

Regulatory Analysis
LSA Document #24-48**I. Description of Rule**

a. History and Background of the Rule – In accordance with [IC 13-30-4-1](#), the Indiana Department of Environmental Management (IDEM) imposes civil penalties on entities that violate state laws and rules related to (1) solid waste management and (2) underground storage tanks (USTs). Both civil penalty policies became effective on April 5, 1999. IDEM's general civil penalty policy is identified as ENFORCEMENT-99-0002-NPD and the civil penalty policy for owners and operators of USTs is identified as ENFORCEMENT 99-0001-NPD.

House Enrolled Act 1623, which became law on May 5, 2023, added [IC 4-22-2-19.6](#). This statute requires any fee, fine, or civil penalty imposed by an agency to be included in the Indiana Administrative Code. Accordingly, this rulemaking adds [329 IAC 1-3](#) and [329 IAC 9-11](#) to include IDEM's civil penalty policy and structure, as found in ENFORCEMENT-99-0002-NPD and ENFORCEMENT 99-0001-NPD. Specifically, this will bring IDEM's Office of Land Quality in compliance with [IC 4-22-2-19.6](#) and allow the agency to impose civil penalties for violations of Indiana's laws and rules regarding solid waste management and USTs.

b. Scope of the Rule – This rule will apply to all violators of Indiana's laws and rules regarding solid waste management and USTs.

c. Statement of Need – IDEM imposes civil penalties to encourage compliance, penalize violations, and recover enforcement costs of Indiana's laws and rules related to solid waste management and USTs. IDEM is authorized to impose such penalties by [IC 13-30-4-1](#) and [IC 13-23-14-2](#); however, these statutes do not provide guidance on how to assess such penalties. Instead, the statutes only cap civil penalties at \$25,000 and \$10,000 per violation per day for violations of solid waste management rules and laws and UST rules and laws, respectively.

IDEM developed non-rule policy documents to ensure that civil penalties are assessed in a consistent and fair manner. Because these policies are now required to be included in the Indiana Administrative Code, pursuant to [IC 4-22-2-19.6](#), this rule is necessary to comply with state law.

d. Statutory Authority for the Proposed Rule – The authority for IDEM to impose civil penalties may be found at [IC 13-30-4-1](#) and [IC 13-23-14-2](#). IDEM's general rulemaking authority may be found at [IC 4-22-2](#) and [IC 13-14-9](#). The requirement to include civil penalties in the Indiana Administrative Code may be found at [IC 4-22-2-19.6](#).

e. Fees, Fines, and Civil Penalties – This rule will incorporate IDEM's 25-year-old civil penalty policies into the Indiana Administrative Code. Adding these policies to the Indiana Administrative Code complies with [IC 4-22-2-19.6](#), and an explanation of how these penalties are assessed is included in the Cost Analysis section.

II. Fiscal Impact Analysis

a. Anticipated Effective Date of the Rule – Late 2024

b. Estimated Fiscal Impact on State and Local Government – This rulemaking will not have a fiscal impact on state and local government because the underlying policies being incorporated into the Indiana Administrative Code have been in place for 25 years.

c. Sources of Expenditures or Revenues Affected by the Rule – This rulemaking will not require any additional expenditures, nor will it collect any additional revenue, because the underlying policies being incorporated into the Indiana Administrative Code has been in place for 25 years.

a. The mean annual average of the total penalties imposed by the Office of Land Quality under the general civil penalty policy between FY 2019 and FY 2023 is \$697,587. This money is deposited into the Environmental Management Special Fund pursuant to [IC 13-14-12](#).

- b. The mean annual average of the total penalties imposed by the Office of Land Quality under the UST civil penalty policy between FY 2019 and FY 2023 is \$352,982. This money is deposited into the Excess Liability Trust Fund pursuant to [IC 13-23-6-2](#).

III. Impacted Parties

The parties impacted by this rule are any entities who violate the state's environmental laws and rules.

IV. Changes in Proposed Rule

From a policy standpoint, this rulemaking will *not* make any substantive changes to rules and policies. This rulemaking's sole purpose is to ensure the agency's compliance with [IC 4-22-2-19.6](#) by incorporating IDEM's civil penalty policy into the Indiana Administrative Code. This specific rulemaking incorporates two civil penalty policies related to solid waste management laws and rules and UST laws and rules. Each of these policies have been in place for 25 years, and IDEM is not making any substantive changes to either policy.

From an administrative standpoint, this rulemaking is *not* making any changes to existing rules; rather, it adds new civil penalty rules to [329 IAC 1](#) and [329 IAC 9](#), the content of which are existing civil penalty policies. Again, this rulemaking will ensure that the agency's process for assessing civil penalties is compliant with [IC 4-22-2-19.6](#).

V. Benefit Analysis

a. Estimate of Primary and Direct Benefits of the Rule – The primary benefit of this rulemaking is ensuring IDEM's compliance with [IC 4-22-2-19.6](#).

b. Estimate of Secondary or Indirect Benefits of the Rule – The secondary, or indirect benefit of this rule, is that compliance with [IC 4-22-2-19.6](#) will allow IDEM to continue assessing civil penalties using the same methods that have been used for the previous 25 years. This rule ensures that existing procedures that encourage compliance, penalize violations, and recover enforcement costs related to the state's environmental rules and laws remain in place.

c. Estimate of Any Cost Savings to Regulated Industries – This rulemaking is not changing any policies, so it is unlikely to result in any cost savings to regulated industries.

VI. Cost Analysis

a. Estimate of Compliance Costs for Regulated Entities – There are no compliance costs imposed by this rule. This rulemaking adds new rules to [329 IAC 1](#) and [329 IAC 9](#) so that IDEM's assessment of civil penalties, as they relate to solid waste management and USTs, complies with new statutory provisions at [IC 4-22-2-19.6](#).

b. Estimate of Administrative Expenses Imposed by the Rules – There will be no administrative expenses imposed by this rule. This rulemaking adds new rules to [329 IAC 1](#) and [329 IAC 9](#) so that IDEM's civil penalty policies, which have been in place for 25 years, comply with new statutory provisions at [IC 4-22-2-19.6](#).

c. The fees, fines, and civil penalties analysis required by [IC 4-22-2-19.6](#) – The rule is not creating any new, nor increasing any existing civil penalties. Instead, this rulemaking is adding new rules to [329 IAC 1](#) and [329 IAC 9](#) to ensure that IDEM's assessment of civil penalties complies with new statutory requirements found at [IC 4-22-2-19.6](#).

a. IDEM's general civil penalty policy has a statutorily imposed maximum of \$25,000 per day per violation. The basic formula used by the agency to determine a civil penalty is *Civil Penalty = Base Civil Penalty +/- Adjustment Factors + Economic Benefits*.

The Base Civil Penalty is determined by:

1. Potential Harm to Human Health or the Environment, or to a Regulatory Program.
2. The extent of Deviation from a Requirement

Adjustment factors are:

1. Actions before/after the violation
2. History of noncompliance

3. Ability to pay
4. Other unique factors
5. Enforcement costs.

Economic Benefits are the amount of economic benefit the violator achieved because of the violation. IDEM acknowledges that this may be difficult to quantify and may disregard if the benefit is less than \$1,000. Types of economic benefits that are evaluated include:

1. Benefit from delayed costs
2. Benefit from avoided costs
3. Other benefits, such as profits earned for the period of startup prior to obtaining a permit.

This portion of the rule satisfies [IC 4-22-2-19.6](#) because it considers the impact violations have on the health and safety of citizens, the number of prior violations and the need for future deterrence, and the economic benefit achieved through violations so that violations are not profitable.

b. IDEM's UST civil penalty has a statutory maximum of \$10,000 per UST per day of violation. The agency uses two components to assess a UST-related civil penalty:

1. Gravity-based portion.
 - a. This portion is assessed by evaluating the deviation from the imposed standard and the potential for harm.
 - b. This penalty is then multiplied by the number of violative USTs and the number of days in noncompliance.
2. Economic benefit portion.
 - a. If a violator derives significant saving or competitive advantage by failing to comply with requirements, the amount of economic benefit is added to the gravity-based portion of the penalty. This ensures that violations are not profitable.

This portion of the rule satisfies [IC 4-22-2-19.6](#) because it considers the risk violations pose to the health and safety of citizens, the length of time violators are in non-compliance, the level of deviation from requirements, and the economic benefit achieved through the violation so that violations are not profitable.

VII. Sources of Information

To develop this rule, IDEM relied on the civil penalty non-rule policy document and the UST civil penalty non-rule policy document. These policies can be found at <https://www.in.gov/idem/oe/nrp/civil.html> and https://www.in.gov/idem/files/nrpd_enf-001.pdf, respectively.

Historical data on the amount of fees collected for violations of solid waste management and UST rules and laws was provided by IDEM's Office of Land Quality.

VIII. Regulatory Analysis

Given that this rulemaking will not impose any new costs but has the benefit of ensuring that IDEM complies with [IC 4-22-2-19.6](#), it is IDEM's judgment that this rulemaking will have a positive impact on the state and regulated entities.

Notice of First Public Comment Period with Proposed Rule: [20240207-IR-329240048FNA](#)

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