

TITLE 357 INDIANA PESTICIDE REVIEW BOARD

ARTICLE 1. DEFINITION; USE OF PESTICIDES

Rule 1. Definition of Pest

357 IAC 1-1-1 Definition of pest

Authority: IC 15-3-3.5-9

Affected: IC 15-3-3.5-2

Sec. 1. Each of the following organisms when it is detrimental or injurious to man, domestic or wild animals, useful plants, or other useful articles or substances is declared to be a pest under IC 1971, 15-3-3.5:

- (a) Mammals, including but not limited to dogs, cats, moles, bats, wild carnivores, and wild herbivores.
- (b) Birds, including but not limited to starlings, house sparrows, wild pigeons and black birds.
- (c) Fishes, including but not limited to alewives, sea lampreys, gizzard shad and carp.
- (d) Amphibians and reptiles, including but not limited to poisonous snakes.
- (e) Aquatic and terrestrial invertebrates, including but not limited to slugs, snails and crayfish.
- (f) Roots and other plant parts growing where not wanted.
- (g) Viruses, other than those on or in living man and other animals.

(Indiana Pesticide Review Board; Reg 1, Sec 1; filed Sep 29, 1978, 12:00 pm: 1 IR 862; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936)

Rule 2. Prescription Use Pesticides (Expired)

(Expired under IC 4-22-2.5, effective January 1, 2002.)

Rule 3. Distribution of Pesticide Products with Restricted Uses

357 IAC 1-3-1 Definitions

Authority: IC 15-3-3.5-10

Affected: IC 15-3-3.5; IC 15-3-3.6-2

Sec. 1. The following definitions apply throughout this rule:

- (1) "Business location" means the physical site of each office, warehouse, salesroom, or other establishment with a distinct mailing or electronic address at which orders for pesticide products with restricted uses are brokered or accepted from certified users.
- (2) "Certified user" means the following:
 - (A) A private applicator (IC 15-3-3.6-2(6)).
 - (B) A commercial applicator (IC 15-3-3.6-2(7)).
 - (C) A person acting as an agent for and under the direct supervision of clause (A) or (B).
- (3) "Restricted use pesticide dealer" means any business location from which restricted use pesticides are distributed or brokered to certified users.

(Indiana Pesticide Review Board; Reg 4, Sec 1; filed Jul 14, 1977, 2:26 p.m.: Rules and Regs. 1978, p. 656; filed Apr 18, 2001, 3:37 p.m.: 24 IR 2680; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936)

357 IAC 1-3-2 Restrictions on distribution

Authority: IC 15-3-3.5-10

Affected: IC 15-3-3.5

Sec. 2. Restricted use pesticides shall be distributed into or within Indiana only to persons who are certified users, except when such distribution is for resale by a restricted use pesticide dealer. *(Indiana Pesticide Review Board; Reg 4, Sec 2; filed Jul 14, 1977, 2:26 p.m.: Rules and Regs. 1978, p. 656; filed Apr 18, 2001, 3:37 p.m.: 24 IR 2680; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936)*

357 IAC 1-3-3 Distribution to certified users by registered dealers only

Authority: IC 15-3-3.5-10

Affected: IC 15-3-3.5; IC 15-3-3.6-12

Sec. 3. Restricted use pesticides shall be distributed to certified users only by restricted use pesticide dealers who are registered in accordance with IC 15-3-3.6-12 and in compliance with regulations pertaining thereto. (*Indiana Pesticide Review Board; Reg 4, Sec 3; filed Jul 14, 1977, 2:26 p.m.: Rules and Regs. 1978, p. 656; filed Apr 18, 2001, 3:37 p.m.: 24 IR 2680; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936*)

357 IAC 1-3-4 List of external sales representatives (Repealed)

Sec. 4. (*Repealed by Indiana Pesticide Review Board; filed Apr 18, 2001, 3:37 p.m.: 24 IR 2681*)

357 IAC 1-3-5 Creation and retention of distribution records

Authority: IC 15-3-3.5-10

Affected: IC 15-3-3.5

Sec. 5. (a) Records of distributions of restricted use pesticides that include all of the items in subsection (c) shall be maintained by restricted use pesticide dealers and accessible from the business location of the dealer for a period of two (2) years.

(b) All written and electronic documentation relating to the distribution of restricted use pesticides must be retained by the restricted use pesticide dealer until the distribution is recorded as specified in subsection (a).

(c) The records to be maintained under this section shall include the following:

(1) Name, certificate number of the certified user for whom the purchase is being made, and the expiration date of that certificate.

(2) Date of distribution.

(3) EPA registration number and brand name of the product.

(4) Amount of product distributed.

(5) Signature of person ordering or taking delivery of the product.

(*Indiana Pesticide Review Board; Reg 4, Sec 5; filed Jul 14, 1977, 2:26 p.m.: Rules and Regs. 1978, p. 656; filed Apr 18, 2001, 3:37 p.m.: 24 IR 2680; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936*)

Rule 4. List of Restricted Use Pesticides

357 IAC 1-4-1 List of restricted use pesticides (Repealed)

Sec. 1. (*Repealed by Indiana Pesticide Review Board; filed Nov 20, 1986, 3:47 pm: 10 IR 865*)

357 IAC 1-4-2 List of restricted use pesticide products (Repealed)

Sec. 2. (*Repealed by Indiana Pesticide Review Board; filed Apr 20, 1990, 4:40 p.m.: 13 IR 1704*)

357 IAC 1-4-3 Restricted use pesticide products

Authority: IC 15-3-3.5-10

Affected: IC 15-3-3.5

Sec. 3. Pesticide products containing the active ingredients listed as follows and otherwise conforming to the conditions and limitations pertaining to each are designated and classified as restricted use pesticides in the state of Indiana:

<u>Active Ingredient</u>	<u>Conditions and Limitations</u>
acrolein	All products
acrylonitrile	All products
alachlor	All products

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aldicarb	All products
allyl alcohol	All products
aluminum phosphide	All products
amitrole	All products except those with homeowner uses
arsenic acid	All products
arsenic pentoxide	All products
arsenic trioxide	All products
avitrol	All products
azinphos methyl	All liquid products 13.5% or greater
baythroid	All liquid products 25% or greater
bendiocarb	All products with turf or ornamental uses
bromoxynil octanoate	All products
cadmium chloride	All products 20% or greater
calcium cyanide	All products
carbofuran	All products
chlordimeform	All products
chlordimeform HCL	All products
chlorfenvinphos	All liquid products 21% or greater
chlorophacinone	All products formulated for use as a tracking powder
chloropicrin	All products 2% or greater
chromic acid	All products with wood preservative uses except brush-on formulations
clonitralid	All products
coal tar creosote	All products
creosote oil	All products
cyanazine	All products
cypermethrin	All products with agricultural uses
dibromochloropropane	All products
dichloropropene	All products
diclofop methyl	All products
dicrotophos	All products
diiflubenuron	All products formulated as wettable powders
dioxathion	All products 30% or greater
	All products 3% or greater with domestic uses
disyston	All liquid products 65% or greater
	All granular products 10% or greater
dodemorph	All products
endrin	All products
ethion	All products 80% or greater
ethoprop	All products
ethyl parathion	All products
ethyl 4,4-dichlorobenzilate	All products
fenamiphos	All products
fensulfothion	All products
fenvalerate	All products 30% or greater
flucythrinate	All products 11% or greater
fluoroacetimide	All products
fonofos	All products 16% or greater
isazofos	All products
isofenphos	All products 65% or greater
lindane	All products labeled for use on ornamentals, livestock, forests, Christmas trees, structures, or pets

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magnesium phosphide	All products
methamidophos	All products
methidathion	All products
methiocarb	All products intended for outdoor commercial or agricultural use
methomyl	All products 20% or greater except those packed and handled in water soluble bags
methyl bromide	All products
methyl parathion	All products
mevinphos	All products
monocrotophos	All products
nicotine	All products 14% or greater which generate a nicotine smoke
oxamyl	All liquid products
oxydemeton methyl	All products
paraquat dichloride	All products
pentachlorophenol	All products with wood preservative uses
permethrin	All products with outdoor agricultural uses
phorate	All products
phosphamidon	Liquid concentrates, 75% or greater; dusts, 1.5% or greater
picloram	All products except Tordon RTU EPA Reg. #464-510 and Passage Herbicide EPA Reg. #464-510
pronamide	All products
propanil	All liquid products 50% or greater
sodium arsenate	All products with wood preservative uses
sodium cyanide	All products
sodium fluoroacetate	All products
sodium dichromate	All products with wood preservative uses except brush-on formulations
sodium pentachlorophenate	All products with wood preservative uses
soluble arsenic	All rodenticide uses
strychnine	All products greater than 0.5%
	All products 0.5% or less except those intended for below ground hand application
sulfotep	All products
sulfuryl fluoride	All products
terbufos	All products
tetraethylpyrophosphate (TEPP)	All products
thallium sulfate	All products
tralomethrin	All products with outdoor agricultural uses
triphenyltin hydroxide	All products
toxaphene	All products
zinc phosphide	All products greater than 2%
	All products 2% or less which do not specify application in tamper-proof bait stations

(Indiana Pesticide Review Board; 357 IAC 1-4-3; filed Apr 20, 1990, 4:40 p.m.: 13 IR 1703; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936)

Rule 5. Outdoor Lawn Pesticide Applications; Notification and Posting

357 IAC 1-5-1 Definitions

Authority: IC 15-3-3.6-4

Affected: IC 15-3-3.6

Sec. 1. (a) As used in this rule, “commercial application for hire” means the intentional application of pesticides for hire by any means to a lawn or any part thereof by or under the direct supervision of a licensed applicator for hire or by a registered technician.

(b) As used in this rule, “golf course” means an area designated and used primarily for the play or practice of the game of golf, including, for example, surrounding grounds, trees, and ornamental beds.

(c) As used in this rule, “lawn” means land area covered with turf kept closely mown or land area covered with turf and trees and shrubs. The term does not include the following:

- (1) Land area used for research for agricultural or commercial production of turf.
- (2) Land area situated exclusively within a public or private right-of-way.
- (3) Land area devoted to the production of any agricultural commodity.
- (4) Land area devoted to use as a golf course.
- (5) Land area situated within three (3) feet of the foundation of a structure when a pesticide is applied to the area as a preventative or control measure for structural pests.

(d) As used in this rule, “lawn marker” means a sign that is placed in, or adjacent to, a lawn to serve as notification that a pesticide has been applied to that lawn.

(e) As used in this rule, “structural pest” means a pest that commonly invades or attacks man’s dwellings or structures. The term includes, but is not limited to, the following:

- (1) Termites.
- (2) Fleas.
- (3) Cockroaches.
- (4) Ants.
- (5) Beetles.
- (6) Crickets.
- (7) Spiders.
- (8) Sowbugs.
- (9) Pillbugs.
- (10) Centipedes.
- (11) Millipedes.

(f) As used in this rule, “turf” means the surface layer of soils created by growing plants (usually grasses) and their matted roots. (*Indiana Pesticide Review Board; 357 IAC 1-5-1; filed Apr 20, 1990, 4:35 p.m.: 13 IR 1701; filed Jun 9, 2000, 9:58 a.m.: 23 IR 2705; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936*)

357 IAC 1-5-2 Posting

Authority: IC 15-3-3.6-4

Affected: IC 15-3-3.6

Sec. 2. (a) At the time of each pesticide application identified by section 1(a) of this rule, the licensed applicator for hire, or an employee of the licensed business, shall place a lawn marker at a conspicuous point of access to the lawn.

(b) The lawn marker shall consist of a sign that:

- (1) shall be at least four (4) inches by five (5) inches in size;
- (2) shall be constructed of sturdy, weather resistant material;
- (3) shall have a background, lettering, and symbols in contrasting colors;
- (4) on the prominent side, shall read “LAWN CARE APPLICATION KEEP OFF THE GRASS” in letters of not less than three-eighths ($\frac{3}{8}$) of an inch high;
- (5) may display a symbol depicting the message required in subdivision (4);
- (6) may display the company name and logo or other group or association affiliation; and
- (7) shall be affixed to a sturdy nonmetallic support extending the bottom of the lawn marker six (6) to eighteen (18) inches above the turf.

(c) The lawn marker may be removed no sooner than the day following the pesticide application. (*Indiana Pesticide Review Board; 357 IAC 1-5-2; filed Apr 20, 1990, 4:35 p.m.: 13 IR 1702; errata, 13 IR 1861; filed Jun 9, 2000, 9:58 a.m.: 23 IR 2706; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936*)

357 IAC 1-5-3 Customer notification

Authority: IC 15-3-3.6-4

Affected: IC 15-3-3.6

Sec. 3. (a) At the time of each pesticide application identified by section 1(a) of this rule, the licensed applicator for hire or an employee of the licensed business shall provide the customer with a written statement containing the following information:

- (1) Business name and telephone number of the licensed business.
- (2) Signature and license or registration number of the licensed applicator for hire or registered technician who made the application.
- (3) Date and time of application.
- (4) Type of pesticide application service and brand name of pesticides applied, which shall be listed, at a minimum, as one (1) or more of the following:
 - (A) Grassy weed control (brand name).
 - (B) Broadleaf weed control (brand name).
 - (C) Insect control (brand name).
 - (D) Disease control (brand name).
 - (E) Other pest control not adequately described in clauses (A) through (D) (brand name).
- (5) Post application label safety precautions for each pesticide.
- (6) Instructions to the customer to remove the lawn marker no sooner than the day following the application.
- (7) Instructions to the customer to contact the business telephone number if more specific information is desired regarding the pesticide product applied.
- (b) The written statement required in subsection (a) shall be provided to the customer by any of the following means:
 - (1) Leave at the residence.
 - (2) Leave with the property manager or his or her authorized representative in the case of a multiunit residence.
 - (3) Mail to the property manager or his or her authorized representative if management is located at a location other than the pesticide application site, within seven (7) days of the date of the pesticide application.

(Indiana Pesticide Review Board; 357 IAC 1-5-3; filed Apr 20, 1990, 4:35 p.m.: 13 IR 1702; filed Jun 9, 2000, 9:58 a.m.: 23 IR 2706; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936)

Rule 6. Civil Penalty Assessment Schedule; Pesticide Registration

357 IAC 1-6-1 Definitions

Authority: IC 15-3-3.5-10; IC 15-3-3.5-18.3

Affected: IC 15-3-3.5-2; IC 15-3-3.5-12

Sec. 1. The following definitions apply throughout this rule:

- (1) "Adulterated" means a product as described in IC 15-3-3.5-2(2).
- (2) "Board" means the Indiana pesticide review board created by IC 15-3-3.5-12.
- (3) "Bulk pesticide" means a pesticide as described in IC 15-3-3.5-2(32).
- (4) "Distribute" means to distribute a product, as described in IC 15-3-3.5-2(8).
- (5) "Labeling" means all products labels and written, printed, or graphic material as described in IC 15-3-3.5-2(18).
- (6) "Legal citation" means the Indiana Code (IC) or the Indiana Administrative Code (IAC) section or subsection cited on the schedule to describe the relevant portion of a pesticide law or rule that has been violated.
- (7) "Misbranded" means a product as described in IC 15-3-3.5-2(19).
- (8) "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.
- (9) "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.
- (10) "Per product" means the method to be utilized for determining the violation number for a violation that may involve more

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than one (1) different product. Violations involving multiple products will be assigned accumulating violation numbers.

(11) "Person" has the meaning set forth in IC 15-3-3.5-2(22).

(12) "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.

(13) "Product" means pesticide product as defined in IC 15-3-3.5-2(38).

(14) "Schedule" means the civil penalty schedule required by IC 15-3-3.5-18.3(b) and as specified in section 2 of this rule.

(15) "State chemist" means the Indiana state chemist or his or her appointed agent.

(16) "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 per incident, per day, per product, and per year basis as indicated on the schedule.

(Indiana Pesticide Review Board; 357 IAC 1-6-1; filed Jan 9, 1992, 3:00 p.m.: 15 IR 706; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936; filed Jan 7, 2005, 2:15 p.m.: 28 IR 1689)

357 IAC 1-6-2 Schedule

Authority: IC 15-3-3.5-10; IC 15-3-3.5-18.3

Affected: IC 15-3-3.5

Sec. 2. (a) The schedule of civil penalties for violations of IC 15-3-3.5, the Indiana Pesticide Registration Law, and the rules adopted under this law is as follows:

Legal Citation	General Description of Violation	Violation Number			Violation Assessment
		1	2	3 and subsequent	
IC 15-3-3.5-3(1) or IC 15-3-3.5-18.1(a)(1)	Distribute a nonregistered product.	\$250	\$500	\$1,000	Per product and per year
IC 15-3-3.5-3(2)	Distribute a product with labeling different from that registered.	\$100	\$200	\$300	Per product and per year
IC 15-3-3.5-3(3)	Distribute a product with composition different from that registered.	\$250	\$500	\$1,000	Per product and per year
IC 15-3-3.5-3(4)	Distribute a product with incomplete or illegible label or in a container other than manufacturer's immediate unbroken container.	\$250	\$500	\$1,000	Per product and per incident
IC 15-3-3.5-3(5)	Distribute an improperly colored product.	\$250	\$500	\$1,000	Per product and per year
IC 15-3-3.5-3(6), IC 15-3-3.5-18.1(2), or IC 15-3-3.5-18.1(3)	Distribute an adulterated or misbranded product.	\$250	\$500	\$1,000	Per product and per year
IC 15-3-3.5-3(7)	Distribute a product in a container not in compliance with container rules.	\$250	\$500	\$1,000	Per product and per year
IC 15-3-3.5-3(8)	Distribute a highly volatile herbicide.	\$250	\$500	\$1,000	Per product and per incident
IC 15-3-3.5-3(9)	Distribute or store a bulk pesticide without an affixed label.	\$100	\$200	\$300	Per product and per incident
IC 15-3-3.5-4(1)	Detach, alter, deface, or destroy a label or labeling or adulterate a product.	\$250	\$500	\$1,000	Per product and per incident
IC 15-3-3.5-4(2)	Reveal a product formula.	\$250*	\$500*	\$1,000*	Per product and per incident

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IC 15-3-3.5-4(3)	Use a pesticide not in compliance with use, distribution, storage, transportation, disposal, or container rules.	\$250	\$500	\$1,000	Per incident
IC 15-3-3.5-25	Sell, use, or remove without permission a product placed under a stop sale, use, or removal order.	\$250*	\$500*	\$1,000*	Per incident
IC 15-3-3.5-33	Store, display, handle, transport, or distribute a product in a hazardous manner.	\$250	\$500	\$1,000	Per incident
IC 15-3-3.5-34	Store, discard, or dispose a product or container in a hazardous manner.	\$250	\$500	\$1,000	Per incident
357 IAC 1-3-2	Distribute a restricted use pesticide to a noncertified user.	\$250*	\$500*	\$1,000*	Per incident
357 IAC 1-3-3	Distribute a restricted use pesticide without a dealer registration.	\$250	\$500	\$1,000	Per incident
357 IAC 1-3-5(a)	Fail to keep restricted use pesticide distribution records.	\$100	\$200	\$300	Per incident
357 IAC 1-3-5(c)	Fail to keep complete distribution records.	\$25	\$50	\$75	Per incident
355 IAC 5-2-1 or 355 IAC 5-2-4	Store a pesticide in a bulk container made of improper design or materials.	\$100	\$200	\$300	Per incident and per day
355 IAC 5-2-2	Store a pesticide in an underground bulk container.	\$250	\$500	\$1,000	Per incident and per day
355 IAC 5-2-3	Abandon a bulk storage container improperly.	\$250	\$500	\$1,000	Per incident
355 IAC 5-2-6	Fail to vent a bulk storage container.	\$100	\$100	\$100	Per incident
355 IAC 5-2-7	Fail to provide bulk container security.	\$100	\$100	\$100	Per day
355 IAC 5-2-8	Fill bulk container beyond intended capacity.	\$100	\$200	\$300	Per incident
355 IAC 5-2-9	Fail to have proper shut-off valve on bulk container.	\$50	\$50	\$50	Per day
355 IAC 5-2-10	Fail to support bulk container appurtenances.	\$50	\$50	\$50	Per day
355 IAC 5-2-11	Fail to have proper liquid level gauging device on bulk container.	\$50	\$50	\$50	Per incident
355 IAC 5-2-12	Fail to maintain bulk container.	\$100	\$100	\$100	Per day
355 IAC 5-3-1(a)	Fail to carry out operational area activities within contained area.	\$250*	\$500*	\$1,000*	Per incident
355 IAC 5-3-1(b) or 355 IAC 5-3-1(d)	Operate operational area containment with improper design, construction, capacity, or drainage.	\$100	\$200	\$300	Per incident and per day
355 IAC 5-3-1(e)	Fail to remove liquids promptly from operational area containment.	\$100	\$200	\$300	Per day
355 IAC 5-3-1(f)	Fail to protect storage containers and appurtenances from damage by vehicles.	\$250	\$500	\$1,000	Per incident
355 IAC 5-3-1(h)	Fail to maintain operational area containment.	\$100	\$200	\$300	Per day
355 IAC 5-4-1(a)	Store a bulk container outside of secondary containment.	\$250*	\$500*	\$1,000*	Per day

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355 IAC 5-4-1(b)	Fail to separate pesticide secondary containment from other materials.	\$100	\$200	\$300	Per day
355 IAC 5-4-1(c)	Fail to maintain required capacity for secondary containment.	\$100	\$200	\$300	Per day
355 IAC 5-4-1(f)	Operate secondary containment with tile drainage within or under the containment.	\$100	\$200	\$300	Per day
355 IAC 5-4-2	Operate secondary containment with improperly constructed or sealed walls.	\$100	\$200	\$300	Per day
355 IAC 5-4-3	Operate secondary containment with improperly constructed or sealed base.	\$100	\$200	\$300	Per day
355 IAC 5-4-4	Operate secondary containment with a relief outlet, valve, or improper pump.	\$100	\$200	\$300	Per day
355 IAC 5-4-7	Operate an improperly designed, constructed, or maintained elephant ring.	\$100	\$200	\$300	Per day
355 IAC 5-4-8(a)	Fail to maintain secondary containment.	\$100	\$200	\$300	Per day
355 IAC 5-4-8(b)	Fail to maintain secondary containment free of debris and foreign matter.	\$25	\$50	\$100	Per day
355 IAC 5-5-1	Store dry bulk pesticide in improper, nonelevated, uncovered, or unsecured container or manner.	\$250	\$500	\$1,000	Per day
355 IAC 5-8-1	Fail to notify the state chemist annually of the bulk storage facility location and status.	\$50	\$100	\$150	Per year

* This penalty shall not be subject to the potential for mitigation listed in section 5 of this rule.

(b) 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.

(c) 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. (*Indiana Pesticide Review Board; 357 IAC 1-6-2; filed Jan 9, 1992, 3:00 p.m.: 15 IR 706; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936; filed Jan 7, 2005, 2:15 p.m.: 28 IR 1690*)

357 IAC 1-6-3 Violation types (Repealed)

Sec. 3. (*Repealed by Indiana Pesticide Review Board; filed Jan 7, 2005, 2:15 p.m.: 28 IR 1693*)

357 IAC 1-6-4 Determining the violation number and count of violations to be assessed

Authority: IC 15-3-3.5-10; IC 15-3-3.5-18.3

Affected: IC 15-3-3.5

Sec. 4. 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.

(Indiana Pesticide Review Board; 357 IAC 1-6-4; filed Jan 9, 1992, 3:00 p.m.: 15 IR 706; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936; filed Jan 7, 2005, 2:15 p.m.: 28 IR 1692)

357 IAC 1-6-5 Potential penalty mitigation

Authority: IC 15-3-3.5-10; IC 15-3-3.5-18.3

Affected: IC 15-3-3.5

Sec. 5. (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) Whether the violation involved a restricted use pesticide.
- (5) The potential for damage.
- (6) 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. *(Indiana Pesticide Review Board; 357 IAC 1-6-5; filed Jan 9, 1992, 3:00 p.m.: 15 IR 707; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936; filed Jan 7, 2005, 2:15 p.m.: 28 IR 1692)*

357 IAC 1-6-6 Notification of legal recourse

Authority: IC 15-3-3.5-10; IC 15-3-3.5-18.3

Affected: IC 15-3-3.5

Sec. 6. 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. *(Indiana Pesticide Review Board; 357 IAC 1-6-6; filed Jan 9, 1992, 3:00 p.m.: 15 IR 707; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936; filed Jan 7, 2005, 2:15 p.m.: 28 IR 1693)*

357 IAC 1-6-7 Imposition of civil penalties

Authority: IC 15-3-3.5-10; IC 15-3-3.5-18.3

Affected: IC 15-3-3.5

Sec. 7. (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 the U.S. Environmental Protection Agency or other appropriate agency.

(Indiana Pesticide Review Board; 357 IAC 1-6-7; filed Jan 7, 2005, 2:15 p.m.: 28 IR 1693)

357 IAC 1-6-8 Penalty money collected

Authority: IC 15-3-3.5-18.3

Affected: IC 15-3-3.5

Sec. 8. (a) The state chemist shall credit all money collected for civil penalties to the Purdue University Cooperative Extension

Service.

(b) The Purdue University Cooperative Extension Service shall use the money solely for the purpose of providing education about pesticides. (*Indiana Pesticide Review Board; 357 IAC 1-6-8; filed Jan 7, 2005, 2:15 p.m.: 28 IR 1693*)

Rule 7. Civil Penalty Assessment Schedule; Pesticide Use and Application

357 IAC 1-7-1 Definitions

Authority: IC 15-3-3.6-4; IC 15-3-3.6-14.5

Affected: IC 15-3-3.5-2; IC 15-3-3.5-12; IC 15-3-3.6

Sec. 1. The following definitions apply throughout this rule:

(1) "Board" means the Indiana pesticide review board created by IC 15-3-3.5-12.

(2) "Legal citation" means the Indiana Code (IC) or Indiana Administrative Code (IAC) section or subsection cited on the schedule to describe the relevant portion of a pesticide law or rule that has been violated.

(3) "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.

(4) "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. Violations involving separate and distinguishable acts may be assigned accumulating violation numbers.

(5) "Per person" means the method to be utilized for determining the civil penalty to be assessed for a violation that may involve more than one (1) different person. The violation number shall remain the same when assessing civil penalties on a per person basis.

(6) "Per product" means the method to be utilized for determining the violation number for a violation that may involve more than one (1) different product. Violations involving multiple products will be assigned accumulating violation numbers.

(7) "Person" has the meaning set forth in IC 15-3-3.5-2(22).

(8) "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.

(9) "Product" means pesticide product as defined in IC 15-3-3.5-2(38).

(10) "Schedule" means the civil penalty schedule required by IC 15-3-3.6-14.5(a) and as specified in section 2 of this rule.

(11) "State chemist" means the Indiana state chemist or his or her appointed agent.

(12) "Violation assessment" means the scheme to be utilized for determining the violation number and the count of violations eligible to be assessed civil penalties under the schedule. This scheme includes the concept of assessing civil penalties on a per incident, per day, per product, per person, and per year basis as indicated on the schedule.

(*Indiana Pesticide Review Board; 357 IAC 1-7-1; filed Jan 9, 1992, 3:00 p.m.: 15 IR 707; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936; filed Jan 7, 2005, 1:50 p.m.: 28 IR 1685*)

357 IAC 1-7-2 Schedule

Authority: IC 15-3-3.6-4; IC 15-3-3.6-14.5

Affected: IC 15-3-3.6-14

Sec. 2. (a) The schedule of civil penalties for violations of IC 15-3-3.6, the Indiana Pesticide Use and Application Law, and the rules adopted under this law, committed by a person not described in subsection (d), is as follows:

Legal Citation	General Description of Violation	Violation Number			Violation Assessment
		1	2	3 and subsequent	
IC 15-3-3.6-14(1)	Make false claims about pesticide or method effectiveness.	\$250	\$500	\$1,000	Per incident
IC 15-3-3.6-14(2)	Use a pesticide inconsistent with its label.	\$250	\$500	\$1,000	Per incident
IC 15-3-3.6-14(3)	Use an ineffective or improper pesticide.	\$250	\$500	\$1,000	Per incident

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IC 15-3-3.6-14(4)	Use unsafe equipment.	\$100	\$200	\$300	Per incident
IC 15-3-3.6-14(5)	Operate in a careless manner.	\$250	\$500	\$1,000	Per incident
IC 15-3-3.6-14(6)	Fail to comply with an order of state chemist.	\$250	\$500	\$1,000	Per incident, per product, and per day
IC 15-3-3.6-14(7)	Fail to keep records, make reports, or supply information.	\$100	\$100	\$100	Per incident
IC 15-3-3.6-14(8)	Make false records, invoices, or reports.	\$250	\$500	\$1,000	Per incident
IC 15-3-3.6-14(9)	Engage in business for hire without a business license.	\$250	\$500	\$1,000	Per day
IC 15-3-3.6-14(10)	Use a restricted use pesticide without applicator certification.	\$250*	\$500*	\$1,000*	Per incident
IC 15-3-3.6-14(11)	Use fraud in applying for a license, permit, or registration.	\$250*	\$500*	\$1,000*	Per incident
IC 15-3-3.6-14(12)	Operate beyond the scope of an issued license, permit, or registration.	\$125	\$125	\$125	Per day
IC 15-3-3.6-14(13)	Aid or abet a person to evade the law.	\$250*	\$250*	\$250*	Per incident
IC 15-3-3.6-14(14)	Make false statements about a pest infestation.	\$250	\$500	\$1,000	Per incident
IC 15-3-3.6-14(15)	Impersonate a government official.	\$250*	\$500*	\$1,000*	Per incident
IC 15-3-3.6-14(16)	Knowingly purchase or use a nonregistered pesticide.	\$100	\$200	\$300	Per incident and per product
IC 15-3-3.6-14(17)	Fail to maintain insurance.	\$25	\$50	\$100	Per day
355 IAC 4-2-3	Fail to provide on-site supervision.	\$125	\$250	\$500	Per day
355 IAC 4-2-6	Fail to provide technician with label, fact sheet, safety equipment, or voice communication.	\$25	\$50	\$100	Per day
355 IAC 4-2-7	Supervise more than 10 technicians.	\$100	\$100	\$100	Per day and per person
355 IAC 4-2-8	Fail to have technician credential at the work site.	\$25	\$50	\$100	Per incident
355 IAC 4-4-1 or 355 IAC 4-4-1.5	Fail to keep restricted use pesticide application records.	\$100	\$200	\$300	Per day
355 IAC 4-4-1 or 355 IAC 4-4-1.5	Fail to keep all record elements.	\$25	\$50	\$100	Per day
355 IAC 4-5-2(1)	Fail to keep termiticide application records.	\$100	\$200	\$300	Per day
355 IAC 4-5-2(2)	Fail to keep complete termiticide records.	\$25	\$50	\$100	Per day
355 IAC 4-5-2(4)	Fail to provide label and application specifications to termite control technicians.	\$25	\$50	\$100	Per incident
355 IAC 4-6-2(a)	Fail to provide label, application address, safety equipment, supervisor identity, or communication to lawn technician.	\$25	\$50	\$100	Per incident
357 IAC 1-5-2(a)	Fail to place a lawn marker.	\$100	\$200	\$300	Per incident
357 IAC 1-5-2(b)	Place an incorrect lawn marker.	\$50	\$100	\$200	Per incident
357 IAC 1-5-3(a)	Fail to provide lawn customer notification.	\$100	\$200	\$300	Per incident
357 IAC 1-5-3(b)	Provide incorrect lawn customer notification.	\$50	\$100	\$200	Per incident
357 IAC 1-9-4(1)	Provide pesticide selection and use advice without consultant registration.	\$250	\$500	\$1,000	Per incident
357 IAC 1-9-4(2)	Fail to train consultant employees.	\$100	\$200	\$300	Per incident
357 IAC 1-9-4(3)	Fail to post consultant employee notice.	\$50	\$100	\$150	Per incident

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357 IAC 1-9-4(4)	Fail to post consultant public notice.	\$50	\$100	\$150	Per incident
357 IAC 1-10-2	Mix, load, or store pesticides in wellhead isolation area.	\$100	\$200	\$300	Per day
357 IAC 1-10-3	Fail to provide proper storage or containment in wellhead area.	\$100	\$200	\$300	Per day
357 IAC 1-10-4	Fail to properly and immediately clean up spill in wellhead area.	\$250	\$500	\$1,000	Per incident
357 IAC 1-11-2	Use any pesticide for community-wide mosquito abatement without a category 8 license.	\$250	\$500	\$1,000	Per day

*This penalty shall not be subject to the potential for mitigation listed in section 5 of this rule.

(b) 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.

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

(d) The schedule of civil penalties for violations of IC 15-3-3.6, the Indiana Pesticide Use and Application Law, and the rules adopted under this law, committed by a person who is required to be certified as a private applicator, shall be the same as that listed in subsection (a) except that all listed amounts shall be one hundred dollars (\$100). (*Indiana Pesticide Review Board; 357 IAC 1-7-2; filed Jan 9, 1992, 3:00 p.m.: 15 IR 707; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936; filed Jan 7, 2005, 1:50 p.m.: 28 IR 1686*)

357 IAC 1-7-3 Violation types (Repealed)

Sec. 3. (*Repealed by Indiana Pesticide Review Board; filed Jan 7, 2005, 1:50 p.m.: 28 IR 1689*)

357 IAC 1-7-4 Determining the violation number and count of violations to be assessed

Authority: IC 15-3-3.6-4; IC 15-3-3.6-14.5

Affected: IC 15-3-3.6

Sec. 4. 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 number 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.

(*Indiana Pesticide Review Board; 357 IAC 1-7-4; filed Jan 9, 1992, 3:00 p.m.: 15 IR 708; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936; filed Jan 7, 2005, 1:50 p.m.: 28 IR 1687*)

357 IAC 1-7-5 Potential penalty mitigation

Authority: IC 15-3-3.6-4; IC 15-3-3.6-14.5

Affected: IC 15-3-3.6

Sec. 5. (a) The amount of a civil penalty may be adjusted downward to reflect particular factors that may be mitigating. 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) Whether the violation involved a restricted use pesticide.
- (5) The potential for damage.
- (6) Remedial or corrective action taken by the violator.
- (7) Unusual climatic events.

(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. (*Indiana Pesticide Review Board; 357 IAC 1-7-5; filed Jan 9, 1992, 3:00 p.m.: 15 IR 708; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936; filed Jan 7, 2005, 1:50 p.m.: 28 IR 1688*)

357 IAC 1-7-6 Notification of legal recourse

Authority: IC 15-3-3.6-4; IC 15-3-3.6-14.5

Affected: IC 15-3-3.6-15

Sec. 6. The state chemist shall notify in writing each person on whom a civil penalty is imposed of the provisions under IC 15-3-3.6-15 for a person's legal recourse and review by the board of any action by the state chemist that may aggrieve that person. (*Indiana Pesticide Review Board; 357 IAC 1-7-6; filed Jan 9, 1992, 3:00 p.m.: 15 IR 708; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936; filed Jan 7, 2005, 1:50 p.m.: 28 IR 1688*)

357 IAC 1-7-7 Imposition of civil penalties

Authority: IC 15-3-3.6-4; IC 15-3-3.6-14.5

Affected: IC 15-3-3.6

Sec. 7. (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 the U.S. Environmental Protection Agency or other appropriate agency.

(*Indiana Pesticide Review Board; 357 IAC 1-7-7; filed Jan 7, 2005, 1:50 p.m.: 28 IR 1688*)

357 IAC 1-7-8 Penalty money collected

Authority: IC 15-3-3.6-4; IC 15-3-3.6-14.5

Affected: IC 15-3-3.6

Sec. 8. (a) The state chemist shall credit all money collected for civil penalties to the Purdue University Cooperative Extension Service.

(b) The Purdue University Cooperative Extension Service shall use the money solely for the purpose of providing education about pesticides. (*Indiana Pesticide Review Board; 357 IAC 1-7-8; filed Jan 7, 2005, 1:50 p.m.: 28 IR 1689*)

Rule 8. Indiana Pesticide Law Violators; Public Listing

357 IAC 1-8-1 Definitions

Authority: IC 15-3-3.5-11; IC 15-3-3.5-18.3; IC 15-3-3.6-4; IC 15-3-3.6-14

Affected: IC 15-3-3.5; IC 15-3-3.6

Sec. 1. (a) As used in this rule, “criteria for publicly listing” means the standards on which a decision will be made by the state chemist to include the identity of a person who has violated any of the provisions of IC 15-3-3.5, IC 15-3-3.6, or the rules thereunder, on a listing prepared for ready access and publication to the general public.

(b) As used in this rule, “person” means any:

- (1) individual;
- (2) partnership;
- (3) association;
- (4) fiduciary;
- (5) corporation; or
- (6) organized groups of persons;

whether incorporated or not. (*Indiana Pesticide Review Board; 357 IAC 1-8-1; filed Sep 10, 1999, 4:47 p.m.: 23 IR 306; readopted filed Dec 2, 2005, 2:30 p.m.: 29 IR 1381*)

357 IAC 1-8-2 Applicability

Authority: IC 15-3-3.5-11; IC 15-3-3.5-18.3; IC 15-3-3.6-4; IC 15-3-3.6-14

Affected: IC 15-3-3.5; IC 15-3-3.6

Sec. 2. The criteria for publicly listing shall be applied to all persons who have violated IC 15-3-3.5, IC 15-3-3.6, or rules thereunder, but shall be limited to the following:

- (1) Any person who has been assessed a civil penalty by the state chemist.
- (2) Any person who has had any certification, registration, license, permit, or other required credential or status issued by the state chemist denied, revoked, canceled, or suspended as the result of the violation.

(*Indiana Pesticide Review Board; 357 IAC 1-8-2; filed Sep 10, 1999, 4:47 p.m.: 23 IR 306; readopted filed Dec 2, 2005, 2:30 p.m.: 29 IR 1381*)

Rule 9. Pesticide Consultants; Registration

357 IAC 1-9-1 Definitions

Authority: IC 15-3-3.6-8.3

Affected: IC 15-3-3.6-2

Sec. 1. The following definitions apply throughout this rule:

- (1) “Employee training” means training approved by the state chemist that is required to be provided by the registered pesticide consultant to employees to enable them to accurately convey pesticide use and safety advice to their pesticide customers.
- (2) “Public notification” means the signage that must be posted in a public area at the registered pesticide consultant establishment to notify the pesticide customer of the customer’s ultimate responsibility to read and follow the directions on the pesticide label and labeling.
- (3) “Registered pesticide consultant” means a retail business establishment that sells any pesticide, except restricted use pesticides as defined in IC 15-3-3.6-2(26), to pesticide users and whose employees provide pesticide selection and use advice.

(*Indiana Pesticide Review Board; 357 IAC 1-9-1; filed Dec 16, 1999, 4:23 p.m.: 23 IR 1103; readopted filed Aug 10, 2006, 8:44 a.m.: 20060906-IR-357060170RFA*)

357 IAC 1-9-2 Applicability

Authority: IC 15-3-3.6-8.3

Affected: IC 15-3-3.6-6; IC 15-3-3.6-12

Sec. 2. (a) The requirement to be a registered pesticide consultant shall apply to any retail establishment that does both of the following:

- (1) Sells or offers for sale any pesticide, except restricted use pesticides, to pesticide users.
 - (2) Has employees who provide pesticide selection and use advice to pesticide users.
- (b) The requirement to be a registered pesticide consultant shall not apply to the following:

- (1) Retail establishments that sell pesticides, but whose employees are not expected to provide pesticide selection and use advice.
- (2) Physicians, pharmacists, and veterinarians that provide pesticide selection and use advice for pesticide products intended for use on humans or animals.
- (3) An establishment with a valid Indiana pesticide business license as described in IC 15-3-3.6-6.
- (4) An establishment with a valid Indiana restricted use pesticide dealer registration as described in IC 15-3-3.6-12.
- (5) An establishment that has an employee at the facility who is a certified and licensed pesticide applicator.

(Indiana Pesticide Review Board; 357 IAC 1-9-2; filed Dec 16, 1999, 4:23 p.m.: 23 IR 1104; readopted filed Aug 10, 2006, 8:44 a.m.: 20060906-IR-357060170RFA)

357 IAC 1-9-3 Registration procedures

Authority: IC 15-3-3.6-8.3

Affected: IC 15-3-3.6-12.1

Sec. 3. (a) To become a registered pesticide consultant, a retail establishment must do the following:

(1) Submit an application on a form provided by the state chemist. This form must list at least one (1) person as the contact for the business for registered pesticide consultant matters.

(2) Submit the thirty dollar (\$30) registered pesticide consultant fee.

(b) Registration of each pesticide consultant retail establishment shall expire on December 31 unless renewed by payment of a thirty dollar (\$30) renewal fee by that date. Renewal after December 31 shall include a late fee of thirty dollars (\$30) as established by IC 15-3-3.6-12.1 in addition to the thirty dollar (\$30) renewal fee.

(c) A pesticide consultant registration must be obtained for each retail establishment location at which pesticide sales, selection, and use advice is provided to customers. *(Indiana Pesticide Review Board; 357 IAC 1-9-3; filed Dec 16, 1999, 4:23 p.m.: 23 IR 1104; readopted filed Aug 10, 2006, 8:44 a.m.: 20060906-IR-357060170RFA)*

357 IAC 1-9-4 Requirements

Authority: IC 15-3-3.6-8.3

Affected: IC 15-3-3.6

Sec. 4. In order for the employees of a retail establishment to provide pesticide selection and use advice, the retail establishment must do the following:

(1) Register with the state chemist as a pesticide consultant.

(2) Provide employee training to all employees who provide pesticide selection and use advice.

(3) Post a notice in an area that employees will see to notify the employees that pesticide selection and use advice may be provided only by those employees who have completed the required pesticide consultant employee training.

(4) Post the public notification signage as defined in section 1(2) of this rule. The public notification may indicate, if desired by the retail establishment, that the location is registered with the state chemist as a pesticide consultant and trained employees may provide pesticide selection and use advice to customers.

(Indiana Pesticide Review Board; 357 IAC 1-9-4; filed Dec 16, 1999, 4:23 p.m.: 23 IR 1104; readopted filed Aug 10, 2006, 8:44 a.m.: 20060906-IR-357060170RFA)

357 IAC 1-9-5 State chemist responsibilities

Authority: IC 15-3-3.6-8.3

Affected: IC 15-3-3.6

Sec. 5. The responsibilities of the state chemist in administering this rule shall include, but may not be limited to, the following:

(1) Maintain a listing of registered pesticide consultants.

(2) Provide relevant pesticide safety and regulatory updates to registered pesticide consultants through the state chemist pesticide newsletter or other appropriate media.

(3) Provide, to registered pesticide consultants, details on obtaining employee training information developed by the Purdue University Cooperative Extension Service.

(4) Inspect registered pesticide consultants and other retail establishments that sell pesticides for compliance with this rule. *(Indiana Pesticide Review Board; 357 IAC 1-9-5; filed Dec 16, 1999, 4:23 p.m.: 23 IR 1104; readopted filed Aug 10, 2006, 8:44 a.m.: 20060906-IR-357060170RFA)*

Rule 10. Regulation of Pesticides Near Community Public Water Supply System Wells

357 IAC 1-10-1 Definitions

Authority: IC 15-3-3.6-4; IC 15-3-3.6-24

Affected: IC 15-3-3.6

Sec. 1. The following definitions apply throughout this rule:

(1) "Community public water supply system" or "CPWSS" means a public water supply system as referenced in 327 IAC 8-4.1-1(5) that serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.

(2) "Discharge" means a release of a pesticide from a storage container into secondary containment.

(3) "Impervious surface" means a surface composed of a watertight material that effectively prevents discharged pesticide from impacting the soil or ground water, and from reaching a drinking water well or dry well, storm or sanitary sewer, or septic system.

(4) "Isolation area" means an area as referenced in 327 IAC 8-3.4-9, which is established around a CPWSS production well, to protect ground water from direct contamination by pesticides.

(5) "Public water supply system" or "PWSS" means a public water supply as established by 326 IAC 8-4.1-1(20) for the provision to the public of piped water for human consumption if such a system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year.

(6) "Secondary containment" means any structure, such as a dike, used to contain pesticide discharge from storage containers and prevent run-off or leaching.

(7) "State chemist" means the Indiana state chemist or his appointed agent.

(8) "Time of travel" or "TOT", as referenced in 327 IAC 8-4.1-1(25), means the calculated length of time that a particle of water takes to reach a CPWSS production well from a certain point.

(9) "Time of travel threshold" means a minimum five (5) year TOT for modeled wellhead protection areas or three thousand (3,000) feet for fixed radius wellhead protection areas as delineated in 327 IAC 8-4.1-1(26).

(10) "Wellhead protection area" or "WHPA" as referenced in 327 IAC 8-4.1-1(27) means the surface and subsurface area that contributes water to a CPWSS production well or well field and through which contaminants are likely to move and reach the well within the TOT threshold.

(Indiana Pesticide Review Board; 357 IAC 1-10-1; filed Apr 23, 2003, 3:45 p.m.: 26 IR 2859)

357 IAC 1-10-2 Prohibited activities within the isolation area

Authority: IC 15-3-3.6-4; IC 15-3-3.6-24

Affected: IC 15-3-3.6

Sec. 2. (a) The following activities shall be prohibited within the isolation area, except for pesticides labeled for the intentional use in the treatment of water for drinking:

(1) Pesticide loading.

(2) Pesticide mixing.

(3) Pesticide storage.

(b) Application of pesticides within the isolation area shall be permitted unless prohibited by:

(1) the pesticide label; or

(2) a rule by the Indiana pesticide review board.

(Indiana Pesticide Review Board; 357 IAC 1-10-2; filed Apr 23, 2003, 3:45 p.m.: 26 IR 2860)

357 IAC 1-10-3 Pesticide storage within the WHPA and outside of the isolation area

Authority: IC 15-3-3.6-4; IC 15-3-3.6-24

Affected: IC 15-3-3.6

Sec. 3. (a) Pesticide containers with the capacity for the storage of pesticides in undivided quantities exceeding fifty-five (55) U.S. gallons or one hundred (100) pounds dry product shall be subject to the storage and containment requirements in 355 IAC 5.

(b) Pesticide containers not covered by the requirements referenced in subsection (a) shall be stored:

(1) on an impervious surface;

(2) in a covered area that is protected from precipitation; and

(3) within secondary containment when the quantity of pesticide product in all containers exceeds fifty-five (55) U.S. gallons of liquid or one hundred (100) pounds of dry product and a spill or leak is likely to enter a septic system, sanitary or storm sewer, drinking water well, or dry well.

(c) Secondary containment required in subsection (b) shall be:

(1) constructed with a capacity of a minimum of at least one hundred ten percent (110%) of the volume of the largest storage container within the contained area plus the volume displaced by all other pesticide containers, equipment, and other items in the containment vessel; and

(2) constructed, installed, and maintained so as to prevent the spill or leakage of the pesticide.

(Indiana Pesticide Review Board; 357 IAC 1-10-3; filed Apr 23, 2003, 3:45 p.m.: 26 IR 2860)

357 IAC 1-10-4 Cleanup of discharged or spilled pesticide

Authority: IC 15-3-3.6-4; IC 15-3-3.6-24

Affected: IC 15-3-3.6

Sec. 4. (a) Remediation and cleanup of discharged or spilled pesticide shall be performed immediately upon discovery.

(b) Clean-up procedures shall be conducted:

(1) in accordance with the procedures on the pesticide product label; and

(2) in a manner that prevents the pesticide from impacting the soil or ground water, and from reaching a drinking water well, dry well, storm sewer, sanitary sewer, or septic system.

(Indiana Pesticide Review Board; 357 IAC 1-10-4; filed Apr 23, 2003, 3:45 p.m.: 26 IR 2860)

357 IAC 1-10-5 Inspection and compliance

Authority: IC 15-3-3.6-4; IC 15-3-3.6-24

Affected: IC 15-3-3.6

Sec. 5. (a) The inspection for compliance with this rule is the responsibility of the state chemist but may be delegated by the state chemist to the Indiana department of environmental management and to employees of state, county, or municipal government.

(b) The initiation of enforcement for violations of the provisions shall be the sole responsibility of the state chemist. *(Indiana Pesticide Review Board; 357 IAC 1-10-5; filed Apr 23, 2003, 3:45 p.m.: 26 IR 2861)*

357 IAC 1-10-6 Compliance with the effective date of rule

Authority: IC 15-3-3.6-4; IC 15-3-3.6-24

Affected: IC 15-3-3.6

Sec. 6. (a) This rule shall become effective within one (1) year of the date of adoption.

(b) For newly established facilities, full compliance shall be required immediately.

(c) For existing facilities:

(1) full compliance with section 3 *[of this rule]* shall be required no later than two (2) years following adoption; and

(2) full compliance with all other sections of this rule shall be required immediately.

(Indiana Pesticide Review Board; 357 IAC 1-10-6; filed Apr 23, 2003, 3:45 p.m.: 26 IR 2861)

Rule 11. Community-Wide Mosquito Abatement Pesticide Applicators and Technicians

357 IAC 1-11-1 Definitions

Authority: IC 15-3-3.6-3; IC 15-3-3.6-4

Affected: IC 15-3-3.6-8.1

Sec. 1. The following definitions apply throughout this rule:

(1) "Category 8" means the public health pest control certification and license category referenced in 355 IAC 4-1-3(14), which includes pesticide applicators who use or supervise the use of pesticides in mosquito abatement operations.

(2) "Commercial applicator license" means the license issued annually by the state chemist to an individual who has met the requirements established in IC 15-3-3.6-8.1, including the following licenses:

(A) Applicator for hire.

(B) Applicator not for hire.

(C) Public applicator.

(3) "Community-wide mosquito abatement" means any pesticide application activities, including mosquito adulticiding and larviciding, conducted wholly or in part on publicly accessible property. The term does not include pesticide applications performed for the control of mosquitoes solely on a single-family residence.

(4) "Direct supervision" means one (1) of the following:

(A) The supervision and oversight procedures for noncertified applicators, as required in 355 IAC 4-2.

(B) The supervising certified applicator is:

(i) present at the pesticide application site in close proximity to and within reasonable line of sight of the noncertified applicator; and

(ii) operating under conditions that permit direct voice contact with the noncertified applicator.

(C) For employees of a governmental agency, the supervising certified applicator:

(i) has provided the noncertified applicator with written instructions covering site-specific precautions to prevent injury to persons or the environment or damage to property at the pesticide application site; and

(ii) is operating under conditions that permit direct voice contact with the noncertified applicator.

(5) "Publicly accessible property" means public or private property to which the public or patrons have a reasonable expectation of relatively unrestricted access.

(6) "Registered technician" means a noncertified person who, having met the requirements of 355 IAC 4-2-8, is registered by the state chemist and thereby is authorized to engage in pesticide use and related activities while working under the direct supervision of a certified and licensed applicator.

(7) "State chemist" means the Indiana state chemist or his appointed agent.

(Indiana Pesticide Review Board; 357 IAC 1-11-1; filed Jan 2, 2004, 2:00 p.m.: 27 IR 1878)

357 IAC 1-11-2 Applicator certification and licensing

Authority: IC 15-3-3.6-3; IC 15-3-3.6-4

Affected: IC 15-3-3.6-2

Sec. 2. (a) Except as provided in section 3 of this rule, a person may not use or supervise the use of any pesticide for community-wide mosquito abatement activities without having obtained a commercial applicator license in Category 8 from the state chemist.

(b) Completing the certification requirements as a commercial applicator (IC 15-3-3.6-6-2(7) [*sic.*, IC 15-3-3.6-2(7)]) in Category 8 shall be a qualifying requirement for each of the licenses referenced in section 1(2) of this rule.

(c) A person may satisfy the Category 8 certification requirements by either:

(1) completing the requirements established in 355 IAC 4-1 for a Category 8 applicator; or

(2) completing the requirements established in 355 IAC 4-1 for a Category 7a applicator and providing proof to the state chemist of practical community-wide mosquito abatement experience within the last five (5) years previous to the effective date of this rule.

(Indiana Pesticide Review Board; 357 IAC 1-11-2; filed Jan 2, 2004, 2:00 p.m.: 27 IR 1878)

357 IAC 1-11-3 Direct supervision of noncertified applicators

Authority: IC 15-3-3.6-3; IC 15-3-3.6-4

Affected: IC 15-3-3.6

Sec. 3. (a) A person who has not obtained a commercial applicator license may use a pesticide if the person is working under the direct supervision of a certified and licensed applicator employed by the business, agency, or organization that also employs the person.

(b) An applicator using pesticides for community-wide mosquito abatement activities is subject to all of the site awareness and direct supervision provisions of 355 IAC 4-2, except as described in section 1(4)(C) of this rule. (*Indiana Pesticide Review Board; 357 IAC 1-11-3; filed Jan 2, 2004, 2:00 p.m.: 27 IR 1878*)

Rule 12. Pesticide Drift

357 IAC 1-12-1 Definitions

Authority: IC 15-3-3.6-4

Affected: IC 15-3-3.6-14

Sec. 1. The following definitions apply throughout this rule:

(1) "Drift" means the physical movement of a pesticide through the air at the time of application from the target site to a nontarget site. The term shall not mean the movement of a pesticide, at a time after the application has been made, by any of the following:

- (A) Erosion.
- (B) Volatility after deposition on the target site.
- (C) Windblown soil particles.

(2) "Nontarget site" means any site that is not the intended target site of the pesticide application, including, but not limited to, the following:

- (A) Personal property.
- (B) Public property.
- (C) A body of water.
- (D) A person.
- (E) An animal.
- (F) Livestock.
- (G) Managed bees.
- (H) A commodity.
- (I) A desirable plant.

(3) "Standards" means the legally enforceable limits, as established by state or federal regulations.

(4) "Sufficient quantity to cause harm" means an amount of pesticide that results in any of the following:

- (A) Pesticide residues in excess of established tolerances or standards.
- (B) Documented:
 - (i) death;
 - (ii) illness;
 - (iii) stunting;
 - (iv) deformation;
 - (v) discoloration; or
 - (vi) other effects;

that are detrimental to the nontarget site.

(5) "Target site" means the specific site to which a pesticide was intentionally applied.

(6) "Tolerance" means the maximum amount of a pesticide residue, as established by the U.S. Environmental Protection Agency, that may lawfully remain on or in food or animal feed.

(7) "Volatility" means the ability of a pesticide to move to a nontarget site as a vapor rather than as a:

- (A) drift particle; or

(B) spray droplet.

(Indiana Pesticide Review Board; 357 IAC 1-12-1; filed Mar 17, 2006, 1:00 p.m.: 29 IR 2523)

357 IAC 1-12-2 Drift restriction

Authority: IC 15-3-3.6-4

Affected: IC 15-3-3.6-14

Sec. 2. A person may not apply a pesticide in a manner that allows it to drift from the target site in sufficient quantity to cause harm to a nontarget site. *(Indiana Pesticide Review Board; 357 IAC 1-12-2; filed Mar 17, 2006, 1:00 p.m.: 29 IR 2524)*

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