

**INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
NONRULE POLICY**

Title: Penalty Policy For Underground Storage Tank/Leaking Underground Storage Tank Requirements

Identification Number: ENFORCEMENT 99-0001-NPD

Date Originally Adopted: April 5, 1999

Date Revised:

Other Policies Repealed or Amended:

Brief Description of Subject Matter: IDEM's policy for determining penalties for violations of the 1998 UST Upgrade Requirements which go into effect December 23, 1998

Citations Affected: IC 13-23-14

File Last Modified:

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I INTRODUCTION

The Indiana Code, IC 13-23-14, provides authority for IDEM to assess civil penalties:

IC 13-23-14-2: A person who violates a rule adopted under IC 13-23-1-2 by:

- 1 Knowingly failing to give a required notification; or
- 2 submitting false information;

is subject to a civil penalty of no more than ten thousand (\$10,000) dollars for each underground storage tank for which a required notification is not given or for which false information is submitted.

IC 13-23-14-3: A person who violates:

- 1 A requirement or standard set forth in this article; or
- 2 a rule adopted under IC 13-23-1-2 other than a violation described in section 2 of this chapter;

is subject to a civil penalty of not more than ten thousand (\$10,000) dollars per underground storage tank for each day of violation.

These statutory provisions set out limits within which the IDEM may impose specific penalties for specific violations.

Penalties will consist of two components: (1) a gravity-based portion and (2) an economic-benefit portion. As in other cases, the gravity-based portion will penalize the UST owner/operator for the violation while the economic-based portion will seek to recoup any profit the UST owner/operator realized by the violation.

In addition to the specific procedures outlined below, IDEM will follow and apply, as applicable, the usual factors and considerations set forth in IDEM’s Civil Penalty Policy.

II GRAVITY BASED COMPONENT

In order to ensure a level playing field for all owners/operators, IDEM will assess penalties sufficient to remove any incentive to operate in violation. Because the statutory penalty limits for UST violations are different than the limits in other cases, IDEM will utilize the following penalty matrix in UST cases:

UST Penalty Matrix

		Extent of Deviation from Requirement		
		<u>MAJOR</u>	<u>MODERATE</u>	<u>MINOR</u>
Potential for Harm	<u>MAJOR</u>	\$10,000 to \$8,000	\$8,000 to \$6,000	\$6,000 to \$5,000
	<u>MODERATE</u>	\$5,000 to \$4,000	\$4,000 to \$3,000	\$3,000 to \$2,000
	<u>MINOR</u>	\$2,000 to \$1,400	\$1,400 to \$800	\$800 to \$400

Once a matrix penalty is determined, that penalty amount is first multiplied by the number of USTs in violation (Tank Multiplier (TM)) and then, in order to calculate a base civil penalty, the penalty is multiplied by the Days of Noncompliance Multiplier. The DNM is used to encourage owners/operators to come into compliance sooner rather than later, IDEM will apply the DNM to every case. The DNM will increase the matrix penalty an additional 25% for every 90 days the violation continues. Thus, the TM adjusted matrix penalty will be multiplied by the DNM listed below depending on the age of the violation:

<u>Days of Noncompliance</u>	<u>Multiplier</u>
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1 to 90 days	1.00
91 to 180	1.25
181 to 270	1.50
271 to 365	1.75
365 and over	2.00

The resulting penalty is the base civil penalty can then be adjusted upwards/downwards pursuant to the following adjustment factor: actions before the violation; actions after the violation; history of noncompliance; ability to pay; cost of IDEM enforcement action; or other unique factors. Once the base civil penalty is adjusted using the above mentioned adjustment factors, it becomes the Gravity Based Penalty.

III ECONOMIC BENEFIT

Where an owner/operator has derived significant savings and competitive advantage by their failure to comply with requirements, the amount of economic benefit from noncompliance gained by the owner/operator will be calculated and added to the gravity based penalty.

IV STIPULATED PENALTIES

In addition to the civil penalty, it is often appropriate for an order to stipulate that the owner/operator pay additional penalties if certain actions intended to remediate or correct the violation are not performed in a timely or satisfactory manner.