

### **NEW IDEM COMPLIANCE ENFORCEMENT RESPONSE POLICY**

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Effective October 2, 2009, IDEM issued its Compliance and Enforcement Response Policy to set forth a systematic approach to the identification of violations by entities subject to Indiana's environmental requirements as well as the conduct of enforcement actions. The self-stated focus of the Policy is on the *appropriateness and timeliness* of IDEM's compliance and enforcement activities. However, the Policy does not ever specify or limit the amount of time which may transpire between the enforcement actions it describes. By law, IDEM is limited to bring an enforcement action within 3 years of a violation. The *initial decision* of whether a violation has occurred and what the appropriate enforcement action should be remains with the Compliance Staff of each program area. The Policy follows the intentions of joining the Enforcement Section with the Compliance Section rather than having two separate sections. As a joined body, it is anticipated that the Compliance Staff, which often has personal knowledge about an entity and its personnel, will impact the final decision on a particular enforcement action with *greater consistency and efficiency*.

The Policy establishes 3 classes of violations with specific examples. Class 1 Violations are those which are *immediately reviewed* by the Assistant Commissioner for the appropriate program area. They are typically the most serious violations involving human health or the environment but also include falsification of data, failure to respond to a Violation Letter, and denial of access to IDEM at the facility. Class 2 Violations are those which are referred to enforcement staff when a Violation Letter or Request For Information was previously sent and *not adequately addressed*. Class 3 Violations are *chronic or recurring minor violations* which may be referred to enforcement staff after a Violation Letter is sent. The Policy refers to "chronic or recurring" as receipt of written notification three times in the past 5 years for the same violation.

The new Policy also provides that IDEM Compliance Staff is required to provide a Verbal Summary to the facility at the conclusion of an inspection. After the inspection, a written Inspection Notification must be sent to the facility detailing specific possible violations and a Notice of Referral for Enforcement if the Assistant Commissioner so determines.

It is important to remember that this Policy is intended solely as guidance and does not have the effect of law. The Policy does give branch chiefs the discretion to authorize compliance staff to deviate from the terms of the policy on a case-by-case basis.

To view a copy of IDEM's policy, click [here](#).