



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Self-Disclosure and Environmental Audit Policy

Office of Compliance Support

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This fact sheet is intended to provide general information concerning the Indiana Department of Environmental Management's (IDEM's) Self-Disclosure and Environmental Audit Policy (the Audit Policy), which was adopted on April 5, 1999, and revised on November 16, 2006 and February 5, 2010.

What is the purpose of the policy and to whom does it apply?

The purpose of the Audit Policy is to enhance protection of human health and the environment by encouraging Indiana's regulated entities, including small businesses, to voluntarily discover, disclose, correct and prevent violations of federal and state environmental requirements.

Why should an entity identify and voluntarily disclose violations to IDEM?

The Policy provides a number of incentives to regulated entities for closely examining their operations and facilities. These incentives include:

- ✓ A reduction of up to 100% of a gravity-based penalty¹ if all conditions (1 through 9, listed below) are satisfied;
- ✓ A reduction of up to 75% of a gravity-based penalty if conditions 2 through 9 are satisfied;
- ✓ IDEM will not recommend prosecution of the regulated entity to an Indiana Prosecuting Attorney or other prosecuting authority where IDEM determines that conditions 2 through 9 have been met and regulated entity managers did not conceal or condone the violation(s) or have a conscious involvement in or willful blindness toward the violation(s);
- ✓ IDEM's assurance that the agency will not request a copy of the audit report for purposes of civil or criminal investigation if the findings of the audit are disclosed under the Audit Policy.

What are the conditions an entity must meet to take advantage of these incentives?

1. The violation was discovered by the regulated entity through either an environmental audit or implementation of a Compliance Management System. Regulated entities receiving assistance from IDEM's Compliance and Technical Assistance Program, or other comparable programs, would likewise meet this condition.
2. The violation was discovered by the regulated entity voluntarily, but was not something that was required to be monitored or sampled as a condition of a permit or other legal requirements.
3. The regulated entity promptly disclosed the violation to IDEM within a maximum of 45 calendar days after it became aware that the violation had occurred or may have occurred. IDEM encourages a regulated entity to notify the agency as soon as it becomes aware that a violation has occurred or may have occurred.
4. The regulated entity identified and disclosed the violation (a) before a federal, state, or local agency conducted an inspection or investigation of the entity or the agency requested information about the found violations; (b) before the entity received notice of a citizen suit; (c) before a third party filed a complaint in a court of law; (d) before IDEM received a report of the violation(s) from a "whistle-blower" or other individual not authorized to speak on behalf of the regulated entity, or; (e) before the imminent discovery of the violation by a federal, state, or local agency.
5. The regulated entity must correct the violation within 60 days after it notified IDEM of the violation. The regulated entity must also certify in writing that the violation has been corrected, and take appropriate measures to address any environmental or human harm that occurred due to the violation. Small regulated entities² must correct the violation within 90 days, but are encouraged to address the

violation in the shortest possible time. These timeframes may be extended if approval from IDEM is granted and documented.

6. The regulated entity must agree, in writing, to take steps to prevent the violation from happening again, for example, conducting an environmental audit, instituting an environmental management system, or putting in place other formalized approaches intended to identify and correct areas of noncompliance and prevent their future re-occurrence.
7. The specific violation(s), or similar ones, cannot have occurred at the facility within the past three years (if the ownership of the facility has remained the same during that period of time). In addition, there cannot be a history of this same type of violation (or similar ones) occurring at facilities owned by the parent company (if one exists) within the past three years.
8. The violation cannot be one that resulted in serious actual harm, or may have presented an imminent and substantial endangerment to human health or the environment. In addition, the violation could not be one which violated the terms of any legal agreement with a regulatory agency.
9. The facility cooperates with IDEM in its efforts to determine if the Audit Policy applies to the violations disclosed.

Note: For a regulated entity with a new owner, self-disclosures that satisfy conditions 3 through 9 may be considered voluntary under the Audit Policy when they are made prior to the first required instance of monitoring, sampling, auditing, or reporting that should have identified the disclosed violations.

Does disclosing a violation mean that the entity will not have to pay a civil penalty?

Disclosure of a violation means that an entity may not have to pay the gravity-based portion of the civil penalty associated with the violation. However, IDEM may still seek to recover the economic benefit the entity may have derived, if any, from noncompliance with the statute or rule that was violated.

Where can an entity obtain information about the Audit Policy?

A copy of the Audit Policy can be obtained by visiting IDEM's website at http://www.in.gov/idem/files/npd_mp_004_r2.pdf or by contacting the Indiana Department of Environmental Management Self-Disclosure and Environmental Audit Administrator, by mail, at 100 North Senate Avenue, IGCN 1301, Indianapolis, IN 46204, or by telephone, at 1-800-451-6027, ext. 4-1819 (toll free), or (317) 234-1819 (direct).

For questions about how to complete a self disclosure, please telephone IDEM's Compliance and Technical Assistance Program (CTAP) at 1-800-988-7901, ext. 2-8172 (toll free) or (317) 232-8172 (direct), or send an e-mail to ctap@idem.IN.gov. For additional information regarding CTAP, visit www.IN.gov/idem/ctap/index.htm.

¹ A civil penalty is comprised of three components: a base penalty that considers both the potential for harm and extent of deviation as it relates to the seriousness of a violation; adjustment factors, and; economic benefit of noncompliance. A discussion of each of these components can be found in IDEM's Civil Penalty Policy, a copy of which can be obtained via IDEM's website at http://www.in.gov/idem/files/nrpd-enf_0002.pdf. The first two components comprise the gravity based portion of the penalty and reflect the portion that can be reduced under the Policy.

² A "small regulated entity" is defined in IDEM's Audit Policy as a "person, corporation, partnership, or other entity who employs 100 or fewer individuals across all facilities and operations owned by the entity, an unincorporated town, a civil township, or unit, school corporation, library district, local housing authority, fire protection district, public transportation corporation, local building authority, local hospital authority or corporation, local airport authority, special service district, or other separate local governmental entity that may sue and be sued." The term does not include special taxing district.