
The IDEM Self-Disclosure Policy's Benefits to Industry

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You know the feeling. You have, in good faith, done everything you know to comply with your environmental permits and requirements. You have submitted reports, written plans and completed training. But inspectors from the Indiana Department of Environmental Management (IDEM) appeared at your door, and they discovered several things that you had not completed, and now you are facing an enforcement action. How do you prevent this from recurring? What steps do you take? If you hire an independent consultant to audit your environmental compliance activities, how do you respond to any findings?

The IDEM very much wants to encourage regulated entities to continuously improve their level of compliance. To this end, the IDEM has a Nonrule Policy regarding Self-Disclosure and Environmental Audits. The policy is specifically designed to encourage regulated entities to voluntarily discover, report, and resolve violations of environmental permits and regulations. In fact, the IDEM is so supportive of a regulated entity's efforts to improve, that a 100% reduction of gravity-based civil penalties can be received if the requirements of the Nonrule Policy are met.

The Self Disclosure Policy

How does a facility become eligible for this reduction in civil penalties for certain violations? The following conditions must be met:

- 1) The violation must be discovered through some systematic process (such as an audit);
- 2) The discovery of the violation must be voluntary (that is, the audit during which the violation is discovered cannot be one required by the agency to meet some other obligation);
- 3) Upon discovery of the violation, the entity must notify IDEM of the violation voluntarily, in a thorough and timely manner (usually within 45 days);
- 4) Both the discovery and disclosure of the violation must be independent of IDEM discovering the same violation;
- 5) The violation is corrected promptly (usually within 60 days);
- 6) The entity must commit to preventing the violation from recurring;
- 7) The violation is not a repeat violation for the entity;
- 8) The violation does not present an imminent and substantial threat to human health and the environment.
- 9) The regulated entity agrees to cooperate with IDEM.

So how does this program work?

A business owner decides that she wants to audit her company's environmental compliance. She hires an environmental engineering firm to complete an audit. During the audit certain findings are discovered with respect to the company's air permit. After consulting with her company's environmental attorney, the business owner determines to notify IDEM. A notification of the air permit violations is submitted to IDEM, along with a schedule by which the facility will come into compliance.

Based upon the notification, IDEM evaluates the notification in view of the self disclosure policy, and limits the assessment of fines accordingly. However, the IDEM may determine that the company does not comply with all nine of the conditions previously noted. Even in this instance, the IDEM will work with the company to reduce fines. The Environmental Protection Agency (EPA) has a similar policy as it relates to federal permitting and reporting requirements, such as Toxic Release Inventory (TRI) reporting.

It should be clear that the IDEM's goal through this policy is not to assess fines at every opportunity. Rather the agency strives to encourage compliance, as increased compliance leads to enhanced protection of human health and the environment.

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