

Proposed Rule
LSA Document #09-797

DIGEST

Adds [355 IAC 9](#) to establish the purpose and applicability of the article, definitions of terms used in the article, and the civil penalty schedule for violation of [IC 15-16-2](#) or rules adopted under [IC 15-16-2](#). Effective 30 days after filing with the Publisher.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

[355 IAC 9](#)

SECTION 1. [355 IAC 9](#) IS ADDED TO READ AS FOLLOWS:

ARTICLE 9. FERTILIZER CIVIL PENALTY SCHEDULE

Rule 1. General Provisions

[355 IAC 9-1-1 Purpose](#)

Authority: [IC 15-16-2-44](#)

Affected: [IC 15-16-2](#)

Sec. 1. The purpose of this article is to establish a civil penalty schedule for violation of [IC 15-16-2](#) or rules adopted under that law.

(State Chemist of the State of Indiana; [355 IAC 9-1-1](#))

Rule 2. Definitions

[355 IAC 9-2-1 Applicability](#)

Authority: [IC 15-16-2-44](#)

Affected: [IC 15-16-2](#)

Sec. 1. The definitions in this rule apply throughout this article.

(State Chemist of the State of Indiana; [355 IAC 9-2-1](#))

[355 IAC 9-2-2 "Board" defined](#)

Authority: [IC 15-16-2-44](#)

Affected: [IC 15-16-2-25](#)

Sec. 2. "Board" means the Indiana fertilizer advisory board established by [IC 15-16-2-25](#).

(State Chemist of the State of Indiana; [355 IAC 9-2-2](#))

[355 IAC 9-2-3 "Legal citation" defined](#)

Authority: [IC 15-16-2-44](#)

Affected: [IC 15-16-2](#)

Sec. 3. "Legal citation" means the Indiana Code or the Indiana Administrative Code section or subsection cited on the schedule to describe the relevant portion of a fertilizer law or rule that has been violated.

(State Chemist of the State of Indiana; [355 IAC 9-2-3](#))

[355 IAC 9-2-4](#) "Per day" defined

Authority: [IC 15-16-2-44](#)

Affected: [IC 15-16-2](#)

Sec. 4. "Per day" means the method to be utilized for determining the civil penalty to be assessed for a violation that is of a continuing nature but may be the result of one (1) distinguishable act or failure to act. The violation number shall remain the same when assessing civil penalties for multiple counts of violation on a per day basis.

(State Chemist of the State of Indiana; [355 IAC 9-2-4](#))

[355 IAC 9-2-5](#) "Per incident" defined

Authority: [IC 15-16-2-44](#)

Affected: [IC 15-16-2](#)

Sec. 5. "Per incident" means the method to be utilized for determining the violation number for a violation that is usually not of a continuing nature and is the result of a separate and distinguishable act or failure to act. Violations involving separate and distinguishable acts may be assigned accumulating violation numbers.

(State Chemist of the State of Indiana; [355 IAC 9-2-5](#))

[355 IAC 9-2-6](#) "Per year" defined

Authority: [IC 15-16-2-44](#)

Affected: [IC 15-16-2](#)

Sec. 6. "Per year" means the method to be utilized for determining the violation number for a violation that may be documented on several dates or at several locations but is the result of one (1) distinguishable act or failure to act.

(State Chemist of the State of Indiana; [355 IAC 9-2-6](#))

[355 IAC 9-2-7](#) "Schedule" defined

Authority: [IC 15-16-2-44](#)

Affected: [IC 15-16-2-49.5](#)

Sec. 7. "Schedule" means the civil penalty schedule required by [IC 15-16-2-49.5\(b\)](#) and as specified in section 9 of this rule.

(State Chemist of the State of Indiana; [355 IAC 9-2-7](#))

[355 IAC 9-2-8](#) "Violation assessment" defined

Authority: [IC 15-16-2-44](#)

Affected: [IC 15-16-2](#)

Sec. 8. "Violation assessment" means the scheme to be utilized for determining the violation number and the count of violations eligible to be assessed civil penalties on the schedule. This scheme includes the concept of assessing civil penalties on a:

- (1) per incident;
- (2) per day;
- (3) per product; and
- (4) per year;

basis as indicated on the schedule.

(State Chemist of the State of Indiana; [355 IAC 9-2-8](#))

Rule 3. Civil Penalty Schedule

[355 IAC 9-3-1](#) Schedule

Authority: [IC 15-16-2-44](#)

Affected: [IC 15-16-2-46](#)

Sec. 1. The schedule of civil penalties for violations of [IC 15-16-2](#), the Indiana commercial fertilizers law, and the rules adopted under this law are as follows:

- (1) Each penalty for each violation, if the violation is of a continuing nature, shall not be imposed for more than one hundred eighty (180) days when assessed on a per day basis.
- (2) Each penalty for each violation, if the violation is of an identical repetitive nature, shall not be imposed for more than one hundred eighty (180) incidents when assessed on a per incident basis.

Legal Citation	General Description of Violation	Violation Number			Violation Assessment
		1	2	3 and subsequent	
355 IAC 2-3-1 and 355 IAC 2-3-4	Store a fertilizer in a bulk container made of improper design or materials.	\$100	\$200	\$300	Per incident
355 IAC 2-3-1(e)	Operate storage containers or appurtenances with an improper design.	\$100	\$200	\$300	Per incident
355 IAC 2-3-2	Store a fertilizer in an underground bulk container.	\$250	\$500	\$1,000	Per day
355 IAC 2-3-3	Abandon a bulk storage container improperly.	\$250	\$500	\$1,000	Per incident
355 IAC 2-3-5(a)	Fail to anchor bulk storage containers properly.	\$100	\$250	\$500	Per incident
355 IAC 2-3-6	Fail to provide bulk container security.	\$100	\$250	\$500	Per incident
355 IAC 2-3-7	Fill bulk container beyond intended capacity.	\$100	\$200	\$300	Per incident
355 IAC 2-3-8	Fail to support or contain appurtenances.	\$50	\$50	\$50	Per day
355 IAC 2-3-9	Fail to provide a liquid level device or secure liquid level gauge.	\$50	\$100	\$150	Per incident
355 IAC 2-3-10	Fail to properly label bulk container.	\$25	\$50	\$100	Per incident
355 IAC 2-3-11	Fail to maintain bulk container or appurtenance.	\$100	\$200	\$300	Per day
355 IAC 2-4-1(a)	Fail to carry out operational area activities within contained area.	\$250	\$500	\$1,000	Per incident
355 IAC 2-4-1(b)	Operate operational area containment with improper design, construction, capacity.	\$100	\$200	\$300	Per day
355 IAC 2-4-1(d)	Operate operational area with a relief outlet, valve, or improper pump.	\$100	\$200	\$300	Per day
355 IAC 2-4-1(e)	Fail to remove liquids promptly from	\$100	\$200	\$300	Per incident

	operational area containment.				
355 IAC 2-4-1(f)	Fail to protect storage containers and appurtenances from damage by vehicles.	\$100	\$200	\$300	Per incident
355 IAC 2-4-1(i)	Fail to maintain operational area containment.	\$100	\$200	\$300	Per day
355 IAC 2-5-1(a)	Store a bulk container outside of secondary containment.	\$250	\$500	\$1,000	Per day
355 IAC 2-5-1(b)	Fail to separate fertilizer secondary containment from other materials.	\$100	\$200	\$300	Per day
355 IAC 2-5-1(c) and 355 IAC 2-5-12.5(b)	Fail to maintain required capacity for secondary containment.	\$100	\$200	\$300	Per day
355 IAC 2-5-1(f)	Operate secondary containment with tile drainage within or under the containment.	\$100	\$200	\$300	Per day
355 IAC 2-5-2(a)	Operate secondary containment with improperly constructed or sealed walls.	\$100	\$200	\$300	Per day
355 IAC 2-5-3 , 355 IAC 2-5-4 , 355 IAC 2-5-5 , 355 IAC 2-5-6 , or 355 IAC 2-5-7	Operate secondary containment with improperly constructed or sealed base.	\$100	\$200	\$300	Per day
355 IAC 2-5-12	Operate an improperly designed, constructed, or maintained elephant ring.	\$100	\$200	\$300	Per day
355 IAC 2-5-12.5(a)	Operate secondary containment with a relief outlet, valve, or improper pump.	\$100	\$200	\$300	Per day
355 IAC 2-5-13(a)	Fail to maintain secondary containment.	\$100	\$200	\$300	Per day
355 IAC 2-5-13(b)	Fail to maintain secondary containment free of debris and foreign matter.	\$25	\$50	\$100	Per day
355 IAC 2-6-1.5(a)	Store dry bulk fertilizer in an unsound manner.	\$250	\$500	\$1,000	Per day
355 IAC 2-6-1.5(b)	Fail to provide a dry fertilizer operations pad.	\$250	\$500	\$1,000	Per incident
355 IAC 2-9-1	Fail to notify the state chemist annually of the bulk storage facility location and status.	\$50	\$100	\$150	Per year
355 IAC 7-3-1	Apply fertilizer material without certification.	\$100	\$200	\$300	Per incident
355 IAC 7-3-1	Distribute fertilizer material to an uncertified person.	\$100	\$200	\$300	Per incident
355 IAC 7-3-1 or 355 IAC 7-3-3	Fail to train an employee.	\$50	\$100	\$200	Per day
355 IAC 7-3-3	Engage in business for hire without a business license.	\$250	\$500	\$1,000	Per day
355 IAC 7-3-4(c)	Fail to provide proper supervision.	\$50	\$100	\$150	Per day
355 IAC 7-3-4(d)	Supervise more than 10 technicians.	\$10	\$150	\$200	Per day and per person
355 IAC 8-4-1	Staging fertilizer material in an improper manner.	\$100	\$200	\$300	Per incident
355 IAC 8-4-2	Fail to apply fertilizer material with the proper setbacks.	\$250	\$500	\$1,000	Per incident
355 IAC 8-3-3 , 355 IAC 8-3-4 , and 355 IAC 8-3-5	Fail to keep fertilizer material records.	\$50	\$100	\$150	Per incident
355 IAC 8-3-2	Fail to follow fertilizer application plan.	\$100	\$200	\$300	Per day
IC 15-16-2-46	Sell, use, or remove without permission a product placed under a stop sale, use, or removal order.	\$250*	\$500*	\$1,000*	Per incident

***This penalty shall not be subject to the potential for mitigation listed in section 3 of this rule.**

(State Chemist of the State of Indiana; [355 IAC 9-3-1](#))

[355 IAC 9-3-2](#) Determining the violation number and count of violations to be assessed

Authority: [IC 15-16-2-44](#)

Affected: [IC 15-16-2](#)

Sec. 2. For purposes of imposing civil penalties, the state chemist shall comply with the following when determining the violation number and the count of violations:

- (1)** Only violations committed within the immediate past five (5) years of the date of the violation being addressed shall be considered.
- (2)** A person's violation numbers shall accumulate as first, second, third, etc., independently for each violation listed on the schedule.
- (3)** When multiple different but similar or related violations are committed by a single distinguishable act or failure to act, only one (1) of those violations may be subject to a civil penalty for that act. This subdivision is intended to avoid duplicating civil penalty assessment for violation of multiple provisions of the statute or rule that may be essentially the same or closely related. This subdivision is not intended to limit in any way civil penalty assessment for violations that are the result of more than one (1) distinguishable unrelated act or failure to act or a violation of a continuing or repetitive nature.
- (4)** When civil penalty assessment procedures outlined in subdivision (3) are being followed, the state chemist will utilize the appropriate violation with the highest penalty listed on the schedule.

(State Chemist of the State of Indiana; [355 IAC 9-3-2](#))

[355 IAC 9-3-3](#) Potential penalty mitigation

Authority: [IC 15-16-2-44](#)

Affected: [IC 15-16-2](#)

Sec. 3. (a) The amount of a civil penalty may be adjusted downward to reflect particular mitigating factors. Some factors that may be considered are the following:

- (1)** Good faith efforts of the violator to comply.
- (2)** Cooperation by the violator with the state chemist during the investigation process.
- (3)** The violator's history of compliance.
- (4)** The potential for damage.
- (5)** Remedial or corrective action taken by the violator.

(b) Failure to pay the full amount of any previously mitigated civil penalty by the date prescribed by the state chemist may subject the violator to the full amount of the nonmitigated civil penalty.

(State Chemist of the State of Indiana; [355 IAC 9-3-3](#))

[355 IAC 9-3-4](#) Notification of legal recourse

Authority: [IC 15-16-2-44](#)

Affected: [IC 15-16-2](#)

Sec. 4. The state chemist shall notify in writing each person on whom a civil penalty may be imposed of the opportunity to obtain a hearing on the proposed action by filing with the board within thirty (30) days notice of the action.

(State Chemist of the State of Indiana; [355 IAC 9-3-4](#))

[355 IAC 9-3-5](#) Imposition of civil penalties

Authority: [IC 15-16-2-44](#)

Affected: [IC 15-16-2](#)

Sec. 5. (a) Nothing in this rule shall require the state chemist to impose a civil penalty for a violation.

(b) The state chemist may initiate any of the following enforcement actions for a violation instead of or in addition to a civil penalty:

- (1) A warning.**
- (2) A citation.**
- (3) A license, permit, registration, or certification:**
 - (A) denial;**
 - (B) modification;**
 - (C) suspension; or**
 - (D) revocation.**
- (4) Referral for criminal prosecution.**
- (5) Referral to other appropriate agency.**

(State Chemist of the State of Indiana; [355 IAC 9-3-5](#))

[355 IAC 9-3-6](#) Penalty money collected

Authority: [IC 15-16-2-44](#)

Affected: [IC 15-16-2](#)

Sec. 6. The state chemist shall credit all money collected for civil penalties to the Purdue Pesticide Programs for the purpose of providing education about fertilizers.

(State Chemist of the State of Indiana; [355 IAC 9-3-6](#))

[Notice of Public Hearing](#)

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