DEPARTMENT OF ENVIRONMENTAL MANAGEMENT AGENCY POLICY	COVERAGE: Office of Compliance & Enforcement	POLICY NUMBER:
	AUTHORIZED: Thomas W. Easterly, Commissioner	
SUBJECT: **Self-Disclosure & Environmental Audit Policy**	SUPERSEDES: Enforcement-99-0005-NPD: April 5, 1999	OFFICE: Office of Compliance & Enforcement
	EFFECTIVE:	RENEWED/REVISED: November 16, 2006

This non-rule policy document is intended solely as guidance and does not have the effect of law or represent formal IDEM decisions or final actions. This non-rule 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. IDEM will submit this non-rule policy document to the Indiana Register for publication. Pursuant to Ind. Code § 13-14-1-11.5, this non-rule policy document will be available for public inspection for at least forty-five (45) days prior to presentation to the appropriate board. This non-rule policy document may be put into effect by IDEM thirty (30) days after presentation to the appropriate board. If this non-rule policy document is presented to more than one board, it will be effective thirty (30) days after its presentation to the last board. Revisions to this non-rule policy document will follow the same procedure of presentation to the board and publication.

1.0 PURPOSE

The purpose of the Indiana Department of Environmental Management's ("IDEM") *Self-Disclosure & Environmental Audit Policy* ("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 compliance and enforcement policy.

To the extent that other existing IDEM compliance and enforcement 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 compliance and enforcement 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

This Policy (1) 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 (2) delineates the circumstances under which IDEM will not recommend for prosecution Regulated Entities that meet the terms of this Policy.

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 the Policy, including: (1) systematic discovery of the Violation; (2) discovery of the Violation is voluntary; (3) disclosure of the Violation to IDEM is voluntary; (4) discovery and disclosure of the Violation is independent of discovery by the government or a third party; (5) disclosed Violation is corrected promptly; (6) Regulated Entity commits to preventing the recurrence of the same Violation; (7) disclosed Violations are not repeat Violations by the Regulated Entity; (8) disclosed Violation is not one which, among other things, presents an imminent and substantial threat to human health or the environment; and (9) Regulated Entity agrees to cooperate with IDEM.

This Policy shall be implemented in accordance with the *Self-Disclosure and Environmental Audit Policy Standard Operating Procedure.*

4.0 DEFINITIONS

4.1 "Civil Penalty" - A punitive mechanism for the purpose of deterring future violations that is calculated by (1) determining the severity and duration of the Violation; and (2) considering the economic benefit of noncompliance.

4.2 "Compliance Management System" - Encompasses 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:

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;

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;

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;

Efforts to communicate effectively the entity's standards and procedures to all employees and other agents whose duties involve environmental management;

Appropriate incentives to managers and employees to perform in accordance with the compliance policies, standards and procedures, including consistent enforcement through appropriate disciplinary mechanisms; and

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 (1) a Facility or an activity at a Facility subject to Indiana's Environmental Requirements; or (2) management systems related to a Facility or an activity, each designed to identify and prevent noncompliance with laws 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 and includes those items delineated under Ind. Code § 13-11-2-69.

4.5 "Facility" – Is all contiguous land, and 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 (1) requirement prescribed by Title 13 of the Indiana Code; (2) rule adopted by the Air Pollution Control Board, Water Pollution Control Board, Solid Waste Management Board, and/or the Financial Assurance Board; (3) term or condition within a permit, license, registration, or certification; or (4) requirement contained within a judicial order or final administrative order.

4.8 "Regulated Entity" – An individual, partnership, copartnership, 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.

4.9 "Small Regulated Entity" – Either (1) a Regulated Entity employing 100 or fewer individuals across all facilities and operations owned by that Regulated Entity; (2) a town as defined by Ind. Code § 36-1-2-21; (3) township as defined by Ind. Code § 36-1-2-22; or (4) a municipal corporation as defined by Ind. Code § 36-1-2-10.

5.0 "Violation" – Any potential or actual non-compliance with Indiana's Environmental Requirements.

5.0 ROLES

Title	# of Staff	Experience, Qualifications, and Training	Location
Assistant Commissioner	**1**	**Familiarity with Voluntary Disclosure/Self-Reporting of Noncompliance Policy and other IDEM non-rule policies Makes ultimate decision as to applicability of Policy.**	**Commissioner's Office**
Section Chief	**4**	**Familiarity with Voluntary Disclosure/Self-Reporting of Noncompliance Policy and other IDEM non-rule policies. Makes decisions as to applicability of Policy.**	**Office of Compliance & Enforcement**
Case Manager	**> 30**	**Familiarity with Voluntary Disclosure/Self-Reporting of Noncompliance Policy and other IDEM non-rule policies Manages self-disclosure process.**	**Office of Compliance & Enforcement**
Administrative Assistant	**3**	**Familiarity with Voluntary Disclosure/Self-Reporting of Noncompliance Policy and other IDEM non-rule policies**	**Office of Compliance & Enforcement**

6.0 POLICY

6.1 Description of Incentives Provided to Regulated Entities

6.1.1 Reduction of Gravity-Based Civil Penalties by 75%

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 6.2.2 through 6.2.9 of this policy.

6.1.2 Reduction of Gravity-Based Civil Penalties by 100%

Where the Regulated Entity establishes that it satisfies each of the conditions of Section 6.2 of this policy, IDEM shall not assess gravity-based civil penalties for Violations of Indiana's Environmental Requirements.

6.1.3 No Recommendation for Criminal Prosecution

IDEM does not focus its criminal investigative resources on Regulated Entities that voluntarily discover, promptly disclose and expeditiously correct Violations, unless there exists potentially culpable behavior that merits criminal investigation. 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.

However, IDEM may determine that the conditions of Sections 6.2.2 through 6.2.9 are satisfied but recommend prosecution of a Regulated Entity where there exists (1) a prevalent management philosophy or practice by the Regulated Entity that concealed or condoned Violations of Indiana's Environmental Requirements; or (2) high-level officials' or managers' conscious involvement in, or willful blindness to, the Violation of Indiana's Environmental Requirements.

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 (1) individual officials, managers, or employees of a Regulated Entity; or (2) other individuals under existing IDEM policies guiding the exercise of enforcement discretion.

6.1.4 No Routine Requests for Environmental Audits

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. A Regulated Entity disclosing an Environmental Audit Report to IDEM under this Policy waives those privileges enumerated at Ind. Code § 13-28-4-7.

6.2 Conditions for Regulated Entities to Receive Incentives

For a Regulated Entity to receive a one hundred percent (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 6.2.2 through 6.2.9 shall receive a seventy-five (75%) reduction in the Gravity-Based Civil Penalty.

6.2.1 Systematic Discovery

6.2.1.1 Regulated Entities

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 mitigation, that a description of the Regulated Entity's due diligence efforts be made publicly available.

6.2.1.2 Small Regulated Entities

The Violation was discovered by a Small Regulated Entity through either (1) an Environmental Audit; (2) an objective, documented, systematic procedure or practice reflecting the regulated entity's due diligence in preventing, detecting, and correcting Violations. The Small Regulated Entity shall provide accurate and complete documentation to IDEM as to how it implements its Compliance Management System. IDEM may require, as a condition of penalty mitigation, that a description of the Small 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 & Technical Assistance Program ((800) 988-7901) or the Clean Manufacturing Technology and Safe Materials Institute at Purdue University ((765) 463-4749).

6.2.2 Voluntary Discovery

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.

For purposes of this Policy, IDEM shall consider an independent third-party environmental compliance audit performed on behalf of either a Regulated Entity or Small Regulated Entity to be above and beyond "reasonable inquiry" for purposes of identifying and disclosing potential Clean Air Act-related violations to IDEM.

6.2.3 Prompt Disclosure

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.

6.2.4 Discovery & Disclosure Independent of Government or Third-Party Plaintiff

The Violation must also be identified and disclosed by the Regulated Entity prior to: (1) the commencement of a Federal, State, or local 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, State or local agency if the Violation is discovered by an agency other than IDEM.

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.

6.2.5 Correction and Remediation

6.2.5.1 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 sixty (60) days will be needed to correct the Violation, the Regulated Entity shall so notify and receive approval from IDEM in writing before the respective notification timeframes have passed. IDEM may require that to satisfy Sections 6.2.5 and 6.2.6 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.

6.2.5.2 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 ninety (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 so notify and receive approval from IDEM in writing before the respective notification timeframes have passed. IDEM may require that to satisfy Sections 6.2.5 and 6.2.6 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.

6.2.6 Prevent Recurrence

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.

6.2.7 No Repeat Violations

The specific Violation (or closely-related Violation) has not occurred previously within the past three (3) years at the same Facility under the same ownership, or 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.

Notwithstanding the above, a Regulated Entity that has an unaffiliated change in ownership, control and/or operation from the original owner and/or operator may conduct an Environmental Audit. If as a result of that Environmental Audit, the new owner and/or operator identifies Violations of Indiana Environmental Requirements and discloses them to IDEM in accordance with this Policy, then such disclosure shall constitute a voluntary disclosure and will be eligible for penalty reduction or mitigation.

6.2.8 Other Violations Excluded

The Violation 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.

6.2.9 Cooperation

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 noncompliance problems related to the self-disclosure; and (3) any environmental consequences related to the Violations.

6.3 Economic Benefit of Non-Compliance

IDEM shall retain its full discretion to recover any economic benefit gained as a result of noncompliance 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

IDEM shall work closely with the EPA and local agencies 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. IDEM will work with EPA to address any provisions of this Policy that are inconsistent with EPA's Self-Disclosure and Environmental Audit Policy, and which may

prevent a timely and appropriate response to significant environmental Violations. 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 EPA to receive and maintain program delegation or primacy. This Policy in no way limits or precludes EPA or other governmental agencies from exercising their authority.

6.5 Administration of IDEM's Environmental Audit & Self-Disclosure Policy

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
Office of Compliance & Enforcement (Mail Code 60-02)
100 North Senate Avenue
Indianapolis, Indiana 46204-2251

Questions about this Policy can be directed to one of the Office of Compliance & Enforcement Section Chiefs at (317) 233-5529 or the Assistant Commissioner of Compliance & Enforcement at (317) 233-3978.

6.6 Public Accountability

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.

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 IDEM's Civil Penalty Policy

7.2 IDEM's Supplemental Environmental Projects Policy

7.3 IDEM's Self-Disclosure & Environmental Audit Policy Standard Operating Procedure

7.4 Ind. Code §§ 13-11-1; 13-11-2-69; 13-28-4-7; 13-30-3; 13-30-4; 13-30-7; 36-1-2-21; 36-1-2-10; 36-1-2-21; and 36-1-2-22.

8.0 SIGNATURES

Thomas W. Easterly, Commissioner — 11/27/2006 Date

This Policy is consistent with IDEM requirements.

David Parry, Quality Assurance Manager — 11/27/2006 Date