determined that the confidential compliance assistance provided by CTAP to a Regulated Entity has not directly or indirectly lead to an allegation of non-compliance against a Regulated Entity, then a relevant and appropriate compliance/enforcement response shall be provided by OCE. In the event that consensus on this determination is not achieved by the appropriate representatives of OCE, OAQ, OLQ, OWQ and CTAP, then the matter shall be resolved by the Assistant Commissioners of OCE and OPPTA.

In effectuating this policy, it may be necessary for a Regulated Entity and IDEM to enter into an Agreed Order specifying certain corrective measures needed to be performed by the Regulated Entity in order to return to compliance with Indiana law.

5. **DISCLAIMER:** Should a Regulated Entity intentionally, knowingly, or recklessly either (1) provide erroneous information to CTAP during its confidential compliance assistance efforts; or (2) prior to seeking confidential compliance assistance from CTAP, violate a rule or statute under I.C. § 13-30-6 directly or indirectly connected to the same issue for which the Regulated Entity subsequently sought confidential compliance assistance from CTAP, then this Policy shall not apply and OCE shall initiate an appropriate compliance/enforcement response.

**Related Compliance Policies:**

1. CTAP Confidentiality Policy ([www.in.gov/idem/ctap/guidance.pdf](http://www.in.gov/idem/ctap/guidance.pdf))
2. IDEM's Civil Penalty Policy ([www.in.gov/idem/enforcement/oe/policy/nrp/civil.html](http://www.in.gov/idem/enforcement/oe/policy/nrp/civil.html))
3. IDEM's Self-Disclosure and Environmental Audit Policy ([www.in.gov/idem/enforcement/oe/policy/nrp/self.html](http://www.in.gov/idem/enforcement/oe/policy/nrp/self.html))