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**TITLE 357 INDIANA PESTICIDE REVIEW
BOARD**

Proposed Rule
LSA Document #04-159

DIGEST

Amends 357 IAC 1-7 to address civil penalties for violations of IC 15-3-3.6, the Indiana Pesticide Use and Application Law, and the rules adopted under that law, to add definitions of new terms introduced as the result of listing each violation individually on the civil penalty schedule rather than grouping the violations by type, to clarify which penalties are to be assessed on a per product, per incident, per day, or per year basis, to add a penalty assessment cap of 180 incidents or 180 days for repetitive violations, to clarify the factors to be considered when mitigating penalties, to clarify that civil penalties are not required nor the sole enforcement action for every violation, and to clarify that the civil penalty money collected is to be used by the Purdue University Cooperative Extension Service solely for providing education about pesticides. Effective 30 days after filing with the secretary of state.

357 IAC 1-7-1	357 IAC 1-7-5
357 IAC 1-7-2	357 IAC 1-7-6
357 IAC 1-7-3	357 IAC 1-7-7
357 IAC 1-7-4	357 IAC 1-7-8

SECTION 1. 357 IAC 1-7-1 IS AMENDED TO READ AS FOLLOWS:

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. (a) As used in The following definitions apply throughout this rule: “improper use” means a violative act of pesticide use:

(b) As used in this rule; “penalty range” means the civil penalty dollar amount range for each violation type listed in the schedule as specified in section 2 of 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).

(c) As used in this rule, (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.

(d) As used in this rule, “use” has the meaning set forth in IC 15-3-3.6-2(37).

(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 on 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)

SECTION 2. 357 IAC 1-7-2 IS AMENDED TO READ AS FOLLOWS:

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 civil penalty schedule to be observed of civil penalties for a violation 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 (b) shall be (d), is as follows:

Violation number	Credentials	Fraudulent acts	Improper use	Records
1	\$0-\$250	\$0-\$250	\$0-\$250	\$0-\$50
2	\$250-\$500	\$250-\$500	\$0-\$500	\$0-\$100
3	\$500-\$1,000	\$500-\$1,000	\$0-\$1,000	\$0-\$200
Subsequent	\$500-\$1,000	\$500-\$1,000	\$0-\$1,000	\$0-\$200

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
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 1.5	Fail to keep restricted use pesticide application records.	\$100	\$200	\$300	Per day
355 IAC 4-4-1 or 355 IAC 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
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 eighty (180) incidents when assessed on a per incident basis.

~~(b)~~ (d) The ~~civil penalty schedule to be observed of civil penalties~~ for a ~~violation~~ **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 ~~from zero-dollars (\$0) to the same as that listed in subsection (a) except that all listed amounts shall be one hundred dollars (\$100). for any type of violation committed.~~ *(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)*

SECTION 3. 357 IAC 1-7-4 IS AMENDED TO READ AS FOLLOWS:

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 after the effective date of this rule shall be considered.~~

~~(2) (1) Only violations committed within the immediate past five (5) years of the date of the violation being addressed shall be considered.~~

~~(3) (2) A person's violation number shall accumulate as first, second, third, etc., and be considered cumulatively for each violation committed by a separate and distinguishable act of the following violation types: independently for each violation listed on the schedule.~~

~~(A) Credentials.~~

~~(B) Fraudulent acts.~~

~~(C) Improper use.~~

~~(4) A person's violation number for each violation per incident of the records violation type shall accumulate and be considered independently of the violation types listed in subdivision (3)(A) through (3)(C).~~

~~(5) When multiple violations of different violation types are committed by a single act, the violation number considered on the schedule for each violation of each violation type shall accumulate and be considered independently.~~

~~(6) (3) When multiple different but similar or related violations of the same violation type are committed by a single distinguishable act or failure to act, only one (1) of those violations within that violation type 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)

SECTION 4. 357 IAC 1-7-5 IS AMENDED TO READ AS FOLLOWS:

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 ~~within the range listed on the schedule under section 2 of this rule downward~~ to reflect particular factors ~~which that~~ may be ~~aggravating or mitigating~~. Some factors that may be considered are the following:

(1) Good faith efforts of the violator to comply.

(2) ~~Intent of~~ **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. ~~or a nonclassified pesticide.~~
- ~~(5) Extent of deviation from the statutory or rule requirement.~~
- ~~(6) (5) The~~ potential for damage.
- ~~(7) Economic benefit to the violator for noncompliance.~~
- ~~(8) (6)~~ Remedial or corrective action taken by the violator.
- ~~(9) (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*)

SECTION 5. 357 IAC 1-7-6 IS AMENDED TO READ AS FOLLOWS:

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 following: ~~(1) The provision under IC 15-3-3.6-14.5(c) that requires the board to approve the imposition of the civil penalty for a person's first violation. (2) 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*)

SECTION 6. 357 IAC 1-7-7 IS ADDED TO READ AS FOLLOWS:

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*)

SECTION 7. 357 IAC 1-7-8 IS ADDED TO READ AS FOLLOWS:

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*)

SECTION 8. 357 IAC 1-7-3 IS REPEALED.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on November 1, 2004 at 10:00 a.m., at the Office of the Indiana State Chemist, Purdue University, 175 South University Street, Room A151, West Lafayette, Indiana the Indiana Pesticide Review Board will hold a public hearing on proposed amendments to 357 IAC 1-7 to address civil penalties for violations of IC 15-3-3.6, the Indiana Pesticide Use and Application Law, and the rules adopted under that law; to add definitions of new terms introduced as the result of listing each violation individually on the civil penalty schedule rather than grouping the violations by type; to clarify which penalties are to be assessed on a per product, per incident, per day, or per year basis; to add a penalty assessment cap of 180 incidents or 180 days for repetitive violations; to clarify the factors to be considered when mitigating penalties; to clarify that civil penalties are not required nor the sole enforcement action for every violation; and to clarify that the civil penalty money collected is to be used by the Purdue University Cooperative Extension Service solely for providing education about pesticides. Copies of these rules are now on file at the Office of the Indiana State Chemist, Purdue University, 175 South University Street, West Lafayette, Indiana and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

David E. Scott
Secretary
Indiana Pesticide Review Board