

**Regulatory Analysis**  
LSA Document #24-47**I. Description of Rule**

**a. History and Background of the Rule** – The Indiana Department of Environmental Management (IDEM) imposes civil penalties on entities that violate provisions of the state's water pollution control laws and rules in accordance with [IC 13-30-4-1](#). The current civil penalty policy and structure became effective on April 5, 1999, through a non-rule policy document identified as ENFORCEMENT-99-0002-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 [327 IAC 1-2](#) to include IDEM's civil penalty policy and structure, as found in ENFORCEMENT-99-0002-NPD. Specifically, this will bring IDEM's Office of Water Quality in compliance with [IC 4-22-2-19.6](#) and allow the agency to impose civil penalties for violations of Indiana's water pollution control laws and rules.

**b. Scope of the Rule** – This rule will apply to all violators of Indiana's water pollution control laws and rules.

**c. Statement of Need** – IDEM imposes civil penalties to encourage compliance, penalize violations, and recover enforcement costs of Indiana's environmental laws and rules. IDEM is authorized to impose such penalties by [IC 13-30-4-1](#); however, this statute does not provide guidance on how to assess such penalties. Instead, the statute only caps civil penalties at \$25,000 per violation per day.

IDEM developed a non-rule policy document to ensure that civil penalties are assessed in a consistent and fair manner. Because this policy is 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](#). 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 policy into the Indiana Administrative Code. Adding this policy 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 policy being incorporated into the Indiana Administrative Code has 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 policy being incorporated into the Indiana Administrative Code has been in place for 25 years. The mean annual average of the total penalties collected under this policy by the Office of Water Quality between FY 2019 and FY 2023 is \$493,722. This money is deposited into the Environmental Management Special Fund pursuant to [IC 13-14-12](#).

**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 the civil penalty policy as it relates to water pollution control laws and rules. This policy has been in place for 25 years, and IDEM is not making any substantive changes to this policy.

From an administrative standpoint, this rulemaking is *not* making any changes to existing rules; rather, it adds a new civil penalty rule to [327 IAC 1](#), the content of which is an existing civil penalty policy. 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 [327 IAC 1](#) so that IDEM's assessment of civil penalties, as it relates to water pollution control, 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 [327 IAC 1](#) so that IDEM's civil penalty policy, which has been in place for 25 years, complies 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 [327 IAC 1](#) to ensure that IDEM's assessment of civil penalties complies with new statutory requirements found at [IC 4-22-2-19.6](#). In general, IDEM's 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 rule satisfies [IC 4-22-2-19.6](#) because it takes into consideration 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.

## VII. Sources of Information

To develop this rule, IDEM relied on the civil penalty non-rule policy document. This policy can be found at

<https://www.in.gov/idem/oe/nrp/civil.html>.

Historical data on the amount of fees collected for violations of water pollution control rules and law was provided by IDEM's Office of Water 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: [02072024-IR-327240047FNA](#)*

*LSA Document #24-47*

*Notice of Determination Received: January 10, 2024*

*Posted: 02/07/2024 by Legislative Services Agency*

An [html](#) version of this document.