

LEGISLATIVE SERVICES AGENCY

*Indiana Register and Administrative Code Division
Indiana Government Center North
100 N. Senate Ave., Room N201
Indianapolis, IN 46204*

TO: Matthew Pearson
State Chemist of the State of Indiana
Purdue University
175 South University Street
West Lafayette, Indiana 47907-2063

FROM: Staci Yockey
Indiana Register and Administrative Code Division

DATE: December 1, 2021

RE: Proposed Rule, LSA Document #21-455

A proposed rule filed by your agency was posted on the IR Database Website at 20211201-IR-355210455PRA.

In reviewing your document, it might have been necessary to make revisions under the Administrative Rules Drafting Manual (IC 4-22-8-4(a)(2)). If so, these changes were incorporated into the posted version. The enclosed marked-up copy shows any changes that might have been made. Please make these changes to your document before submitting it to the Attorney General's office for legal review. The Attorney General's office can disapprove your rule if the rule does not comply with the Administrative Rules Drafting Manual.

I have also enclosed a copy of the emailed Authorization to Proceed required to be submitted with your final rule packet to the Attorney General under IC 4-22-2-31.

If you have any questions concerning changes that were made, please call me at 317-232-9564 or send an email to staci.yockey@iga.in.gov.

ENCLOSURE

NOTE: Each agency is required to maintain an indexed rulemaking docket containing each pending rulemaking action on the agency's website. The **rulemaking document** must be updated promptly and kept current throughout the rulemaking process. A copy of the rulemaking docket must be included as supporting documentation when submitting the Final Rule packet to the Attorney General. See IC 4-22-2-22.5 for rulemaking docket requirements. **To review the Steps for the rulemaking process, please visit the Checklist for Adoption of Administrative Rules on page 50 of the User's Guide.**



Heather Jarrett

From: Indiana Register
Sent: Tuesday, November 16, 2021 9:50 AM
To: 'Pearson, Matthew E'; Indiana Register
Subject: LSA # 21-455 AUTHORIZATION TO PROCEED

AUTHORIZATION TO PROCEED

This document is the authorization to proceed as required under IC 4-22-2-24(g).

The intended date for publication of LSA Document #21-455 is December 1, 2021. Please include this authorization to proceed with the documents submitted to the Attorney General under IC 4-22-2-31.

Legislative Services Agency
Indiana Register and Administrative Code Division
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TITLE 355 STATE CHEMIST OF THE STATE OF INDIANA

Notice of Public Hearing

LSA Document # 21-455

Notice of Public Hearing

Indiana Under IC 4-22-2-24, notice is hereby given that on *Tuesday* January 11, 2022, at 9:30 a.m. at the Office of Indiana State Chemist, Purdue University, 175 *South* University St, West Lafayette, *IN* 47907, the State Chemist of the State of Indiana will hold a public hearing on a proposed rule to regulate the distribution and storage of manure based fertilizer and also establishes fees for the distribution of manure based fertilizer.

The proposed rules would require a *business* company that wishes to distribute a manure based commercial fertilizer product to register that product and pay a tonnage fee based on distribution up to \$1,000 on a semiannual basis.

Copies of these rules and any data or analyses referenced in a justification of requirements or costs on regulated entities are now on file at the Office of Indiana State Chemist, Purdue University, 175 South University Street, West Lafayette, Indiana and are open for public inspection, or at: http://www.oisc.purdue.edu/oisc_rules_regs_laws.html.

Public comments may be made at the meeting, submitted via email to pearsonm@purdue.edu, or mailed to the address below before the close of business on January 11, 2022.

Matthew E. Pearson
Fertilizer Administrator
Office of Indiana State Chemist
175 S. University St.
W. Lafayette IN 47907-2063

West *Indiana*

TITLE 355 STATE CHEMIST OF THE STATE OF INDIANA

~~IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Business~~

Economic Impact Statement

LSA Document #21-455 Processed Manure

IC 4-22-2.1-5 Rules affecting small businesses; economic impact statement required; full implementation of rules; submission of statement to small business ombudsman

Sec. 5. (a) If an agency intends to adopt a rule under IC 4-22-2 that will impose requirements or costs on small businesses, the agency shall prepare a statement that describes the annual economic impact of a rule on all small businesses after the rule is fully implemented as described in subsection (b). The statement required by this section must include the following:

- The Office of Indiana State Chemist*
- (1) **An estimate of the number of small businesses, classified by industry sector, that will be subject to the proposed rule.**

(OISC) estimates that there will be 10 small businesses subject to this rule. All businesses are confined feeding livestock facilities that manipulate the manure that is produced by the animals and then sell the processed manure with a guaranteed nutrient content.

- (2) **An estimate of the average annual reporting, record keeping, and other administrative costs that small businesses will incur to comply with the proposed rule.**

Confined Feed Operations (CFO's) are required to keep manure distribution records through their Indiana Department of Environmental Management permit. The estimated annual reporting, record keeping, and other administrative costs that small businesses will incur will be insignificant. The required records are currently being collected. (IDEM)

- (3) **An estimate of the total annual economic impact that compliance with the proposed rule will have on all small businesses subject to the rule. The agency is not required to submit the proposed rule to the office of management and budget for a fiscal analysis under IC 4-22-2-28 unless the estimated economic impact of the rule is greater than five hundred thousand dollars (\$500,000) on all regulated entities, as set forth in IC 4-22-2-28.**

It is estimated that the total annual impact that compliance with the proposed rules will be less than \$100,000. The projected 10 businesses that will be subject to this rule will have no significant increase in administrative costs as they are already required to keep similar records. The maximum fees that they would be subject to would be \$2,000 per year.

- (4) **A statement justifying any requirement or cost that is:**

- (A) **imposed on small businesses by the rule; and**

The proposed rule applies to anyone that wishes to distribute processed manure with a guaranteed nutrient content as opposed to an estimate. Only those wishing to market the material with a guarantee will be subject to the rule. If a small business chooses to distribute with an estimated nutrient content then the rule is not applicable and there is no cost. Being included in the rule is the choice of the small business. *chooses there*

Should a small business desire to market their product with a guarantee, they are required to then pay a nominal product registration fee and be subject to a three-tiered inspection fee

based on the amount of product being distributed. The cost of the proposed rule imposed on the small business may be offset by the sale of the product.

(B) not expressly required by:

(i) the statute authorizing the agency to adopt the rule; or
IC 15-16-2-1.5(c) specifically directs OISC to adopt these rules.

(c) The state chemist shall adopt rules under IC 4-22-2:

- (1) regulating the distribution of manure based fertilizer; and
- (2) establishing fees for the distribution of manure based fertilizer.

(ii) any other state or federal law.

None.

The statement required by this subdivision must include a reference to any data, studies, or analyses relied upon by the agency in determining that the imposition of the requirement or cost is necessary.

OISC surveyed many of the companies that may be impacted by the proposed rules to collect the data for the imposition of costs.

(5) A regulatory flexibility analysis that considers any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule. The analysis under this subdivision must consider the following methods of minimizing the economic impact of the proposed rule on small businesses:

(A) The establishment of less stringent compliance or reporting requirements for small businesses.

The proposed rule applies to anyone that wishes to distribute processed manure with a guaranteed nutrient content as opposed to an estimate. Only those wishing to market the material with a guarantee will be subject to the rule. If a small business chooses to distribute with an estimated nutrient content then the rule is not applicable and ~~there~~ *is* no cost. Being included in the rule is the choice of the small business. *There*
Less stringent compliance or reporting would be their choice to be excluded from the rule.

(B) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.

Only those wishing to market the material with a guarantee will be subject to the rule. If a small business chooses to distribute with an estimated nutrient content then the rule is not applicable and ~~there~~ *is* no cost. Being included in the rule is the choice of the small business. *There*

(C) The consolidation or simplification of compliance or reporting requirements for small businesses.

The reporting requirements for the proposed rules should add little to no additional reporting requirements for the small business. The small businesses are already required to make reports to IDEM for their distribution of manures. Our reporting will require similar information.

(D) The establishment of performance standards for small businesses instead of design or operational standards imposed on other regulated entities by the rule.

Standards are not developed or required by the proposed rules.

(E) The exemption of small businesses from part or all of the requirements or costs imposed by the rule.

Only those wishing to market the material with a guarantee will be subject to the rule. If a small business chooses to distribute with an estimated nutrient content then the rule is not applicable and there is no cost. Being included in the rule is the choice of the small business.

If the agency has made a preliminary determination not to implement one (1) or more of the alternative methods considered, the agency shall include a statement explaining the agency's reasons for the determination, including a reference to any data, studies, or analyses relied upon by the agency in making the determination.

OISC's responses is found above.

(b) For purposes of subsection (a), a proposed rule will be fully implemented with respect to small businesses after:

(1) the conclusion of any phase-in period during which:

(A) the rule is gradually made to apply to small businesses or certain types of small businesses; or

The proposed rules will become effective thirty days following adoption. Only those wishing to market the material with a guarantee will be subject to the rule. If a small business chooses to distribute with an estimated nutrient content then the rule is not applicable and there is no cost. Being included in the rule is the choice of the small business.

(B) the costs of the rule are gradually implemented; and

(2) the rule applies to all small businesses that will be affected by the rule.

Only those wishing to market the material with a guarantee will be subject to the rule. If a small business chooses to distribute with an estimated nutrient content then the rule is not applicable and there is no cost. Being included in the rule is the choice of the small business.

Red = Changes/Style
Green = Questions/Suggestions

TITLE 355 STATE CHEMIST OF THE STATE OF INDIANA

Proposed Rule
LSA Document #21-455

DIGEST

Adds 355 IAC 10 to regulate the distribution and storage of manure based fertilizer and establish fees for the distribution of manure based fertilizer. Effective 30 days after filing with the Publisher.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

355 IAC 10

SECTION 1. 355 IAC 10 IS ADDED TO READ AS FOLLOWS:

ARTICLE 10. DISTRIBUTION OF MANURE BASED FERTILIZER

Rule 1. General Provisions

355 IAC 10-1-1 Applicability

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 1. This article applies to any person that distributes manure based fertilizers:

(1) in bulk and with a guaranteed analysis;

(2) with a total nitrogen (N) content less than five percent (5%); and

(3) with the summation of total nitrogen (N), available phosphate (P_2O_5), and soluble potash (K_2O) content less than ten percent (10%).

(State Chemist of the State of Indiana; 355 IAC 10-1-1)

Rule 2. Definitions

355 IAC 10-2-1 Applicability

Authority: IC 15-16-2-1.5

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 10-2-1)*

355 IAC 10-2-2 "Brand" defined

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 2. "Brand" means a term, design, or trademark used in connection with at least one (1) grade of manure based fertilizer. *(State Chemist of the State of Indiana; 355 IAC 10-2-2)*

355 IAC 10-2-3 "Bulk" defined

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 3. "Bulk" means distributed in nonpackaged form. *(State Chemist of the State of Indiana; 355 IAC 10-2-3)*

355 IAC 10-2-4 "Distributor" defined

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 4. "Distributor" means a person who:

- (1) offers for sale;
- (2) sells;
- (3) barter; or
- (4) supplies;

manure based fertilizers. (*State Chemist of the State of Indiana; 355 IAC 10-2-4*)

355 IAC 10-2-5 "Grade" defined

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 5. "Grade" means the minimum percentages of the following elements stated in the following order:

- (1) Total nitrogen (N).
- (2) Available phosphate (P_2O_5).
- (3) Soluble potash (K_2O).

(*State Chemist of the State of Indiana; 355 IAC 10-2-5*)

355 IAC 10-2-6 "Guaranteed analysis" defined

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 6. "Guaranteed analysis" means the minimum percentage of plant nutrients claimed. Recognized plant nutrients include the following:

- (1) Total nitrogen (N).
- (2) Available phosphate (P_2O_5).
- (3) Soluble potash (K_2O).
- (4) Calcium (Ca).
- (5) Magnesium (Mg).
- (6) Sulfur (S).
- (7) Boron (B).
- (8) Chlorine (Cl).
- (9) Cobalt (Co).
- (10) Copper (Cu).
- (11) Iron (Fe).
- (12) Manganese (Mn).
- (13) Molybdenum (Mo).
- (14) Nickel (Ni).
- (15) Sodium (Na).
- (16) Zinc (Zn).

(*State Chemist of the State of Indiana; 355 IAC 10-2-6*)

355 IAC 10-2-7 "Manure" defined

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 7. "Manure" means any of the following:

- (1) Liquid or solid animal excreta.
- (2) Waste liquid generated at a livestock or poultry production area, including the following:
 - (A) Excess drinking water.
 - (B) Cleanup water.
 - (C) Contaminated livestock truck or trailer washwater.
 - (D) Milking parlor wastewater.
 - (E) Milk house washwater.
 - (F) Egg washwater.

(G) Silage leachate.
(3) Any precipitation or surface water that has come into contact with the following:

(A) Liquid or solid animal excreta.

(B) Used bedding.

(C) Litter.

(D) Liquid described in subdivision (4).

(4) Any other materials generated at a livestock or poultry production area commingled with the materials listed in subdivisions (1) through (3).

(State Chemist of the State of Indiana; 355 IAC 10-2-7)

355 IAC 10-2-8 "Manure based fertilizers" defined

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2 -1.5

Sec. 8. "Manure based fertilizer" has the meaning set forth in IC 15-16-2-1.5(a). *(State Chemist of the State of Indiana; 355 IAC 10-2-8)*

355 IAC 10-2-9 "Official sample" defined

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 9. "Official sample" means any sample of manure based fertilizer taken by the state chemist or the state chemist's agent. *(State Chemist of the State of Indiana; 355 IAC 10-2-9)*

355 IAC 10-2-10 "Percent" or "percentage" defined

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 10. "Percent" or "percentage" means the percentage by weight. *(State Chemist of the State of Indiana; 355 IAC 10-2-10)*

355 IAC 10-2-11 "Permit" defined

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 11. "Permit" refers to a permit issued to report the tonnage of manure based fertilizer sold. *(State Chemist of the State of Indiana; 355 IAC 10-2-11)*

355 IAC 10-2-12 "Person" defined

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 12. "Person" means:

(1) an individual;

(2) a partnership;

(3) an association;

(4) a firm;

(5) a limited liability company; or

(6) a corporation.

(State Chemist of the State of Indiana; 355 IAC 10-2-12)

355 IAC 10-2-13 "Processed manure" defined

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 13. "Processed manure" means animal manure that has undergone at least one (1) step of physical or chemical processing to change the characteristics of the manure. This does not apply to manure marketed for consideration without a guaranteed analysis. Examples of manure that has been processed include, but are not limited to, composted, digested, mechanically separated, or pelletized. (*State Chemist of the State of Indiana; 355 IAC 10-2-13*)

355 IAC 10-2-14 "Registrant" defined
Authority: IC 15-16-2-1.5
Affected: IC 15-16-2

Sec. 14. "Registrant" means a person who registers manure based fertilizer under this article. (*State Chemist of the State of Indiana; 355 IAC 10-2-14*)

355 IAC 10-2-15 "State chemist" defined
Authority: IC 15-16-2-1.5
Affected: IC 15-16-2 - \

Sec. 15. "State chemist" means the Indiana state chemist under IC 15-16-2-1 or an appointed agent. (*State Chemist of the State of Indiana; 355 IAC 10-2-15*)

355 IAC 10-2-16 "Storage" defined
Authority: IC 15-16-2-1.5
Affected: IC 15-16-2

Sec. 16. "Storage" means the storage of manure based fertilizer by a person who:
(1) manufactures or distributes manure based fertilizer; or
(2) stores manure based fertilizer for personal use.

(*State Chemist of the State of Indiana; 355 IAC 10-2-16*)

Rule 3. Labeling

355 IAC 10-3-1 Label; application; fee; registration; information; analysis
Authority: IC 15-16-2-1.5
Affected: IC 15-16-2

Sec. 1. (a) Before distributing manure based fertilizer in Indiana for consideration, the person who is the guarantor of each brand and grade of the manure based fertilizer must submit:

- (1) an application for registration to the state chemist on a form furnished by the state chemist; and
- (2) the appropriate filing fee of twenty dollars (\$20).

(b) Upon approval of the application, the state chemist shall furnish a copy of the registration to the applicant.

(c) All registrations expire on June 30 each year.

(d) In addition to the appropriate filing fee set forth in subsection (a), a late filing fee equal to one hundred percent (100%) of the appropriate filing fee is assessed when:

- (1) an application to renew the registration of a manure based fertilizer under this section is received after July 31; or
- (2) a product that must be registered under this section is found to be in distribution before registration.

(e) An application under subsection (a) must include the following information:

- (1) The name and address of the registrant.
- (2) The brand and grade.
- (3) The guaranteed analysis showing the minimum percentage of plant food claimed in the following order and form:
(A) Total nitrogen (N) _____ percent.

(B) Available phosphate (P_2O_5) _____ percent.

(C) Soluble potash (K_2O) _____ percent.

(f) Additional plant food elements or other additives that are determinable by chemical methods may be guaranteed only by permission of the state chemist. The state chemist shall grant permission only if the state chemist determines that the guarantee would not constitute a misrepresentation and is correct. Additional plant foods that are guaranteed:

(1) must be included in the guarantee in the form of the element; and

(2) are subject to inspection and analysis in accordance with the methods that the state chemist prescribes.

(State Chemist of the State of Indiana; 355 IAC 10-3-1)

355 IAC 10-3-2 Labeling

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 2. Manure based fertilizer must be distributed with a written or printed statement with the guaranteed analysis that:

(1) accompanies the manure based fertilizer at delivery; and

(2) is supplied to the purchaser at time of delivery.

(State Chemist of the State of Indiana; 355 IAC 10-3-2)

Rule 4. Fees

355 IAC 10-4-1 Processed manure inspection fee

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 1. (a) The person who distributes manure based fertilizers in Indiana to a person who is not a registrant or permit holder under this article shall pay to the state chemist an inspection fee computed under subsection (b).

(b) The inspection fee charged under subsection (a) is as follows:

(1) One hundred dollars (\$100) for zero (0) to up to one thousand two hundred fifty (1,250) tons distributed per reporting period.

(2) Five hundred dollars (\$500) for more than one thousand two hundred fifty (1,250) but less than five thousand (5,000) tons per reporting period.

(3) One thousand dollars (\$1,000) for more than five thousand (5,000) tons distributed per reporting period.

(c) Sales or exchanges between importers, manufacturers, distributors, or registrants are exempt from the inspection fee. *(State Chemist of the State of Indiana; 355 IAC 10-4-1)*

355 IAC 10-4-2 Permit to report tonnage

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 2. (a) Each registrant shall apply to the state chemist for a permit to report the tonnage of manure based fertilizer sold and pay the inspection fee as specified in section 1 of this rule. In making the application, the registrant must agree to the following:

(1) To keep records that indicate accurately the tonnage and kinds of manure based fertilizers sold in Indiana.

(2) To grant the state chemist permission to examine those records and verify the statement of tonnage.

(3) To report under oath to the state chemist on forms furnished by the state chemist the tonnage of manure based fertilizer sold during the period covered.

(b) The state chemist:

(1) may grant the permit to report tonnage if the state chemist determines that the application of the permit to report tonnage of manure based fertilizer described in subsection (a) will lead to efficient enforcement of this article; and

(2) may revoke the permit to report tonnage at any time if it appears to the state chemist that the registrant is not complying with:

- (A) the terms of the agreement entered into at the time of the issuance of the permit; or
- (B) this article.

(c) The report of tonnage is due and the inspection fees are payable semiannually on the last day of the month following the end of the semiannual period.

(d) If:

- (1) the report of tonnage is not filed and the inspection fee, ^{is not} paid by the fifteenth day following the due date;
- (2) the report of tonnage is false; or
- (3) the permit holder has not complied with labeling requirements of this article;

the state chemist may revoke the permit.

(e) If the inspection fee is unpaid after the fifteen (15) day grace period described in subsection (d), a penalty shall be assessed in the amount of:

- (1) fifty dollars (\$50); or
- (2) ten percent (10%) of the amount due;

whichever is greater, in addition to the amount due. (*State Chemist of the State of Indiana; 355 IAC 10-4-2*)

Rule 5. Annual Reports

355 IAC 10-5-1 Annual publication by state chemist; information required

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 1. (a) The state chemist shall publish at least annually, in a form that the state chemist considers proper, information concerning the following:

- (1) The sales of manure based fertilizers, including any data on sales that the state chemist considers advisable.
- (2) The results of the analyses conducted under 355 IAC 10-6 based on official samples of manure based fertilizers sold within the state compared with the analysis guaranteed under 355 IAC 10-3.

(b) The information published by the state chemist concerning the sale of manure based fertilizers:

- (1) must show separately the fall season and spring season of each year; and
- (2) may not disclose the operations of any person.

(*State Chemist of the State of Indiana; 355 IAC 10-5-1*)

Rule 6. Samples and Inspection

355 IAC 10-6-1 Inspection, analysis, and tests; entry onto premises; subpoenas

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 1. (a) The state chemist may:

- (1) sample, inspect, make analysis of, and test manure based fertilizers distributed within Indiana; and
- (2) inspect the storage of manure based fertilizers in Indiana at a time and place and to such an extent as necessary to determine whether the manure based fertilizers and their storage are in compliance with this article.

(b) The state chemist may enter upon any public or private premises during regular business hours in order to have access to:

- (1) manure based fertilizer materials; and
- (2) plans and records relating to the transportation, storage, sale, and use of fertilizer materials;

subject to this article and the rules adopted under this article.

(c) The methods of sampling and analysis for manure based fertilizers may be based on sources that include

AOAC International. In cases of dispute, AOAC International's methods prevail if AOAC International's methods are available.

(d) The state chemist shall determine for administrative purposes whether a manure based fertilizer is deficient in plant foods using only the official sample obtained and analyzed as provided in subsection (c).

(e) The state chemist may request a court to issue subpoenas to compel:

(1) the attendance of witnesses; or

(2) the production of books, documents, and records;

as part of an authorized investigation or a hearing located in Indiana affecting the authority or privilege granted by a license, certificate, application, registration, or permit issued under this article. (*State Chemist of the State of Indiana; 355 IAC 10-6-1*)

355 IAC 10-6-2 Official manure based fertilizer analysis; report

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 2. If an official manure based fertilizer analysis conducted by the state chemist under this rule results in a determination that the registrant of a manure based fertilizer is subject to a penalty or other legal action under this article, the state chemist shall forward a report of the results of the analysis to the registrant at least thirty (30) days before the report is submitted to the purchaser of the manure based fertilizer. If the analysis was requested by a person other than the state chemist, the results of the analysis shall be forwarded to the registrant and purchaser immediately. If, during the thirty (30) day period, the state chemist does not receive adequate evidence contesting the results in the report, the report becomes an official report at the expiration of the thirty (30) day period. Upon the registrant's request, the state chemist shall furnish to the registrant part of the manure based fertilizer sample analyzed by the state chemist to determine that the registrant is subject to a penalty or other legal action under this article. (*State Chemist of the State of Indiana; 355 IAC 10-6-2*)

355 IAC 10-6-3 Noncompliance with analysis; order for refund to purchaser; appeal

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 3. (a) If an analysis conducted under this rule shows that a manure based fertilizer fails in any respect to meet the guaranteed analysis filed by a registrant under 355 IAC 10-3, the state chemist may require the payment of a refund to the purchaser equal to the difference between:

(1) the price the purchaser paid for the manure based fertilizer; and

(2) the current value of the manure based fertilizer after the state chemist's analysis.

(b) The registrant must forward receipts for payment of refunds required under subsection (a) promptly to the state chemist. If the purchaser cannot be found, the registrant shall pay the refund to a local charitable or educational organization of the registrant's choice and forward the receipts promptly to the state chemist.

(c) This section does not prevent the appeal of the imposition of any penalty assessed by the state chemist under this article to a court with jurisdiction. (*State Chemist of the State of Indiana; 355 IAC 10-6-3*)

Rule 7. Storage

355 IAC 10-7-1 Storage of manure based fertilizers

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 1. Manure based fertilizers must be stored in a manner that:

(1) minimizes the release of manure based fertilizer; and

(2) protects the waters of the state.

(*State Chemist of the State of Indiana; 355 IAC 10-7-1*)

355 IAC 10-7-2 Design requirements

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2; IC 25-17.6

Sec. 2. (a) A storage structure must be designed as follows:

(1) The bottom of the storage structure is at least two (2) feet above bedrock.

(2) The bottom of the storage structure must be above the seasonal high water table, unless lowered in accordance with subsection (c).

(3) Test holes to obtain soil and water table information for the design must be obtained as follows:

(A) The number of test holes must be sufficient to adequately characterize the seasonal water table and soil underneath the storage structure.

(B) Test holes must be:

(i) evenly distributed throughout the storage structure;

(ii) at least two (2) feet below the base of the storage structure for concrete structures in karst and non-karst areas;

(iii) at least five (5) feet below the base of the storage structure for earthen structures in non-karst areas; and

(iv) placed to the shallower of either:

(AA) bedrock; or

(BB) ten (10) feet below the lowest point of the proposed processed manure storage structure;

in areas of karst terrain.

(C) Testing shall be conducted by:

(i) a soil scientist registered under the Indiana board of registration for soil scientists;

(ii) a professional geologist certified in Indiana under IC 25-17.6; or

(iii) a professional engineer registered in Indiana.

(b) Plastic, fiberglass, and aboveground steel tanks must:

(1) have sufficient strength to withstand design loads;

(2) be watertight;

(3) be cleaned to remove any traces of previously stored substances prior to addition of manure to the tank if the tank is used to store any objectionable or hazardous substances;

(4) be installed to ensure the seasonal high water table is maintained below the tank or the tank must be anchored to prevent flotation; and

(5) have protected shut-off valves for all inlet and outlet pipes.

(c) Any drainage system to lower the seasonal water table around the base of a storage structure must be designed and installed to:

(1) effectively collect and drain the ground water;

(2) be of adequate size, proper slopes, and proper distance from the storage structure;

(3) if applicable, be provided with:

(A) sumps;

(B) pumps, including a backup pump; and

(C) electricity supply;

(4) if applicable, have a surface outlet that is at least fifty (50) feet away from the storage structure, and at least:

(A) fifty (50) feet from the property line in soils with a permeability of one-half (1/2) inch per hour or less; or

(B) twenty (20) feet from the property line in soils with a permeability greater than one-half (1/2) inch per hour;

(5) have a shut-off valve or equivalent; and

(6) have an access point for sampling within fifty (50) feet of the storage structure.

(d) A concrete storage structure must be constructed according to the Indiana NRCS Construction Specification, Concrete Construction, May 2015* and designed to either of the following design standards:

- (1) MWPS-36: Rectangular Concrete Manure Storages, Second Edition, 2005**.
- (2) TR-9: Circular Concrete Manure Tanks, March 1998**.

(e) A storage structure must not:

- (1) have a discharge pipe or conveyance that would allow for a release or discharge of processed manure or water contaminated by processed manure; or
- (2) be an underground steel storage tank.

*This document is incorporated by reference. Copies may be obtained from the Indiana NRCS State Office, 6013 Lakeside Boulevard, Indianapolis, IN 46278 or are available for review and copying at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, Thirteenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

**These documents are incorporated by reference. Copies may be obtained from the MidWest Plan Service, 122 Davidson Hall, Iowa State University, Ames, Iowa 50011-3080 or are available for review and copying at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, Thirteenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*State Chemist of the State of Indiana; 355 IAC 10-7-2*)

355 IAC 10-7-3 Design requirements for liners

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 3. (a) The soil or foundation of an earthen storage structure shall have a maximum specific discharge permeability of one-sixteenth (1/16) in³/in²/day, 1.8x10⁻⁶cm³/cm²/sec. This requirement may be satisfied by soil testing that shows a minimum of three (3) feet of in situ soils that:

- (1) meet the maximum specific discharge permeability criteria;
- (2) are over-excavated a minimum of six (6) inches; and
- (3) are recompacted to break up the existing macropore structure.

(b) If there is not at least three (3) feet of in situ soils that meet the maximum specific discharge criteria in subsection (a), a liner must be used. Except for clay liners described in subsection (c), liners used in a storage structure must meet the following design standards as applicable:

- (1) Indiana NRCS Conservation Practice Standard Code 521A: POND SEALING OR LINING-GEOMEMBRANE OR GEOSYNTHETIC CLAY LINER, November 2018*.
- (2) Indiana NRCS Conservation Practice Standard Code 520: POND SEALING OR LINING – COMPACTED SOIL TREATMENT, October 2016*.
- (3) Indiana NRCS Conservation Practice Standard Code 522: POND SEALING OR LINING – CONCRETE, October 2016*.

(c) Clay liners shall be a minimum of one (1) foot thick and have a maximum specific discharge of one-sixteenth (1/16) in³/in²/day, 1.8x10⁻⁶cm³/cm²/sec.

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355 IAC 10-7-4 Solid processed manure structure design requirements

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 4. In addition to section 2 of this rule, a storage structure that contains solid processed manure must be designed according to the following:

- (1) The storage structure must:
 - (A) be covered to prevent rainwater from contacting the processed manure; or

- (B) have storm water run-on and run-off controls.
- (2) The storage structure must not be constructed in sand or gravel soils, Unified Soil Classification of Pt, GW, GP, GM, GC, SW, SP, SM, as described in ASTM D2488-09a Standard Practice for Description and Identification of Soils (Visual-Manual Procedure)*, unless specially designed with an approved liner, in accordance with section 3 of this rule.
- (3) Test holes for an earthen storage structure storing solid processed manure must be placed at a rate of two (2) holes for the first acre of storage and one (1) additional hole for each additional one-half (1/2) acre of storage.

*This document is incorporated by reference. Copies may be obtained from the ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959 or are available for review and copying at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, Thirteenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*State Chemist of the State of Indiana; 355 IAC 10-7-4*)

355 IAC 10-7-5 Liquid processed manure structure design requirements

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 5. (a) In addition to section 2 of this rule, a storage structure that contains liquid processed manure must be designed according to the Indiana NRCS Conservation Practice Standard Code 313: Waste Storage Structure, October 2016*.

(b) An uncovered storage structure containing liquid processed manure must be designed with a minimum freeboard of two (2) feet unless an alternate design is approved by the state chemist.

(c) Test holes for an earthen storage structure storing liquid processed manure must be placed at a rate of two (2) holes for the first one-half (1/2) acre of storage and one (1) additional hole for each additional one-half (1/2) acre of storage.

(d) Pipelines must be constructed according to the Indiana NRCS Conservation Practice Standard Code 634: Waste Transfer, October 2015*.

(e) The storage structure must be certified upon completion by a registered professional engineer. The engineer's certification must be kept in the operating record and submitted to the state chemist prior to introducing processed manure.

*These documents are incorporated by reference. Copies may be obtained from the Indiana NRCS State Office, 6013 Lakeside Boulevard, Indianapolis, IN 46278 or are available for review and copying at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, Thirteenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*State Chemist of the State of Indiana; 355 IAC 10-7-5*)

355 IAC 10-7-6 Alternative to rule requirements

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 6. (a) An owner or operator may propose and request an alternative to a design, construction, or operational requirement specified in this article, provided the owner or operator can prove to the satisfaction of the state chemist that any alternative will provide equivalent or greater environmental protection than the requirements specified in this article.

(b) Any alternative must be submitted to the state chemist and accompanied by documentation that demonstrates equivalent or greater environmental protection than the standard for which an alternative is being requested.

(c) No alternative may be used prior to approval by the state chemist.

(d) The state chemist shall provide written documentation describing the basis for any determination on an alternative request. (*State Chemist of the State of Indiana; 355 IAC 10-7-6*)

355 IAC 10-7-7 Construction

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 7. (a) The owner or operator shall notify the state chemist in writing at least two (2) days prior to scheduled construction of a storage structure. Multiple notices, with identification of the parts of the storage structure that are completed at the time of submittal, are required if an owner or operator performs partial construction of an approved structure and plans to utilize that portion prior to completing construction of the entire storage structure.

(b) Any field tiles or drainage outlets encountered during construction must be blocked or rerouted in accordance with any applicable local approval requirements and be cut back at least fifty (50) feet from the edge of any:

- (1) berm;
- (2) concrete pit; or
- (3) earthen storage structure.

(c) The applicant shall execute and send to the state chemist a notarized affidavit, under penalty of perjury, that a storage structure was constructed, and shall be operated, in accordance with the requirements of this article, as follows:

- (1) The affidavit shall be submitted:
 - (A) on a form provided by the state chemist;
 - (B) within thirty (30) days after the date construction is completed; and
 - (C) prior to the introduction of any processed manure.
- (2) The affidavit shall include identification of the parts of the storage structure that are completed at the time of submittal.
- (3) If an owner or operator performs partial construction of an approved storage structure and plans to utilize that portion prior to completing construction of the entire storage structure, multiple affidavits shall be submitted.

(d) The certification required by section 5(e) of this rule must be completed prior to the introduction of processed manure. (*State Chemist of the State of Indiana; 355 IAC 10-7-7*)

355 IAC 10-7-8 Maintenance requirements

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 8. (a) A storage structure must be maintained and operated to meet the requirements of this article.

(b) The owner or operator shall inspect the storage structure for compliance with this article at least one (1) time each month. Any maintenance activities shall be documented in the operating record.

(c) An uncovered storage structure storing liquid manure must:

- (1) be maintained, with a minimum freeboard of two (2) feet, unless otherwise specified in the processed manure storage structure permit; and
- (2) have clearly identified markers to indicate manure levels relative to the approved freeboard elevation.

(d) An earthen berm for a storage structure must be:

- (1) stabilized with vegetation or alternative erosion control measures;
- (2) maintained to prevent growth of trees and shrubs; and
- (3) maintained to allow for visual inspection.

(*State Chemist of the State of Indiana; 355 IAC 10-7-8*)

355 IAC 10-7-9 Operating record
Authority: IC 15-16-2-1.5
Affected: IC 15-16-2

Sec. 9. (a) The owner or operator of a storage structure must keep an operating record that includes the following:

- (1) The complete application.
- (2) The storage structure site plan.
- (3) Notification of construction required by section 7(a) of this rule.
- (4) Notarized affidavit required by section 7(c) of this rule.
- (5) Certification by a registered professional engineer required by section 5(e) of this rule.
- (6) The current emergency response plan described in section 10(a) of this rule.
- (7) Documentation of any spill response described in section 10(b) of this rule.
- (8) Documentation of maintenance activities on the storage structure.
- (9) Copies of any written waivers related to reduction of the setback distances.
- (10) All processed manure storage structure permits, modifications, renewals, and notifications applicable to the storage structure.

(b) The operating record described in subsection (a) shall be kept on site for the duration of the processed manure storage structure permit term, except items described in subsection (a)(1), (a)(2), (a)(4), (a)(5), and (a)(9) shall be kept on site for the life of the facility. If the operator is unable to keep the operating record on site, it must be kept at the operator's address listed in the processed manure storage structure permit.

(c) If the record in subsection (a) is unable to be kept on site to be made available for inspection, the operator must submit a copy of the record to the state chemist within a reasonable period of time. (*State Chemist of the State of Indiana; 355 IAC 10-7-9*)

355 IAC 10-7-10 Emergency response plan
Authority: IC 15-16-2-1.5
Affected: IC 15-16-2

Sec. 10. (a) The owner or operator of a storage structure shall develop an emergency response plan to be kept in the operating record. The plan shall contain the following:

- (1) Procedures for the following:
 - (A) Containing a processed manure release to prevent it from reaching waters of the state.
 - (B) Locating the source of a processed manure release and stopping the flow of manure.
 - (C) Returning released manure to the storage structure or an approved waste management system.
 - (D) Contacting the following:
 - (i) The owner or operator.
 - (ii) Any applicable local emergency or health authorities.
- (2) The names and telephone numbers of persons who are identified by the owner or operator as responsible for implementing the emergency response plan.
- (3) Identification of areas where potential manure releases could occur and their accompanying drainage points.
- (4) Identification of equipment and cleanup materials to be used in the event of a manure release.

(b) The owner or operator must implement the emergency response plan anytime a manure release occurs. If manure from the storage structure reaches waters of the state, the owner or operator must do the following:

- (1) Provide notification in accordance with the following:
 - (A) As soon as possible, but within two (2) hours of discovery, communicate a spill report to the Indiana Department of Environmental Management (IDEM), Office of Land Quality, Emergency Response Section: (888) 233-7745 or (317) 233-7745.
 - (B) If new or updated spill report information becomes known that indicates a significant increase in the likelihood of damage to the waters of the state, the responsible party shall notify IDEM as soon as possible, but within two (2) hours of the time the new or updated information becomes known.
- (2) Submit a written copy of the spill report to the Indiana Department of Environmental Management, Office

of Land Quality, Emergency Response Section, Indiana Government Center North, Eleventh Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204, if requested by the department. *IDEW*

(3) Except from modes of transportation other than pipelines, exercise due diligence and document attempts to notify the following:

(A) For processed manure releases or spills to surface water, the nearest affected downstream water user located within ten (10) miles of the spill and in the state of Indiana.

(B) For processed manure releases or spills to soil outside the storage structure property boundary, the affected property owner or owners, operator or operators, or occupant or occupants.

(State Chemist of the State of Indiana; 355 IAC 10-7-10)

355 IAC 10-7-11 Decommissioning a processed manure storage structure

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 11. (a) The owner or operator of a processed manure storage structure that plans to decommission a processed manure storage structure shall do the following:

(1) Continue to maintain the processed manure storage structure in accordance with the requirements of this article until the manure is removed.

(2) Follow the requirements in the Indiana NRCS Conservation Practice Standard Code 360, Closure of Waste Impoundments, November 2012*, if applicable.

(3) Have all associated appurtenances and conveyance structures removed from uncovered processed manure storage facilities.

(4) Notify the department:

(A) before demolishing or converting the use of any processed manure storage structure; and

(B) of the intended future use of the processed manure storage structure, if the processed manure storage structure is to be converted to another use.

(b) The owner or operator shall submit a certification to the commissioner within thirty (30) days after completing the requirements in this section that certifies compliance with the requirements in this section.

(c) If deemed necessary to protect human health or the environment, the state chemist may require additional decommissioning activities based on:

(1) surface or ground water contamination;

(2) evidence of:

(A) leakage;

(B) seepage;

(C) manure releases; or

(D) spills; or

(3) other criteria related to protection of human health or the environment.

(d) The commissioner shall provide written documentation describing the basis for any required additional activities.

*This document is incorporated by reference. Copies may be obtained from the Indiana NRCS State Office, 6013 Lakeside Boulevard, Indianapolis, IN 46278 or are available for review and copying at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, Thirteenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(State Chemist of the State of Indiana; 355 IAC 10-7-11)*

Rule 8. Violations

355 IAC 10-8-1 Misbranded and adulterated manure based fertilizers; unlawful distribution

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 1. (a) A manure based fertilizer is misbranded if:

Define 'department' for rule? Indiana

of environmental management (IDEW)

define 'commissioner'?

- (1) the manure based fertilizer carries any false or misleading statement; or
- (2) false or misleading statements concerning the manure based fertilizer's nutrient value are made in any advertising media accompanying or associated with the manure based fertilizer.

It is unlawful to distribute a misbranded manure based fertilizer.

(b) It is unlawful to distribute an adulterated manure based fertilizer. For purposes of this subsection, a manure based fertilizer is adulterated if:

- (1) the manure based fertilizer contains any deleterious or harmful substance in a sufficient amount to render the manure based fertilizer injurious to beneficial plant life, animals, humans, aquatic life, soil, or water when applied in accordance with directions for use on the label; or
- (2) the label does not include adequate warning statements or directions for use that may be necessary to protect plant life, animals, humans, aquatic life, soil, or water.

(State Chemist of the State of Indiana; 355 IAC 10-8-1)

355 IAC 10-8-2 Fraudulent or deceptive practices; cancellation of registration; refusal to register; notice; hearing

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 2. (a) The state chemist may:

- (1) cancel the registration of any brand of manure based fertilizer; or
- (2) refuse to register any brand of manure based fertilizer in accordance with this article;

if the state chemist receives satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasion or attempted evasion of this article.

(b) The state chemist may not revoke or refuse a registration under subsection (a) until the registrant receives notice and has the opportunity to appear for a hearing. *(State Chemist of the State of Indiana; 355 IAC 10-8-2)*

355 IAC 10-8-3 Stop sale, use, or removal orders

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 3. (a) If the state chemist determines that a manure based fertilizer is being offered for sale in violation of this article, the state chemist may issue to and enforce upon the owner or custodian:

- (1) a written or printed stop sale, use, or removal order; and
- (2) a written or printed order to hold the manure based fertilizer at a designated place until:
 - (A) the owner or custodian complies with this article;
 - (B) the state chemist releases the manure based fertilizer in writing; or
 - (C) the violation is legally disposed of by written authority.

(b) The state chemist shall release manure based fertilizer withdrawn under subsection (a)

when:

- (1) the owner or custodian complies with this article; and
- (2) all costs and expenses incurred in connection with the withdrawal have been paid.

(State Chemist of the State of Indiana; 355 IAC 10-8-3)

355 IAC 10-8-4 Seizure of manure based fertilizer; condemnation and disposal; release of manure based fertilizer

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 4. (a) Any manure based fertilizer not in compliance with this article is subject to seizure based on a complaint of the state chemist filed in a court with jurisdiction in the area in which the manure based fertilizer is located.

(b) Subject to subsection (a), if the court finds the manure based fertilizer is in violation of this article and orders the condemnation of the manure based fertilizer, the manure based fertilizer must be disposed of in any manner consistent with the quality of the manure based fertilizer and the laws of the state. *(State Chemist of the State of Indiana; 355 IAC 10-8-4)*

355 IAC 10-8-5 Injunctions

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 5. The state chemist may apply for a temporary or permanent injunction restraining any person from violating or continuing to violate this article. The remedies under this section are supplemental to other remedies allowed under this article or other law. (*State Chemist of the State of Indiana; 355 IAC 10-8-5*)

355 IAC 10-8-6 Violations; penalties

Authority: IC 15-16-2-1.5

Affected: IC 15-16-2

Sec. 6. (a) If a person violates this article, the state chemist may:

- (1) warn, issue a citation to, or impose a civil penalty on the person; or
- (2) deny, suspend, revoke, or amend the person's registration under this article.

(b) A person who knowingly or intentionally violates this article commits a Class A misdemeanor. (*State Chemist of the State of Indiana; 355 IAC 10-8-6*)

Notice of Public Hearing