

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT	STATUS: Effective	POLICY NUMBER: MP-004-R2-NPD	
AGENCY NONRULE POLICY DOCUMENT SUBJECT: Self-Disclosure and Environmental Audit	AUTHORIZED: Thomas W. Easterly, Commissioner		
	SUPERSEDES: A-002-OE-06-P-R1, November 16, 2006	ISSUING OFFICE(S): Office of Air Quality, Office of Land Quality, Office of Water Quality	
	ORIGINALLY EFFECTIVE: April 5, 1999	RENEWED/REVISED: February 5, 2010	

Disclaimer: This Nonrule Policy Document (NPD) is being established by the Indiana Department of Environmental Management (IDEM) consistent with its authority under IC 13-14-1-11.5. It is intended solely as guidance and shall be used in conjunction with applicable rules and laws. It does not replace applicable rules and laws, and if it conflicts with these rule or laws, the rules or laws shall control. Pursuant to IC 13-14-1-11.5, this policy will be available for public inspection for at least forty-five (45) days prior to presentation to the appropriate State Environmental Board, and may be put into effect by IDEM thirty (30) days afterward. If the nonrule policy is presented to more than one board, it will be effective thirty (30) days after presentation to the last. IDEM also will submit the policy to the Indiana Register for publication.

1.0 PURPOSE

The purpose of this policy is to enhance protection of human health and the environment by encouraging regulated entities, including small regulated entities, to voluntarily discover, disclose, correct and prevent violations of Indiana’s Environmental Requirements.

2.0 SCOPE

This policy applies to the assessment of gravity-based civil penalties for any violation of Indiana’s Environmental Requirements that IDEM administers and supersedes any inconsistent provisions contained in any other IDEM policy.

To the extent that other existing IDEM policies are not inconsistent with this policy, such policies shall continue to apply in conjunction with this policy. However, this policy shall not apply to violations which have received civil penalty mitigation under other IDEM policies.

This policy sets forth factors for IDEM consideration that shall guide IDEM in the exercise of its compliance and enforcement discretion. This policy is not a final Agency action and is intended only as guidance. It does not create any rights, duties, obligations or defenses, implied or otherwise, in any third parties.

This policy shall be used by IDEM, at its discretion and whenever applicable, in settlement negotiations to resolve administrative enforcement actions instituted prior to, but not yet resolved, as of the effective date of this policy. This policy is not intended for use in pleading, at hearing or at trial.

3.0 SUMMARY

3.1. This policy:

- A. States the parameters wherein IDEM shall exercise its enforcement discretion to either eliminate or reduce assessed gravity-based civil penalties through environmental auditing and self-disclosure; and
- B. Delineates the circumstances under which IDEM will not recommend for prosecution regulated entities that meet the terms of this policy.

- 3.2. A regulated entity shall receive a complete (100%) reduction of any assessed gravity-based civil penalty under this policy as long as the regulated entity meets each of the nine (9) conditions discussed within Section 6.0 of this policy, including:
 - A. Systematic discovery of the violation;
 - B. Discovery of the violation is voluntary;
 - C. Disclosure of the violation to IDEM is voluntary, thorough and timely;
 - D. Discovery and disclosure of the violation is independent of discovery by the government or a third party;
 - E. Disclosed violation is corrected promptly;
 - F. Regulated entity commits to preventing the recurrence of the same violation;
 - G. Disclosed violation is not a repeat violation by the regulated entity;
 - H. Disclosed violation is not one which, among other things, presents an imminent and substantial threat to human health or the environment; and
 - I. Regulated entity agrees to cooperate with IDEM.
- 3.3. To further encourage regulated entities to make good-faith self-disclosures, IDEM will review good-faith self-disclosures that do not meet one or more of the first four conditions listed above, and are not eligible for relief under this policy for mitigation under the Agency Civil Penalty Nonrule Policy, April 5, 1999. Such mitigation may include reductions of any assessed gravity-based civil penalty by up to 50%. Submitting information required to be supplied to IDEM (data or a subset of data in a quarterly report for example) earlier than required is not a good-faith self-disclosure.
- 3.4. This policy shall be implemented in accordance with IC 13-28-4.

4.0 DEFINITIONS

- 4.1. "Civil penalty" - A punitive mechanism for the purpose of deterring future violations that is calculated by:
 - A. Determining the severity and duration of the violation; and
 - B. Considering the economic benefit of non-compliance.
- 4.2. "Compliance Management System" - A regulated entity's systematic efforts, appropriate to the size and nature of its operation(s), to prevent, detect and correct violations through all of the following:
 - A. Compliance policies, standards and procedures that identify how employees and agents are to meet the requirements of laws, regulations, permits and other sources of authority for environmental requirements.
 - B. Assignment of overall responsibility for overseeing compliance with policies, standards, and procedures, and assignment of specific responsibility for assuring compliance at each facility or operation.
 - C. Mechanisms for systematically assuring that compliance policies, standards and procedures are being carried out, including monitoring and auditing systems reasonably designed to detect and correct violations, periodic evaluation of the overall performance of the compliance management system, and a means for employees or agents to report violations of environmental requirements without fear of retaliation.
 - D. Efforts to communicate effectively the entity's standards and procedures to all employees and other agents whose duties involve environmental management.
 - E. Appropriate incentives to managers and employees to perform in accordance with the compliance policies, standards and procedures, including consistent enforcement through appropriate disciplinary mechanisms.
 - F. Procedures for the prompt and appropriate disclosure and correction of any violations, and for any necessary modifications to the entity's program to prevent future violations.
- 4.3. "Environmental audit" - A voluntary, internal and comprehensive evaluation of either:
 - A. A facility or an activity at a facility subject to Indiana's Environmental Requirements; or
 - B. Management systems related to a facility or an activity designed to identify and prevent noncompliance, and improve compliance with laws, and that is conducted by an owner or operator of a facility, or is an activity by either an employee or independent contractor of the owner or operator.

- 4.4. "Environmental audit report" - A set of documents prepared as a result of an environmental audit that includes those items delineated under IC 13-11-2-69.
- 4.5. "Facility" - All contiguous land, structures and other appurtenances and improvements on the land owned by or under the common control of the same regulated entity.
- 4.6. "Gravity-based civil penalty" - The punitive portion of a civil penalty calculated by determining the extent of deviation from Indiana's Environmental Requirements and the potential for harm to human health and the environment or the regulatory program.
- 4.7. "Indiana Environmental Requirements" - Includes, but is not limited to, any:
 - A. Requirement prescribed by Title 13 of the Indiana Code;
 - B. Rule adopted by the Air Pollution Control Board, Financial Assurance Board, Solid Waste Management Board, and/or the Water Pollution Control Board;
 - C. Term or condition within a permit, license, registration or certification; or
 - D. Requirement contained within a judicial order or final administrative order.
- 4.8. "New owner" - A regulated entity has a new owner if:
 - A. Prior to the transaction, the new owner was not responsible for the environmental compliance at the facility which is the subject of the disclosure, did not cause the violations being disclosed and could not have prevented their occurrence;
 - B. The violation which is the subject of the disclosure originated with the prior owner;
 - C. Prior to the transaction, neither the buyer nor the seller had the largest ownership share of the other entity, and they did not have a common corporate parent; and
 - D. The date of the transaction closing occurred within nine months prior to the disclosure.
- 4.9. "Regulated entity" - An individual, partnership, co-partnership, firm, company, corporation, limited liability company, association, unincorporated association, joint stock company, trust, estate, municipal corporation, city, school city, town, school town, school district, school corporation, county, consolidated unit of government, political subdivision, State or local agency, contractor, consortium, joint venture, commercial entity, Federal, State or local government, or other legal entity (either public or private) and any legal successor, representative, agent or agency of that individual, corporation, business enterprise or legal entity.
- 4.10. "Small regulated entity" - Either:
 - A. A regulated entity employing one-hundred (100) or fewer individuals across all facilities and operations owned by that regulated entity;
 - B. A town as defined by IC 36-1-2-21;
 - C. A township as defined by IC 36-1-2-22; or
 - D. A municipal corporation as defined by IC 36-1-2-10.

5.0 ROLES

- 5.1. The Assistant Commissioner shall:
 - A. Be familiar with the Self-Disclosure and Environmental Audit Nonrule Policy and other IDEM non-rule policies.
 - B. Make decisions as to policy applicability.
- 5.2. The branch chief shall:
 - A. Be familiar with the Self-Disclosure and Environmental Audit Nonrule Policy and other IDEM non-rule policies.
 - B. Make recommendations as to policy applicability.
- 5.3. The section chief shall:
 - A. Be familiar with the Self-Disclosure and Environmental Audit Nonrule Policy and other IDEM non-rule policies.
 - B. Make recommendations as to policy applicability.
- 5.4. The case manager or compliance/enforcement manager shall:
 - A. Be familiar with the Self-Disclosure and Environmental Audit Nonrule Policy and other IDEM non-rule policies.

- B. Implement policy decisions in any associated enforcement actions.
- 5.5. The self-disclosure and environmental audit administrator shall:
- A. Be familiar with the Self-Disclosure and Environmental Audit Nonrule Policy and other IDEM non-rule policies.
 - B. Make recommendations as to policy applicability.

6.0 POLICY

- 6.1. Description of incentives provided to regulated entities:
- A. Reduction of gravity-based civil penalties by 75%:
 - 1. IDEM shall reduce by 75% the gravity-based civil penalties assessed against regulated entities for violations of Indiana's Environmental Requirements as long as the regulated entity satisfies all of the conditions of Sections 6.2.A.2 through 6.2.A.9 of this policy.
 - B. Reduction of gravity-based civil penalties by 100%:
 - 1. Where the regulated entity establishes that it satisfies each of the conditions of Section 6.2.A.1 through 6.2.A.9 of this policy, IDEM shall not assess gravity-based civil penalties for violations of Indiana's Environmental Requirements.
 - C. No recommendation for criminal prosecution:
 - 1. IDEM does not focus its criminal investigative resources on regulated entities that voluntarily discover, promptly disclose and expeditiously correct violations, unless potentially culpable behavior that merits criminal investigation exists. IDEM generally will not recommend to an Indiana Prosecuting Attorney or other prosecuting authority, prosecution of the regulated entity when a self-disclosure that meets the terms and conditions of this policy results in a criminal investigation by IDEM.
 - 2. However, IDEM may determine that the conditions of Sections 6.2.A.2 through 6.2.A.9 are satisfied but recommend prosecution of a regulated entity where there exists:
 - a. A prevalent management philosophy or practice by the regulated entity that concealed or condoned violations of Indiana's Environmental Requirements; or
 - b. High-level officials' or managers' conscious involvement in, or willful blindness to the violation of Indiana's Environmental Requirements.
 - 3. Regardless of whether IDEM refers the regulated entity for criminal prosecution under this section, IDEM reserves the right to recommend prosecution for the criminal acts of either:
 - a. Individual officials, managers or employees of a regulated entity; or
 - b. Other individuals under existing IDEM policies guiding the exercise of enforcement discretion.
 - D. No routine requests for environmental audits
 - 1. IDEM shall not routinely request an environmental audit report to be disclosed under this policy to initiate an administrative, civil or criminal investigation of the self-disclosing regulated entity. For example, IDEM shall not request an environmental audit report during routine compliance inspections. If IDEM has independent reason to believe that a violation of Indiana's Environmental Requirements has occurred, however, IDEM may seek information relevant to identifying such violation(s) or determining liability or extent of harm. Pursuant to IC 13-28-4-7, a regulated entity disclosing an environmental audit report to IDEM waives any privileges to which it would otherwise be entitled under IC13-28-4.
- 6.2. Conditions for regulated entities to receive incentives:
- A. For a regulated entity to receive a 100% reduction of the gravity-based civil penalty, it shall meet each of the nine (9) conditions of Section 6.2. A regulated entity solely meeting the conditions within Sections 6.2.A.2 through 6.2.A.9 shall receive a 75% reduction in the gravity-based civil penalty. Good-faith self-disclosures which do not meet one or more of conditions 6.2.A.1 through 6.2.A.4 and are not eligible for penalty reductions under this policy will be reviewed for mitigation under the Agency Civil Penalty Nonrule Policy, April 5, 1999 of up to 50% of the assessed gravity-based civil penalty.

1. Systematic discovery:
 - a. The violation was discovered by a regulated entity through either:
 - (1) An environmental audit; or
 - (2) An objective, documented, systematic procedure or practice reflecting the regulated entity's due diligence in preventing, detecting and correcting violations. The regulated entity shall provide complete and accurate documentation to IDEM as to how it implements its Compliance Management System. IDEM may require, as a condition of penalty of mitigation, that a description of the regulated entity's due diligence efforts be made publicly available; or
 - (3) Details regarding its receipt of compliance assistance from a government or government-supported program, including IDEM's Compliance and Technical Assistance Program ((800) 988-7901).
2. Voluntary discovery:
 - a. The violation was identified voluntarily by the regulated entity, and not through a legally-mandated monitoring or sampling requirement prescribed by an Indiana Environmental Requirement. For example, the policy does not apply to:
 - (1) Emissions violations detected through a continuous emissions monitor (or alternative monitor established by permit) where any such emissions monitoring is required;
 - (2) Violations required to be detected by the regulated entity in accordance with either a Part 70 Permit issued pursuant to 326 IAC 2-7 or a Federally Enforceable State Operating Permit (FESOP) issued pursuant to 326 IAC 2-8;
 - (3) Violations of discharge limits detected through required sampling or monitoring in accordance with a National Pollutant Discharge Elimination System (NPDES) permit or equivalent; or
 - (4) Violations discovered through an environmental audit required to be performed as a Supplemental Environmental Project by the terms of an administrative or civil order.
 - b. For a regulated entity with a new owner, self-disclosures that satisfy the remaining requirements of this policy may be considered voluntary for the purposes of this policy when they are made prior to the first required instance of monitoring, sampling, auditing, or reporting that should have identified the disclosed violations.
3. Prompt disclosure:
 - a. The regulated entity fully discloses in writing to IDEM the specific violation(s) within forty-five (45) days (or such shorter period provided by law) after it has discovered the violation has occurred or may likely have occurred.
4. Discovery and disclosure independent of government or third-party plaintiff:
 - a. The violation must also be identified and disclosed by the regulated entity prior to:
 - (1) The commencement of a Federal or State agency inspection or investigation, or the issuance by such agency of an information request to the regulated entity seeking information pertaining directly to the violation(s) self-disclosed by the regulated entity;
 - (2) Notice of a citizen suit;
 - (3) The filing of a complaint in a court of law by a third-party;
 - (4) The reporting of the violation to IDEM or other agency by a "whistle-blower" employee, or non-employee, rather than by one authorized to speak on behalf of the regulated entity; or
 - (5) Imminent discovery of the violation by a Federal or State agency.
 - b. For a regulated entity that owns or operates multiple facilities within Indiana, the fact that one facility is already the subject of an investigation, inspection, information requests or third-party complaint does not preclude IDEM from exercising its enforcement discretion to allow the self-disclosure of violations discovered at other facilities owned or operated by the same regulated entity.

5. Correction and remediation:
 - a. Regulated entities - The regulated entity shall:
 - (1) Correct the violation within sixty (60) days after the date that the regulated entity notifies IDEM of the violation;
 - (2) Certify in writing to IDEM that the violations have been corrected; and
 - (3) Take appropriate measures, as determined by IDEM, to remedy any harm to human health or the environment due to the violation.
 - If more than (60) days will be needed to correct the violation, the regulated entity shall request an extension of time to correct the violation in writing from IDEM not later than fifty (50) days after the date that it notified IDEM of the violation, specifying the additional time required and including a detailed explanation as to why the additional time is necessary.
 - If IDEM fails to respond in writing within ten (10) days of receiving the request, the additional time requested up to a maximum of thirty (30) days will be deemed granted. Approval of any extension exceeding thirty (30) days must be in writing and received by the regulated entity no later than thirty (30) days from IDEM's receipt of the extension request.
 - IDEM may require that to satisfy Sections 6.2.A.5. and 6.2.A.6. and, as necessary and appropriate, the obligation to pay a civil penalty, a regulated entity enter into an administrative order, particularly where:
 - (1) Compliance or remedial measures are complex; or
 - (2) A lengthy schedule for attaining and maintaining compliance or performing remediation is required.
 - b. Small regulated entities - Small regulated entities shall remedy a violation within the shortest practicable period of time, not to exceed ninety (90) days following detection of the violation. However, a small regulated entity may take an additional period of (90) days (i.e., up to a total period of one-hundred-eighty (180) days) only if necessary to allow a small regulated entity to correct the violation by implementing pollution prevention measures.
 - If more than ninety (90) days will be needed to correct the violation, the small regulated entity shall request an extension of time to correct the violation in writing from IDEM not later than eighty (80) days after the date that it notified IDEM of the violation, specifying the additional time required and including a detailed explanation as to why the additional time is necessary.
 - If IDEM fails to respond in writing within ten (10) days of receiving the request, the additional time requested up to a maximum of thirty (30) days (or ninety (90) days when correcting the violation by implementing pollution prevention measures) will be deemed granted. Approval of any extension exceeding thirty (30) days (or ninety (90) days when correcting the violation by implementing pollution prevention measures) must be in writing and received by the small regulated entity no later than thirty (30) days from IDEM's receipt of the extension request.
 - IDEM may require that to satisfy Sections 6.2.A.5 and 6.2.A.6 and, as necessary and appropriate, the obligation to pay a civil penalty, a small regulated entity enter into an administrative order, particularly where:
 - (1) Compliance or remedial measures are complex; or
 - (2) A lengthy schedule for attaining and maintaining compliance or performing remediation is required.
6. Prevent recurrence:
 - a. The regulated entity shall agree in writing to take steps to prevent a recurrence of the violation, which may include improvements to either:
 - (1) Its environmental auditing procedures; or
 - (2) Compliance Management System.

7. No repeat violations:
 - a. The specific violation (or closely-related violation):
 - (1) Has not occurred previously within the past three (3) years at the same facility under the same ownership, or
 - (2) Is not part of a series or pattern of violations by the facility's parent organization (if any) at other facilities, which have occurred within the past three (3) years.
 8. Other violations excluded:
 - a. The violations may not be one which:
 - (1) Results in serious environmental harm or risk to human health;
 - (2) Presents an imminent and substantial endangerment to human health or the environment;
 - (3) Presents a significant threat to human health or the environment;
 - (4) Is knowing, intentional or reckless that may constitute criminal conduct;
 - (5) Was not inadvertent; or
 - (6) Violates the specific terms of any judicial or administrative order.
 9. Cooperation:
 - a. The regulated entity shall cooperate and provide such information as is necessary and requested by IDEM to determine applicability of this policy. Cooperation includes, at a minimum, providing all requested documents and access to employees and assistance in investigating:
 - (1) The violation;
 - (2) Any non-compliance problems related to the self-disclosure; and
 - (3) Any environmental consequences related to the violations.
- 6.3. Economic benefit of non-compliance:
- A. IDEM shall retain its full discretion to recover any economic benefit gained as a result of non-compliance to preserve a "level playing field" in which regulated entities that violate do not gain a competitive advantage over regulated entities that do comply. IDEM may forgive the total civil penalty for violations when:
 1. The self-disclosed violations meet the conditions of Sections 6.2.1 through 6.2.9; and
 2. The violations do not merit a civil penalty due to the insignificant amount of calculated economic benefit of non-compliance.
- 6.4. Effect on Federal laws, regulations or policies, and local ordinances or policies
- A. IDEM shall work closely with USEPA to encourage their support of this policy. IDEM remains firmly opposed to blanket immunities for violations that:
 1. Reflect criminal conduct;
 2. Present serious threats or actual harm to health and the environment;
 3. Allow non-complying companies to gain an economic advantage over their competitors; or
 4. Reflect a repeated failure to comply with Indiana's Environmental Requirements.
 - B. IDEM will work with USEPA to address any provisions of this policy that are inconsistent with USEPA's Self-Disclosure and Environmental Audit Policy, and which may prevent a timely and appropriate response to significant environmental violations.
 - C. IDEM reserves its right to take necessary actions to protect public health or the environment by enforcing against any violations of Indiana's Environmental Requirements. This policy shall not prevent IDEM from pursuing enforcement actions specifically required by USEPA to receive and maintain program delegation or primacy. This policy in no way limits or precludes USEPA or other governmental agencies from exercising their authority.
- 6.5. Administration of IDEM's Environmental Audit and Self-Disclosure Policy:
- A. For the purposes of this policy, environmental audit reports shall be marked appropriately and submitted to the following address:

Self-Disclosure and Environmental Audit Administrator
Indiana Department of Environmental Management
100 North Senate Avenue
MC 60-01
Indianapolis, IN 46204-2251

- B. Questions about this policy can be directed to one of the compliance and/or enforcement section chiefs at (800) 451-6027 or the self-disclosure and environmental audit administrator at (317) 232-8753.
- 6.6. Public accountability:
- A. Within three (3) years of the effective date of this policy, IDEM shall review the effectiveness of the policy in encouraging:
 - 1. Changes in compliance behavior within the regulated community, including improved compliance rates;
 - 2. Prompt disclosure and correction of violations, including timely and accurate compliance with reporting requirements;
 - 3. Corporate compliance programs that are successful in preventing violations, improving environmental performance, and promoting public disclosure; and (
 - 4. Consistency among state programs that provide incentives for voluntary compliance.
 - B. IDEM will make publicly available the terms and conditions of any compliance agreement reached under this policy, including the nature of the violation, the remedy and the compliance schedule.

7.0 REFERENCES

- 7.1. Indiana Code:
- A. 13-11-1, Definitions; General Provisions
 - B. 13-11-2-69, Definitions; Environmental Audit Report
 - C. 13-28-4-7, Voluntary Environmental Audits; Waiver of Privilege
 - D. 13-30-3, Investigations of Violations; Administrative Proceedings and Orders
 - E. 13-30-4, Civil Penalties
 - F. 13-30-7, Minor Violations by Certain Businesses
 - G. 36-1-2, Definitions of General Applicability
- 7.2. Agency Nonrule Policies:
- A. Civil Penalty, April 5, 1999,
 - B. Supplemental Environmental Projects, June 20, 2008

8.0 SIGNATURES



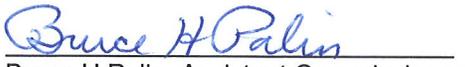
Thomas W. Easterly, Commissioner
Indiana Department of Environmental Management

February 4, 2010
Date



Acting Assistant Commissioner
Office of Air Quality

February 4, 2010
Date



Bruce H. Palin, Assistant Commissioner
Office of Land Quality

1/29/10
Date



Bruno Piggott, Assistant Commissioner
Office of Water Quality

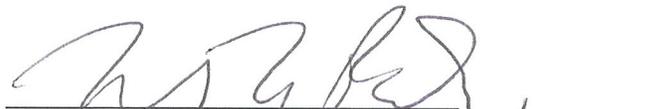
1/21/10
Date



David R. Joest, Assistant Commissioner
Office of Legal Counsel and Criminal Investigations

01/29/10
Date

This policy is consistent with Agency requirements.



Quality Assurance Program, Planning and Assessment
Indiana Department of Environmental Management

1/20/10
Date