

July 18, 2020

DRAFT CIVIL PENALTY LANGUAGE

PESTICIDE REGISTRATION LAW

IC 15-16-4-3.5 “Adverse Effect”

Sec. 3.5. As used in this chapter, “adverse effect” means a pesticide exposure to a nontarget site that results in:

- (1) pesticide residues in excess of established food or feed tolerances established by the U.S. Environmental Protection Agency;
- (2) environmental media standards or benchmarks for pesticides established by a federal or state agency;
- (3) visible, measurable, or documented:
 - (i) death;
 - (ii) illness;
 - (iii) stunting;
 - (iv) deformation;
 - (v) discoloration; or
 - (vi) other effects;that are detrimental to the nontarget site.

IC 15-16-4-69 Violations; penalties; disposition of penalties

Sec. 69. (a) Subject to this section, if a person violates this chapter or a rule adopted under this chapter, the state chemist under IC 4-21.5-3-6 may warn, cite, or impose a civil penalty on the person or:

- (1) deny;
- (2) suspend;
- (3) revoke; or
- (4) amend;

the person's registration under this chapter.

(b) The state chemist may impose civil penalties under this section only in accordance with ~~the schedule of civil penalties adopted by the board. The board shall establish a schedule of the civil penalties that may be imposed under subsection (a) by rule adopted under IC 4-22-2. The rule adopted under this subsection may not provide for a civil penalty that exceeds the following:~~

- ~~(1) Two hundred fifty dollars (\$250) for a person's first violation.~~
- ~~(2) Five hundred dollars (\$500) for a person's second violation.~~
- ~~(3) One thousand dollars (\$1,000) for a person's third violation and each subsequent violation.~~

subsections (c) through (e). Nothing in this section requires that the state chemist impose a civil penalty on a person for any violation of this chapter or a rule adopted under this chapter.

(c) Except for violations referenced in subsections (d) or (e), a civil penalty not exceeding two hundred fifty dollars (\$250) may be imposed. A civil penalty under this subsection may not be

imposed unless a warning for violation has previously been issued to the person for the same violation within the previous five (5) years.

(d) A civil penalty not exceeding five hundred dollars (\$500) may be imposed for each of the following violations:

(1) IC 15-16-4-57(1) or IC 15-16-4-66(1), unknowingly produce, distribute, display, sell, offer for sale, or transport a nonregistered pesticide product.

(2) IC 15-16-4-57(2), produce, distribute, display, sell, offer for sale, or transport a pesticide product with labeling claims or directions for use different from that registered.

(3) IC 15-16-4-57(3), produce, distribute, display, sell, offer for sale, or transport a pesticide product with composition different from that registered.

(4) IC 15-16-4-57(4), produce, distribute, display, sell, offer for sale, or transport a pesticide product with incomplete or illegible label or in a container other than manufacturer's immediate, unbroken, and approved or authorized container.

(5) IC 15-16-4-57(5), IC 15-16-4-66(2), or IC 15-16-4-66(3), produce, distribute, display, sell, offer for sale, or transport an adulterated or misbranded pesticide product.

(6) 355 IAC 5-4-1(a), store a nonrestricted general use pesticide in a minibulk pesticide storage container outside of secondary containment.

(7) 357 IAC 1-3-3, unknowingly distribute a restricted use pesticide without a dealer registration.

(e) A civil penalty of one thousand dollars (\$1000) may be imposed for each of the following violations:

(1) IC 15-16-4-57(1) or IC 15-16-4-66(1), knowingly produce, distribute, display, sell, offer for sale, or transport a nonregistered pesticide product.

(2) IC 15-16-4-57(9), produce, distribute, sell, offer for sale, or transport a pesticide that violates the Federal Insecticide, Fungicide, and Rodenticide Act (U.S.C. 136 et seq.) or regulations adopted under the Act.

(3) IC 15-16-4-59(6), after notice, refuse to comply with this chapter, the rules adopted under these chapters, or any lawful written order of the state chemist or board.

(4) IC 15-16-4-67 or IC 15-16-4-68, produce, handle, transport, store, display, dispose, or distribute a pesticide product or pesticide product container in a manner that may endanger or cause injury to humans, beneficial vegetation, crops, livestock, wildlife, beneficial insects, the environment, food, feed, or other associated products.

(5) IC 15-16-4-73(c), sell, use, or remove without written permission from the state chemist or by a court order a pesticide product placed under a stop sale, use, or removal order by the state chemist.

(6) IC 15-16-4-77, recklessly, knowingly, or intentionally impede or prevent the state chemist or the state chemist's agent in the performance of the state chemist's duty.

(7) 355 IAC 5-4-1(a), store:

(a) any pesticide in a bulk pesticide storage container; or

(b) a restricted use pesticide in a minibulk pesticide storage container; outside of secondary containment.

(8) 357 IAC 1-3-2, distribute a restricted use pesticide to a noncertified user.

(9) 357 IAC 1-3-3, knowingly distribute a restricted use pesticide without a dealer registration.

(f) The amount of the civil penalty for any of the violations listed in subsection (e) may not be adjusted by the state chemist. The amount of the civil penalty for any of the violations listed in subsection (c) or (d) may be adjusted downward from the maximum to account for **each** of the following mitigating actions taken by the person responsible for the violation.

(1) Cooperation with the state chemist during the investigation or inspection process (20%).

(2) Corrective action to prevent future similar violations (20%).

(3) Remedial action to compensate a victim for adverse effects that resulted from the violation (20%).

(g) A proceeding under IC 4-21.5-3 that involves the imposition of a civil penalty may be consolidated with any other proceeding commenced under IC 4-21.5 to enforce this chapter or the rules adopted under this chapter.

(h) Money collected for civil penalties imposed under this section shall be credited to the office of Purdue pesticide programs. The money may be used only to provide education about pesticides. *As added by P.L.2-2008, SEC.7. Amended by P.L.91-2020, SEC.11.*

USE & APPLICATION LAW

IC 15-16-5-0.5 “Adverse Effect”

Sec. 0.5. As used in this chapter, "adverse effect" has the meaning set forth in IC 15-16-4-3.5.

IC 15-16-5-66 Violations; civil penalties; disposition of penalties

Sec. 66. (a) The state chemist may impose civil penalties under this section only in accordance with the schedule of civil penalties adopted by the board. **subsections (b) through (d). Nothing in this section requires that the state chemist impose a civil penalty on a person for any violation of this chapter or a rule adopted under this chapter.**

~~(b) The board shall establish a schedule of civil penalties that may be imposed under section 65 of this chapter by rule adopted under IC 4-22-2. The rule adopted under this subsection may not provide for a civil penalty that exceeds the following:~~

~~(1) For a violation committed by a person who is required to be certified as a private applicator, one hundred dollars (\$100).~~

~~(2) For a violation by a person who is not described in subdivision (1), the following:~~

~~(A) Two hundred fifty dollars (\$250) for a person's first violation.~~

~~(B) Five hundred dollars (\$500) for a person's second violation.~~

~~(C) One thousand dollars (\$1,000) for a person's third violation and each subsequent violation.~~

(b) Except for violations referenced in subsections (c) or (d), a civil penalty not exceeding two hundred fifty dollars (\$250) may be imposed. A civil penalty under this subsection may not be imposed unless a warning for violation has previously been issued to the person for the same violation within the previous five (5) years.

(c) A civil penalty not exceeding five hundred dollars (\$500) may be imposed for each of the following violations:

(1) IC 15-16-5-65(2), recommend, use, or supervise the use of a nonrestricted general use pesticide product in a manner inconsistent with its labeling and resulting in an adverse effect.

(2) IC 15-16-5-65(2), recommend, use, or supervise the use of a restricted use pesticide product in a manner inconsistent with its labeling and resulting in no adverse effect.

(3) IC 15-16-5-65(7), after written notice, neglect to keep and maintain the records required by IC 15-16-5.

(4) IC 15-16-5-65(8), make false records, invoices, or reports.

(5) IC 15-16-5-65(9), unknowingly engage in or profess to engage in the business of using a pesticide or any other product regulated under this chapter or by rules adopted under this chapter or making a diagnostic inspection to determine infestations of a wood destroying pest for hire on the property of another without having a pesticide business license issued by the state chemist.

(6) IC 15-16-5-65(10), unknowingly use a restricted use pesticide without having an applicator, who is licensed or permitted under IC 15-16-5, in direct supervision.

(7) IC 15-16-5-65(12), after written notice, neglect to comply with any limitations or restrictions on or in a duly issued license, permit, registration, or certification.

(8) IC 15-16-5-65(14), make false or misleading statements during or after an inspection concerning any infestation or infection of pests.

(9) IC 15-16-5-65(16), knowingly purchase or use a pesticide product that was not registered under IC 15-16-4.

(10) 357 IAC 1-12-2, apply a nonrestricted general use pesticide in a manner that allows it to drift from the target site in sufficient quantity to cause an adverse effect to a nontarget site.

(d) A civil penalty not exceeding one thousand dollars (\$1000) may be imposed for each of the following violations:

(1) IC 15-16-5-64, produce, transport, store, handle, or dispose, or of any pesticide product or pesticide product container in a manner that may cause injury to humans, beneficial vegetation, crops, livestock, wildlife, or beneficial insects, or pollute any waterway in a manner harmful to any wildlife in a waterway.

(2) IC 15-16-5-65(2), recommend, use, or supervise the use of a restricted use pesticide product in a manner inconsistent with its labeling and resulting in an adverse effect.

(3) IC 15-16-5-65(5), operate in a careless or negligent manner.

(4) IC 15-16-5-65(6), after written notice, refuse to comply with this chapter or rules adopted under this chapter, or any lawful order of the state chemist or board.

(5) IC 15-16-5-65(7), refuse to keep and maintain the records required by IC 15-16-5 or to make reports and supply information when required or requested by the state chemist in the course of an investigation or inspection.

(6) IC 15-16-5-65(8), intentionally make fraudulent records, invoices, or reports.

(7) IC 15-16-5-65(9) knowingly engage in or profess to engage in the business of using a pesticide or any other product regulated under IC 15-16-5 or by rules adopted under IC 15-16-5 or making a diagnostic inspection to determine infestations of a wood destroying pest for hire on the property of another without having a pesticide business license issued by the state chemist.

(8) IC 15-16-5-65(10), knowingly use a restricted use pesticide without having an applicator, who is licensed or permitted under IC 15-16-5, in direct supervision.

(9) IC 15-16-5-65(11), use fraud or misrepresentation in making an application for, or renewal of, a license, permit, registration, or certification.

(10) IC 15-16-5-65(12), refuse to comply with any limitations or restrictions on or in a duly issued license, permit, registration, or certification.

(11) IC 15-16-5-65(13), aid or abet a person to evade this chapter, conspire with a person to evade this chapter, or allow a license, permit, registration, or certification to be used by another person.

(12) IC 15-16-5-65(15), impersonate any federal, state, county, or city inspector, investigator, or official.

(13) IC 15-16-5-65(18), intentionally alter a duly issued license, permit, registration, or certification.

(14) IC 15-16-5-65(19), recklessly, knowingly, or intentionally impede or prevent the state chemist or the state chemist's agent in the performance of the state chemist's duty.

(15) 355 IAC 4-7-7, make false or fraudulent reports or misrepresent participation in the certification or registration renewal process.

(16) 357 IAC 1-12-2, apply a restricted use pesticide in a manner that allows it to drift from the target site in sufficient quantity to cause an adverse effect to a nontarget site.

(e) The amount of the civil penalty for any of the violations listed in subsection (d) may not be adjusted by the state chemist. The amount of the civil penalty for any of the violations listed in subsection (b) or (c) may be adjusted downward from the maximum to account for each of the following mitigating actions taken by the person responsible for the violation.

(1) Cooperation with the state chemist during the investigation or inspection process (20%).

(2) Corrective action to prevent future similar violations (20%).

3) Remedial action to compensate a victim for adverse effects that resulted from the violation (20%).

(~~e~~) (f) A proceeding under IC 4-21.5-3 that involves a civil penalty may be consolidated with any other proceeding commenced under IC 4-21.5 to enforce this chapter or the rules adopted under this chapter.

(~~d~~) (g) Money collected for civil penalties imposed under section 65 of this chapter shall be credited to the office of Purdue pesticide programs. The money may be used only to provide education about pesticides.

As added by P.L.2-2008, SEC.7. Amended by P.L.91-2020, SEC.26.