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## **Attachment 8**

### **IDEM CLASSIFICATION OF ENVIRONMENTAL VIOLATIONS AND CRITERIA FOR REFERRAL OF SUCH VIOLATIONS TO THE OFFICE OF ENFORCEMENT**

This Enforcement Referral Plan (ERP) sets out:

- the various classes of environmental violations enforced by the Indiana Department of Environmental Management (IDEM),
- the criteria to be used by the environmental program and regional offices of IDEM to determine violations that should be referred to the Office of Enforcement (OE),
- lists of examples of Class I, Class II and Class III violations.

This document serves as a general guideline for IDEM's Office of Air Quality, Office of Enforcement, Office of Land Quality, Office of Water Quality, and the regional offices. The criteria set out in this document are intended only for staff guidance. In order to promote consistency in IDEM's response to the wide array of environmental violations, the criteria specified in this document will be used by all of the environmental programs and regional offices when determining violations that will be referred to OE. Violations that have already been addressed by enforcement actions taken by USEPA are not required to be referred to OE.

By stating that any given violation or group of violations will be referred to the Office of Enforcement (OE), it is expected that OE will then act upon the referral by applying its established guidelines and procedures. A referral to OE does not mean that compliance staff should not continue to work with the facility to achieve compliance. OE may initiate formal enforcement action on its own, without a referral from a program area, if OE identifies and documents a violation. OE will discuss any such action with the program area prior to taking any action. It is expected that OE and the program areas will routinely keep each other advised of developments in each case. All violations, whether immediately corrected or not, must be documented in writing. A deviation from the referral criteria established in this document is acceptable where OE and the program area has developed a separate guideline for enforcement referrals. Deviations from the referral criteria established in this document also may occur in specific cases when requested in writing to the Section Chief or Branch Chief.

The content of this ERP is not intended to, nor does it constitute rulemaking by IDEM, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. IDEM officials may take action that is at variance with the criteria contained in this document, if determined to be appropriate in a specific case. IDEM reserves the right to modify this document and these criteria at any time without public notice.

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### Classes of violations

Violations have been divided into three classes. In all three classes, violations will be referred to OE when the criteria for such are met. By setting these agency-wide standards, it is expected that each IDEM compliance staff person will make determinations that are consistent and fair across all media.

Class I violations require immediate referral to OE (using the standard enforcement referral form) when discovered and documented by program staff, regardless of the efforts by the responsible party or IDEM staff to achieve compliance. The program area may continue to work with the responsible party on compliance issues, but the enforcement referral should be made as soon as possible, and the program and enforcement staff need to coordinate what is said to the violator. If the violator is responsible for a number of violations which include a mixture of Class I, II, and III violations, all violations will be referred with the Class I violations.

Class II violations require referral to OE when the violation is not promptly corrected through the issuance of a violation letter. The general rule for this category is "two strikes and you are out", meaning these types of violations are referred to OE after the violator is given one opportunity to comply, and fails.

Class III violations may be referred to OE if the responsible party has been found to be repeatedly in violation of the same minor requirement over an extended period of time. A guideline for this may be that the responsible party has received written notification three times in the past five years for the same violation. Many of the program-specific violations may be minor violations under IC 13-30-7, although the criteria set forth in this statute should be reviewed in each case, since many violations are exempted.

### General categories

#### CLASS I VIOLATIONS:

Violations which are immediately referred to OE:

- I. A. Unauthorized preventable (negligent) discharge, release, or emission that results in actual or potential threat to human health or safety or which results in a serious actual or potential impact to the environment.
- I. B. Individual performing a regulated activity without the proper license or certification.
- I. C. A determination of significant noncompliance (SNC) or high priority violation (HPV), under the water, air or hazardous waste programs (with specific exceptions described below).

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- I. D. Documented falsification of data, documents, or reports.
- I. E. Failure to respond to a warning/violation letter where a response is required.
- I. F. Denial of access to an IDEM staff person to a regulated site.
- I. G. Other preventable violations not specifically identified above which result in actual or potential threat to human health or safety or which results in serious actual or potential impact to the environment.

**CLASS II VIOLATIONS:**

Violations referred to OE after a violation letter/ request for information letter is sent:

- II. A. Unauthorized discharge, release or emission that results in minor or no harm to the environment.
- II. B. Individual performing a regulated activity with the proper license or certification, but not following all required practices, with the exception of asbestos work practice requirements.
- II. C. Late, incomplete, or improperly completed data, documents, reports.

**CLASS III VIOLATIONS**

Chronic or recurring minor violations.

(May be referred to OE after repeated documentation of the violation or efforts to achieve compliance fail)

- III. A. Violations not otherwise covered by Class I or II, which are minor in nature and are documented in inspection reports or similar reports. These are often corrected at the time of the inspection, but recur after having been corrected. Referral to OE may occur without a warning or violation letter first being sent.
- III. B. Violations that meet the criteria set forth in IC 13-30-7 as "minor violations."

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## Program Specific Categories

The following lists are not intended to be all-inclusive, but serve as examples of the type of violation fitting into each category.

### CLASS I VIOLATIONS:

#### Air

- Title V CWOP/OWOP
- FESOP, SSOA & MSOP CWOP/OWOP with >25 T/yr. actual emissions
- Non-HPV Opacity violation significantly exceeding the limit
- Significant non-HPV exceedance of NSPS emission limits
- Asbestos or lead work practice violations
- Fugitive dust violations significantly impacting other individuals or businesses
- Open burning violations significantly impacting other individuals or businesses
- Significant automobile tampering violations
- Significant stage I & II gasoline vapor recovery violations
- Significant chrome violations
- Significant dry cleaner violations
- Significant CEM/COM downtime violations

#### CFOs

- Significant discharge to waters of the state
- Deliberate discharge to waters of the state
- Failure to have a confined feeding approval for a facility above the applicable animal numbers where the facility has/had a discharge to waters of the state
- The Responsible Party refuses to comply with the spill rule after being verbally advised to do so (no question as to whom the Responsible Party is)

#### Emergency Response / Spills

- Failure to report, contain, and/or clean up a spill to the waters of the state (spill response) which results in actual or potential threat to human health or safety or which results in a serious impact to the environment, once RP becomes aware of the event
- The Responsible Party refuses to comply with the spill rule after being verbally advised to do so (no question as to whom the Responsible Party is)

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**Hazardous Waste**

- Overall pattern of non-compliance with applicable requirements
- Storage of hazardous waste without a permit for more than 30 days in excess of that allowed by generator status
- Transporting HW without giving the proper notification
- Improper or illegal hazardous waste disposal
- Improper or illegal hazardous waste treatment
- Hazardous waste releases
- Accepting HW without a permit
- Failure to conduct hazardous waste determination or improper determination, where failure or improper waste determination results in improper or illegal disposal
- Significant used oil releases
- Lack of secondary containment for hazardous waste/used oil tanks
- Lack of integrity assessment for hazardous waste tanks
- Lack of personnel training program or lack of significant components of program
- Lack of contingency plan or lack of significant components of contingency plan
- Failure to use a manifest
- Dilution of waste to avoid HW storage and disposal requirements
- Failure to remove land disposal restricted waste within the required time frame
- Lack of compliance with significant components of air emission requirements (Subparts AA, BB, CC)
- Storing waste at a transfer facility for more than 10 days
- Complete lack of financial assurance

**Land Application (327 IAC 6.1)**

- Land application without a permit
- Major land application permit deviations that have an adverse impact on the environment and/or pose a significant adverse impact to the program

**Septage**

- Land application to unpermitted site
- Wastewater land applied to crops for human consumption within 60 days of harvest
- Land application of chemical toilet contents
- Failure to cleanup a discharge to a road ditch, swales or field depressions
- Unpermitted storage outside of licensed truck

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### Solid Waste Land Disposal Facilities

- Leachate migrating off the facility's property
- Overfill violations (if the facility wants to leave the overfilled waste in-place)
- Failure to remove and segregate detected regulated HW or PCB material
- Failure to implement actions required by 329 IAC 10-20-17(d) when explosive gases are detected
- Unpermitted landfill
- Major permit deviations that have an adverse impact on the environment and/or have a significant adverse impact on the program.

### Solid Waste Processing Facilities/Transfer Station

- Operating (as a business) without a permit
- Major permit deviations that have an adverse impact on the environment and/or have a significant adverse impact on the program
- Failure to remove and segregate detected regulated HW and PCB material.

### USTs \*

- USTs that do not have corrosion protection
- USTs that do not have any form of leak detection
- USTs that do not have any form of spill and/or overfill protection
- USTs that have been in temporary closure longer than 12 months

\* UST facilities that are in violation and have been purchased by a new owner/operator, after the violation already existed, may be handled differently. This will be a case-by-case situation.

### Water

- Discharging without a permit, where a permit is required, excluding Rules 5 and 6
- Major NPDES permit holders not employing a properly certified operator (over 30 days without an operator)
- Major NPDES permit holders appearing on the Active Exceptions List or the SNC list (except for dechlorination/minimum residual chlorine violations of 0.07 mg/l or less, or schedule violations of 90 days or less)
- Failure to comply with the regulatory or statutory terms/requirements of a compliance agreement entered into between the responsible party and the program area (the referral is for the underlying violations, not violation of the compliance agreement)

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- A significant number of SSO events in any year
- Bypass, CSO or SSO events that are not reported or are reported late after IDEM discovers by other means
- Failure to report, contain, and/or clean up a spill to waters of the state (spill response), which results in actual or potential threat to human health or safety or which results in a serious impact to the environment, once RP becomes aware of the event.
- The Responsible Party refuses to comply with the spill rule after being verbally advised to do so (no question as to whom the Responsible Party is)
- POTW/municipality substantial failure to implement pretreatment program, such as inadequate sewer use ordinance, inadequate staffing, failure to issue permits for SIUs, insufficient inspections or enforcement of its sewer use ordinance
- Discharge to a POTW that causes pass through or interference at the POTW, unless a community with an approved pretreatment program is taking appropriate action
- Violation of a sewer ban or connection ban
- Noncompliance with a final permit schedule date by more than 90 days
- Off-site sedimentation from a construction site causing a significant water quality impact.
- Construction/disturbance in a wetland without prior 401 water quality certification
- Denial of access to a regulated site. (This does not include inability to gain access due to lack of attendant personnel).
- Plant abandonment.
- Construction of any portion of a POTW, collection or distribution system without a permit (where a construction permit is required)
- Any PWS that fails to provide the minimum level of treatment (surface water, GWUDI, disinfection, etc.) required by rule
- Community and nontransient noncommunity Public Water Supplies that appear on the SNC list for violations that pose an actual or potential threat to human health or safety
- Any facility that fails to comply with an earlier Order
- Unresolved Maximum Contaminant Level (MCL) violation at a PWS
- PWS' classified as a WT3, WT4, or WT5 not employing a certified operator (more than 30 days)
- Failure of a PWS to monitor for acute contaminants (reports submitted five working days or more late)
- Failure of a PWS to public notice its failure to monitor for acute contaminants, or when MCLs for acute contaminants are exceeded

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**CLASS II VIOLATIONS:****Air**

- Failure to conduct compliance testing
- Late submission of annual emission statement
- Failure to submit FESOP annual compliance certifications (>90 days)
- Failure to meet Federal test requirements. (NSPS, NESHAPS)
- Fugitive dust violations from non-traffic sources
- Failure to conduct PST of CEMS/COMS (60 days after 326 IAC 3-5-3 deadline)
- Failure to certify CEMS/COMS
- Failure to perform applicable compliance monitoring as specified in the permit
- Failure to prepare or maintain a preventive maintenance plan
- Failure to prepare a compliance monitoring or response plan
- Failure to submit CEMS/COMS SOP
- Failure to conduct CEMS/COMS audit
- Failure to submit an Emergency Reduction Plan

**CFOs**

- Failure to have a confined feeding approval for a facility above the applicable animal numbers, where the facility has not caused a discharge to the waters of the state
- Use of unpermitted structures or structures not constructed as approved for manure storage that are not causing a discharge to waters of the state
- Severe erosion, animal damage, or lack of maintenance that poses an immediate threat of structural failure to a manure management system
- Lack of freeboard in an uncovered manure management storage structure
- Construction without a permit

**Emergency Response / Spills**

- Failure of Responsible Party to perform an adequate spill response
- Failure of Responsible Party to report a spill, but where RP performs a spill response
- Failure of Responsible Party to submit a Spill Report when requested to do so

**Hazardous Waste**

- Failure to perform waste determination
- SQG violations except when exceeding the storage time requirement, improper disposal, or releases that are not minor in nature

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- Minor used oil releases
- Limited container or tank management
- Failure to submit biennial report
- Limited paperwork
- Failure to obtain an EPA ID number
- Lack of minor portions of personnel training
- Lack of minor portions of contingency plan
- Maintenance problems with secondary containment
- Lack of minor components of air emission requirements
- Failure to have adequate financial assurance
- Failure to install, operate or maintain a monitoring system in accordance with applicable plans, permit, rule, or Agreed Order resulting in the failure to detect a statistical difference, exceedance of applicable groundwater protection standards or release of contamination to the groundwater
- Failure to install, operate or maintain an adequate monitoring system
- Development or implementation of a groundwater sampling plan resulting in groundwater samples that do not represent the quality of groundwater in the uppermost aquifer underlying the facility and subsequently contribute to the failure to detect a statistical difference, exceedance of applicable groundwater protection standards, or release of contamination to the groundwater
- Development or implementation of a groundwater sampling plan resulting in groundwater samples that are not representative of groundwater quality in the uppermost aquifer underlying the facility
- Failure to prepare, evaluate, submit plans or notifications that meet the requirements of plans, permit, rule, or Agreed Order resulting in the subsequent failure to detect a statistical difference, exceedance of applicable groundwater protection standards, or release of contamination to the groundwater
- Failure to prepare, evaluate, or submit timely plans or notifications that meet the requirements of plans, permit, rule or Agreed Order
- Failure to submit to IDEM the occurrence of a statistical difference, exceedance of applicable groundwater protection standards or release of contamination to the groundwater
- Failure to submit information to IDEM on a timely basis
- Failure to complete closure in accordance with schedule or approved extension
- Failure to submit a post closure application

**Land Application (327 IAC 6.1)**

- Minor land application permit deviations that result in minor impact to the environment and/or have minor adverse impact on the program
- Significant deviation from the land application general requirements

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- Site restriction violations
- Management practices violations
- Storage/stockpiling/staging violations
- Pollutant limit exceedance
- Loading rate limit exceedance
- Improper pathogen reduction
- Improper vector reduction
- Improper monitoring and analysis
- Significant deviation from the Marketing and distribution requirements
- Off-site storage structure performance standard violations
- Off-site earthen lagoon construction violations
- Off-site storage structure operational violations
- Off-site storage structure closure/abandonment violations

**LUSTs**

- Failure to adequately perform a release investigation to delineate extent of contamination
- Abatement violations (i.e. initial response, free product removal)
- Corrective action violations (e.g. Corrective Action Plan implementation)

**Open Dumps**

- Waste has been dumped in standing water
- The dump is larger than ½ acre and it appears there is ongoing activity

**Septage**

- Animals are present or not restricted from land application site
- Land application on vegetation intended for forage or grazing
- Untreated wastewater from privies, holding tanks and sealed vaults is land applied
- Wastewater is land applied to crops intended for human consumption greater than 60 days before harvest
- Non-compliance with land application setbacks
- Wastewater drained off the land application site, but did not cause a significant discharge to waters of the state
- Wastewater is land applied to a drainageway without entering waters of the state
- Wastewater is allowed to pool or pond (over application) on the surface of the land application site
- Leaking tank, inlets/outlets, valves, caps/plugs and pumps on septic truck
- INDOT inspection of septic truck needed
- Refusal of right of entry and investigation (may be bumped to Class I)

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### **Solid Waste Land Disposal Facilities**

- Minor landfill permit deviations that pose minor harm to the environment and/or pose minor harm to the program
- Open Burning
- Overfill violations (if the facility wants to leave the overfilled waste in-place the facility is automatically referred to OE)
- Significant cover application (daily, intermediate, final, etc.) and maintenance problems.
- Leachate 50 ft beyond solid waste boundary, but still within the facility's property boundaries
- Improper leachate disposal
- Failure to establish or maintain vegetation (significant problems)
- Failure to perform explosive gas monitoring and reporting
- Significant erosion problems
- Failure to have up-to-date landfill plans on-site, as required by the rule
- Failure to have adequate financial assurance
- Failure to install, operate or maintain a monitoring system in accordance with applicable plans, permit, rule, or Agreed Order resulting in the failure to detect a statistical difference, exceedance of applicable groundwater protection standards or release of contamination to the groundwater
- Failure to install, operate or maintain an adequate monitoring system
- Development or implementation of a groundwater sampling plan resulting in groundwater samples that do not represent the quality of groundwater in the uppermost aquifer underlying the facility and subsequently contribute to the failure to detect a statistical difference, exceedance of applicable groundwater protection standards, or release of contamination to the groundwater
- Development or implementation of a groundwater sampling plan resulting in groundwater samples that are not representative of groundwater quality in the uppermost aquifer underlying the facility
- Failure to prepare, evaluate, submit plans or notifications that meet the requirements of plans, permit, rule, or Agreed Order resulting in the subsequent failure to detect a statistical difference, exceedance of applicable groundwater protection standards, or release of contamination to the groundwater
- Failure to prepare, evaluate, or submit timely plans or notifications that meet the requirements of plans, permit, rule or Agreed Order
- Failure to submit to IDEM the occurrence of a statistical difference, exceedance of applicable groundwater protection standards or release of contamination to the groundwater
- Failure to submit information to IDEM on a timely basis.

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**Solid Waste Processing Facilities/Transfer Stations**

- Minor processing permit deviations
- Failure to have adequate financial assurance
- Significant operational violations

**USTs**

- Operation/maintenance (i.e. leak detection, corrosion protection) violation
- Inadequate corrosion protection
- Inadequate leak detection
- Inadequate spill and/or overfill prevention
- Failure to comply with UST closure requirements
- Improper temporary closure

**Water**

- Minor NPDES or IWP permit holders that have violations meeting the criteria for SNC (except for dechlorination/minimum residual chlorine violations of 0.07 mg/l or less, or schedule violations of less than 90 days)
- Major NPDES permit holders appearing on the Active Exceptions List or the SNC list for violations of dechlorination/minimum residual chlorine violations of 0.07 mg/l or less, or permit schedule violations of less than 90 days
- Minor NPDES or IWP permit holders not employing a properly certified operator (more than 30 days without an operator)
- Late submittal of NPDES or IWP-required reports (DMRs, MROs, bypass, biomonitoring, schedule milestones, etc.).
- Failure to provide timely and complete application for a NPDES permit or permit renewal or to provide additional information as requested. (This also may relate to unpermitted discharge)
- NPDES or IWP permittee, or PWS which fails to meet a categorical/regulatory deadline by more than 90 days
- A moderate number of SSO events in any year.
- Failure to report CSO, SSO, or bypass events within the required timeframe (multiple events reported late—any amount of time)
- Failure of RP to perform an adequate spill response
- Failure of Responsible Party to report a spill, but where the RP performs a spill response
- Failure of Responsible Party to submit a Spill Report when requested to do so
- Failure to achieve compliance with an established interim permit schedule requirement or failure to achieve compliance with final permit schedule by less than 90 days

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- Chronic inability of inspector to gain access to a site due to absence of site personnel
- Insufficient implementation of erosion control measures at a construction site, which results in some incidental off-site sedimentation causing minor or no water quality impact
- Minor off-site sedimentation, including tracking onto roads.
- Failure to submit an NOI or erosion control plan for a construction site prior to initiation of land disturbing activities
- Submittal of an inadequate NOI or erosion control plan for a construction site
- Failure to provide complete or timely mitigation as required by a 401-water quality certification
- Minor CWOP or construction at variance with a permit, such as using wrong pipe size.
- NPDES or IWP permittee, or PWS that fails to meet a categorical/regulatory deadline by less than 90 days
- Transient noncommunity public water supplies serving less than 500 population which have violations meeting the criteria for SNC, except as included in Class III.
- PWS with chronic or repeated low (<20 psi) pressure or outages for the same cause (three or more events in a year)
- PWS violation of a MCL, treatment technique, action level, or requirement.
- PWS failure to monitor and/or submit compliance monitoring results within required timeframe
- Community PWS failure to submit wellhead protection plan by due date.
- PWS classified as a WT1, WT2, or distribution systems not employing a properly certified operator

**CLASS III VIOLATIONS:****Air**

- Late or failure to submit asbestos or lead notifications
- Failure to conduct proper asbestos training
- Failure to comply with work practice standards that do not involve asbestos or lead
- Failure to keep records which are not critical to documenting compliance with emissions limits
- Improper open burning with air curtain incinerators
- Late submittal of test report
- Continued failure of Quality Assurance checks on CEMS/COMS

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**CFOs**

- Lack of maintenance and/or improper management of manure storage areas that have minimal or no potential for discharge

**Emergency Response / Spills**

- Late spill reporting but has performed proper spill response

**Hazardous Waste**

- Minor violations that are not already addressed in Class II
  - Failure to maintain a monitoring system
  - Failure to collect ground water samples in accordance with the specified schedule
  - Other minor scheduling deviations
- Failure to keep records and plans on file as required

**Septage**

- Land application approval is not on-site or on the application vehicle
- "No Trespassing" signs are not posted on the access road to the land application site
- Land application area is not delineated with visible markers
- Soil erosion is occurring from not following site specific permit for land application
- Wastewater is being land applied to frozen ground, but not entering any waterways
- Wastewater is being land applied on snow cover with slope greater than 2 %
- Wastewater is being over applied, without threat to discharge to waters of the state
- Wastewater is not tilled in to prevent nuisance conditions, when applicable
- Land application site is not maintained to prevent the harborage of rodents and breeding of insects
- Permittee does not have letter from a public WWTP authorizing use of the facility, or does not have a permitted storage facility

**Solid Waste Land Disposal Facilities**

- Improper salvaging
- Failure to have quarterly plot plans on site
- Minor cover problems

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- Minor erosion problems
- Minor vegetation problems
- Litter
- Failure to maintain a monitoring system
- Failure to collect ground water samples in accordance with the specified schedule
- Other minor scheduling deviations
- Failure to keep records and plans on file as required

**Solid Waste Processing Facility/Transfer Stations**

- Operational violations that do not pose any threat to public health and the environment.

**Water**

- Minor NPDES or IWP permit holders that have violations meeting the criteria for SNC for dechlorination/minimum residual chlorine of 0.07 mg/l or less, or schedule violations of less than 90 days
- Incomplete DMRs or other monthly reports
- Not having required signature(s) on records
- Inadequate operation and maintenance, such as not cleaning sludge out of chlorine contact tank
- A minor number of SSO events in any year
- Recurring SSOs or bypasses due to power failure, line blockage, etc. (generally, not wet-weather related)
- Late spill reporting but has performed proper spill response
- Not having monitoring records readily available for inspectors
- PWS distribution systems not maintained, such as water mains not flushed adequately
- Community PWS failure to revise a wellhead protection plan to meet approval requirements.
- Any PWS serving less than 500 people that submits late or incomplete Monthly Reports of Operation
- Any PWS that violates secondary water quality standards

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