



Office of
INDIANA STATE CHEMIST AND SEED COMMISSIONER

Protecting Indiana's Agriculture and Environment - Feed, Fertilizer, Hemp, Pesticide and Seed

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Submitted Electronically to: sbarules@gov.in.gov

TO: Cris Johnston, Director, Indiana Office of Management and Budget

FROM: David Scott, Secretary, Indiana Pesticide Review Board (IPRB) &
Pesticide administrator, Office of Indiana State Chemist (OISC)

Exception Request to the Regulatory Moratorium for 355 IAC 5

OMB Tracking Number: 2022-31

Dear Director Johnston,

The Office of Indiana State Chemist (OISC) and the Indiana Pesticide Review Board (IPRB) are requesting an exception to the Regulatory Moratorium for the above referenced proposed rule. This proposed rule and supporting documentation were originally submitted to OMB on February 7, 2022, as part of a submission under OMB Tracking Number: OMB #2022-05. After consultation with Patrick Price of your staff, it was determined that separating the OMB review of the originally submitted collective amendments to 355 IAC 4, 355 IAC 5, and 357 IAC1 would be more expeditious. Therefore, this is our first submission for the independent review of 355 IAC 5.

Please feel free to contact the OISC Pesticide Administrator and IPRB Secretary David Scott at (765) 413-1242 or scottde@purdue.edu if you have questions or concerns about the proposed rules or the analyses herein.

1. Detailed summary of the proposed rules:

a. History and background of the rules:

OISC (355) and the IPRB (357) have been working jointly for almost two years on drafting proposed rules to revise article 355 IAC 5. The objectives of the proposed rulemaking actions are to: 1) consolidate and standardize same or similar terms and definitions used across current state pesticide statutes and rules; 2) consolidate and simplify storage and containment requirements currently spread across several different rules in several different articles; and 3) reduce and repeal a variety of pesticide storage and handling requirements that have been determined over time to be no longer necessary for safe and effective distribution and use of pesticides in Indiana.

The subject matter of the proposed amendments to these rules are the result of public discussion and debate that have occurred over the course of the last several years at quarterly public IPRB meetings. Minutes and discussion materials from past IPRB meetings are available at <https://oisc.purdue.edu/pesticide/iprb.html> . Discussion and input gathering have also occurred over the past two or more years through individual targeted and general outreach meetings with impacted regulated industries and government entities.

Industry and government organizations participating in these efforts include, but have not been not limited to, Agricultural Council of Indiana (ACI), Indiana Farm Bureau (IFB), Indiana Professional Lawn and Landscape Association (IPLLA), Indiana Nursery Association (INA), Indiana Pest Management Association (IPMA), National Railroad Contractors Association (NRCA), Indiana Vector Management Association (IVMA) Control, Purdue University Cooperative Extension Service (CES), Purdue Pesticide Programs (PPP), Indiana Department of Environmental Management (IDEM), and Indiana Department of Health (IDH).

b. Justification for the rules:

Current pesticide storage and containment requirements are spread across a variety of existing Indiana pesticide rules. Consolidation, coordination, and streamlining of existing storage, containment, and handling requirements will assist regulated individuals in locating and complying with these rules. In addition, some existing storage and containment requirements have been identified as outmoded and unnecessary for public and environmental protection. These requirements are proposed to be repealed or reduced, consistent with the intent of the stated Regulatory Moratorium. Specifically, establishing clear distinctions between bulk and minibulk storage and containment requirements, based on over twenty years of compliance implementation experience by OISC, will create greater compliance flexibility.

c. Statutory authority for the proposed rules:

In addition to the authorities listed under section d. below, the following authorities apply:

IC 15-16-5-59 provides that commercial applicators, private applicators, and licensed pest inspectors shall maintain records concerning: (1) the application of restricted use pesticides; (2) the application of pesticides for hire; (3) the application of pesticides on golf courses; (4) the application of pesticides on school property; (5) diagnostic inspections to determine infestations of wood destroying pests; and (6) any relevant information that the state chemist determines by rule is necessary for purposes of this chapter.

IC 15-16-5-63 provides that the state chemist may cooperate with, and enter into agreements with, any other agency of the state, any federal agency, or any other state agency or nongovernmental organization to carry out this chapter to: (1) secure uniformity of rules; (2) cooperate in the enforcement of the federal pesticide control laws through the use of state or federal personnel and facilities and to implement cooperative enforcement programs; (3) develop and administer state plans for certification of applicators consistent with federal standards; (4) contract or cooperate with agencies or organizations for the purpose of training applicators; (5) contract for monitoring

pesticides; (6) prepare and submit state plans to meet federal certification standards; (7) administer and enforce requirements under this chapter; and (8) make reports to the United States Environmental Protection Agency as the agency requires.

d. Statutory authority for OISC and IPRB to promulgate the rules:

IC 15-16-4-50 provides that IPRB may adopt rules that: 1) provide for the safe handling, transportation, storage, display, distribution, disposal, and production of pesticides and pesticide containers; 2) restrict or prohibit certain types of pesticide containers or packages; 3) determine the time and condition of the sale, distribution, or use of pesticides; 4) require that any or all pesticide products be purchased, possessed, or used only under permit, certificate, license, or registration; and 5) require all persons issued permits, certificates, licenses, or registrations under this chapter to maintain records of pesticide use.

IC 15-16-4-52 provides that OISC may adopt rules to administer this chapter, including rules providing for the issuance of permits to purchase, possess, or use restricted use pesticides.

IC 15-16-5-44 provides that the IPRB may adopt rules under IC 4-22-2 prescribing policies and procedures relating to: (1) the use and application of pesticides; and (2) diagnostic inspections and reports for wood destroying pests. For uniformity and in order to enter into both cooperative and reciprocal agreements, the board may adopt restricted use pesticide classifications as determined by the United States Environmental Protection Agency. The state chemist may adopt additional rules under IC 4-22-2 as required to accomplish the purpose of this chapter. Rules adopted under this chapter may not permit any pesticide use that is prohibited by federal law and regulations or orders issued under federal law.

IC 15-16-5-45 provides that OISC shall adopt rules to establish categories and qualifications to certify and license persons to use pesticides and to make diagnostic inspections and reports for wood destroying pests under this chapter. The state chemist, in adopting rules under this section, shall establish examination content and standards for the certification of persons who use pesticides or who make diagnostic inspections and reports for wood destroying pests. The examination of content and standards must relate to the following: (1) The hazards involved in the use and handling of pesticides, or the use and handling of the pesticide or class of pesticides covered by the individual's certification. (2) The job responsibilities of the individual using pesticides that are covered by the individual's certification. (3) Any relevant information addressed in 40 CFR Part 171.

IC 15-16-5-64 provides that the IPRB may adopt rules governing the production, transportation, storage, handling, and disposal of pesticide products or pesticide containers. In determining these standards, the board shall take into consideration any regulations issued by the United States Environmental Protection Agency.

e. Description of the existing legal framework governing the subject matter of the rule:

IC 15-16-4-42 provides that the Indiana pesticide review board is established. The board consists of the following members: One representative of the state department of health. One representative of the department of natural resources. One representative of the department of environmental

management. One representative of the Purdue University office of agricultural research programs. One representative of the Purdue University cooperative extension service. Two ecologists: one a terrestrial ecologist; and one an aquatic ecologist. Not more than one ecologist may be a plant ecologist. One public representative. One representative of the pesticide producing or manufacturing industry. Two representatives of producers of agricultural crops or products on which pesticides are applied or that may be affected by the application of pesticides; one of whom represents producers of agronomic crops; and one of whom represents producers of specialty crops. One public representative from a conservation organization. Three (3) qualified scientists, one each in the fields of entomology, plant pathology, and weed science. One scientist must be the representative of either the Purdue University office of agricultural research programs or the Purdue University cooperative extension service. Three certified and licensed commercial applicators of pesticides who must represent three different certificate or license categories established under IC 15-16-5-45. The state chemist, who is an ex officio member and shall serve as a nonvoting member. The pesticide administrator for the office of the state chemist, who shall serve as a nonvoting member. The pesticide training coordinator, who shall serve as a nonvoting member. The voting members shall be appointed by the governor for terms of four years.

IC 15-16-4-45 provides that the board shall meet at least annually. The board may meet at other times and at a location specified by the chairperson or a majority of the board. Typically, the IPRB meets quarterly each year.

IC 15-16-4-46 provides that nine members of the board constitute a quorum. Official actions are subject to approval by a simple majority of board members present at a called meeting. The chairperson shall actively participate in all decisions of the board.

IC 15-16-4-51 provides that the state chemist shall administer this chapter.

IC 15-16-4-53 provides that the state chemist may delegate to an employee or agent any function that is vested in the state chemist by this chapter.

IC 15-16-4-54 provides that OISC may cooperate with and enter into agreements with any other state or federal agency to carry out the chapter and apply uniform rules.

IC 15-16-4-55 provides that the state chemist or the state chemist's agent may do the following: (1) Enter any public or private premises, including any vehicle of transport during regular business hours: (A) to: (i) have access to; and (ii) obtain samples of; pesticide products; and (B) to: (i) examine; and (ii) copy; records relating to the production, use, transportation, and sale of pesticide products, subject to this chapter, the rules adopted under this chapter, and the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.). (2) Enter at a reasonable time in or upon any: (A) private; or (B) public; property for the purpose of inspection and investigating conditions possibly resulting from the use or misuse of a pesticide product.

IC 15-16-4-62 provides that all fees collected by the state chemist under this chapter shall be paid to the treasurer of Purdue University, who shall deposit the fees in a special restricted account designated by the treasurer of the board of trustees of Purdue University. From the account the treasurer shall pay all expenses incurred in administering this chapter, including expenses for the

following: (1) The employment of: (A) inspectors; (B) investigators; (C) researchers; (D) analysts; (E) administrators; and (F) clerical and service staff. (2) Expenses in procuring samples and printing results of inspections. (3) Purchasing: (A) supplies; (B) equipment; and (C) services. (4) Necessary remodeling. (5) Other expenses of the office of the state chemist. (6) The transfer of ten dollars (\$10) from each fee paid under subsection (a) on an annual basis to the office of Purdue pesticide programs to provide education about the safe and effective use of pesticides. The treasurer is not required to use any other funds, except those collected as registration fees, to pay any expenses incurred in the administration of this chapter. Excess funds from the collection of fees under this chapter are subject to IC 15-16-2-36.

IC 15-16-4-64.5 provides that a person who is: (1) regulated under this chapter; and (2) aggrieved by any decision of the state chemist; may obtain a review by the board if the person files a written petition with the board not later than thirty (30) days after the state chemist's decision. The board shall provide a copy of a petition filed under subsection (a) to the state chemist not later than seven (7) days after receiving the petition. Not more than fifteen (15) days after receiving a petition under subsection (b), the state chemist shall certify and file with the board a transcript of any record related to the petition, including a transcript of any evidence received. Whenever a hearing is held under this section, the board may designate one (1) or more persons as the board's agent or representative to conduct the hearing. The agent or representative shall conduct the hearing in the manner provided by IC 4-21.5-3. After hearing the appeal, the board shall affirm, set aside, or modify the action of the state chemist. However, the state chemist's finding of facts that are supported by the substantial evidence is considered conclusive. A person aggrieved by any action of the board may obtain judicial review under IC 4-21.5-5.

IC 15-16-4-69 provides that 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 deny, suspend, revoke, or amend the person's registration under this chapter. The state chemist may impose civil penalties under this section only in accordance with subsections (c) through (e). 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. 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

IC 15-16-5-39 provides that this chapter shall be administered by the state chemist.

IC 15-16-5-40 provides that the state chemist may delegate to an employee or agent any function that is vested in the state chemist by this chapter.

IC 15-16-5-43 provides that in concurrence with the state chemist, the Purdue University cooperative extension service shall organize and conduct programs of instruction and training in areas of knowledge required in this chapter. Where appropriate and feasible, the Purdue University cooperative extension service shall draw upon the resources and expertise of other educational institutions and the private sector in this effort.

IC 15-16-5-61 provides that all fees collected by the state chemist under this chapter shall be paid to Purdue University and deposited in a special restricted account designated by the treasurer of the

board of trustees of Purdue University. From the account described, the treasurer shall pay from the special restricted account the expenses incurred in administering this chapter, including expenses for the following: (1) The employment of: (A) inspectors; (B) investigators; (C) researchers; (D) analysts; (E) administrators; and (F) clerical and service staff. (2) Conducting and reporting inspections and investigations. (3) Purchasing supplies and services. (4) Providing necessary facilities and remodeling. (5) Any other expense of the office of the state chemist. The treasurer is not required to use any other funds, except those collected under this chapter, to defray any expenses incurred in the administration of this chapter. The dean of agriculture of Purdue University shall make an annual financial report to the governor showing total receipts and expenditures of all fees received under this chapter. Fee revenue remaining in the account described after payment of the expenses described is subject to IC 15-16-2-36.

IC 15-16-5-63 provides that the state chemist may cooperate with, and enter into agreements with, any other agency of the state, any federal agency, or any other state agency or nongovernmental organization to carry out this chapter to: (1) secure uniformity of rules; (2) cooperate in the enforcement of the federal pesticide control laws through the use of state or federal personnel and facilities and to implement cooperative enforcement programs; (3) develop and administer state plans for certification of applicators consistent with federal standards; (4) contract or cooperate with agencies or organizations for the purpose of training applicators; (5) contract for monitoring pesticides; (6) prepare and submit state plans to meet federal certification standards; (7) administer and enforce requirements under this chapter; and (8) make reports to the United States Environmental Protection Agency as the agency requires.

IC 15-16-5-66 provides that the state chemist may impose civil penalties under this section only in accordance with subsections (b) through (d). 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. 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.

IC 15-16-5-67 provides that a person who is: (1) subject to an action under section 65, 66, or 70 of this chapter; and (2) aggrieved by any decision by the state chemist; may obtain a review by the board if the person files a written petition with the board not later than thirty (30) days after the state chemist's decision. The board shall provide a copy of a petition filed under subsection (a) to the state chemist not later than seven (7) days after receiving the petition. Not more than fifteen (15) days after receiving a petition under subsection (b), the state chemist shall certify and file with the board a transcript of any record related to the petition, including a transcript of any evidence received. Whenever a hearing is held under this section, the board may designate one (1) or more persons as the board's agent or representative to conduct the hearing. The agent or representative shall conduct the hearing in the manner provided by IC 4-21.5-3. After hearing the appeal, the board shall affirm, set aside, or modify the action of the state chemist. However, the state chemist's finding of facts that are supported by the substantial evidence is considered conclusive. A person aggrieved by any action of the board may obtain judicial review under IC 4-21.5-5.

IC 15-16-5-68 provides that 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, registration, or permit issued under this chapter.

IC 15-16-5-69 provides that the state chemist may enter upon any public or private property at reasonable times to do the following: (1) Observe the use and application of a pesticide product. (2) Inspect equipment subject to this chapter. (3) Inspect and sample property actually or reported to be exposed to pesticide products. (4) Inspect storage or disposal areas. (5) Inspect or investigate complaints of injury to humans or property. (6) Sample pesticide products being produced, distributed, transported, stored, disposed, or used or to be used. (7) Inspect and obtain copies of pesticide product production, sale, distribution, purchase, use, storage, and disposal records, including confidential business information. Confidential business information obtained under this subdivision is confidential for purposes of IC 5-14-3-4(a). The state chemist may, upon showing a need, apply to any court with jurisdiction for a search warrant authorizing access to the property. The court may, after receiving the application and finding a need, issue the search warrant for the purposes requested. A prosecuting attorney to whom a violation of this chapter is reported may institute and prosecute the violation in a court with jurisdiction of that county without delay. The state chemist may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any rule adopted under this chapter notwithstanding the existence of other remedies at law. The injunction may be issued without bond.

IC 15-16-5-70 provides that a person who recklessly, knowingly, or intentionally: (1) violates this chapter, except as provided in subsection (b); or (2) impedes or prevents the state chemist or the state chemist's agent from performing a duty of the state chemist; commits a Class C misdemeanor. A person who recklessly, knowingly, or intentionally violates section 65(9) of this chapter after the state chemist has issued written notification to that person regarding a previous violation of section 65(9) of this chapter commits a Class A misdemeanor. The state chemist may bring an action to enjoin the violation or threatened violation of this chapter or a rule under this chapter. A court may not allow the recovery of damages for an administrative action taken under this subsection if the court finds that there was probable cause for the action.

2. Identification of the applicable moratorium exceptions:

a. These rules will repeal parts of existing rules and reduce the regulatory impact of the existing rules.

Repeal of obsolete, outdated, and duplicative definitions from 355 IAC 5 and relocating those terms into a single definitions section in this article will simplify and standardize terms used throughout IC 15-16-4, IC 15-16-5, and these rules. This will simplify and standardize compliance.

Repeal of 357 IAC 1-10 and relocating those requirements into the storage and containment rules in 355 IAC 5 will simplify and standardize pesticide storage and handling requirements near public water supply system wells.

Repeal of 357 IAC 1-13 and 357 IAC 1-14 and relocating those container requirements into the storage and containment rules in 355 IAC 5 will simplify and standardize compliance efforts.

Amending 355 IAC 5-1, 355 IC 5-2, 355 IAC 5-3, 355 IAC 5-4, 355 IAC 5-5, and 355 IAC 5-8

will provide clarifications and distinctions between bulk pesticide containers and minibulk pesticide containers and will eliminate or simplify a variety of storage and containment requirements and restrictions for minibulk containers.

3. Fiscal Impact Analysis as described in FMC #2010-4:

It is estimated that the proposed rules collectively will have no fiscal impact on federal, state, or local funds. Most of the proposed rules reflect technical correction, clarification, simplification, reorganization, increased flexibility, reduction, or elimination of regulatory requirements. While there will be some positive fiscal impacts from these regulatory reductions, the negligible impacts on local, state, and federal entities regulated by these rule revisions makes calculating those potential cost savings difficult.

a. Estimated fiscal impact on state and local government:

OISC is charged by IC 15-16-4 and IC 15-16-5 to administer those laws and to conduct an inspection program to ensure compliance with requirements under these chapters and the rules thereunder. Annual user fees from regulated entities are collected by OISC and are deposited in dedicated accounts that are managed by Purdue University. The dedicated funds are used to support all related administrative and compliance activities required of OISC. No appropriations from state or local general funds are used to support these activities. Additional funding for pesticide compliance and program implementation is received from U.S. EPA in the form of an annual pesticide cooperative agreement. All persons impacted by any of the proposed rules are already regulated and being inspected through OISC's normal routine inspection scheme. It is not anticipated that the rule changes will result in any more or any fewer regulated industries or individuals requiring services from OISC. Outreach and education necessary to communicate the new and revised requirements to regulated persons will require some effort by OISC, but OISC is already actively and routinely involved in ongoing educational efforts with regulated associations, industries, and persons. Implementation and outreach will fit seamlessly into existing annual activities with no additional direct or indirect costs. No additional OISC personnel will be required for administration, implementation, or compliance assurance. Therefore, other than elevating rule revision outreach on the priority list of topics to be communicated in the first two to three years, no fiscal impact on OISC is expected.

b. Anticipated effective date of the rules:

It is anticipated that these rules will become effective within thirty days of publication of the final rule within the Register. Because all current and proposed certification and training requirements occur on a continuous annual calendar schedule, any revisions will be implemented at the start of the first full calendar year following the year of the effective date. All other regulatory revisions will be made effective, for compliance purposes, after the first full season of outreach, education, and compliance assistance inspections by OISC for the impacted persons and industries. Because OISC engages on a continuous basis with industry outreach there will be adequate lead time before the effective date of the rules to communicate the new requirements and adequate opportunities after the effective date to provide compliance assistance.

c. Sources and expenditures of revenues affected by the rules:

It is anticipated that the number of regulated persons or fees generated by those persons will neither increase nor decrease with incorporation of the proposed amendments. It is anticipated that the number and level of civil penalties assessed and collected for failure to comply may decrease as the result of reduced and simplified regulatory requirements. However, civil penalty fees are not a source of income for OISC. Civil penalties are required to be used by Purdue Pesticide Programs for pesticide education. Therefore, any change to civil penalty assessment will not affect OISC revenues or expenditures.

Because there are no new or additional requirements created by these amendments there will be no need for an increased level of compliance inspections by OISC to implement these rules. Therefore, it is not anticipated that revenues or expenditures will increase or decrease from current levels. The legal citations identifying applicable revenues and expenditures include IC 15-16-4-62 and 69 and IC 15-16-5-61 and 66.

d. Administrative impact to state and local governments:

It is anticipated that there will be no measurable administrative impact to state and local governments. No new regulatory requirements are being created by these largely clarifying and requirement reduction amendments.

e. Creation of an unfunded mandate on a state agency or political subdivision:

These rules will not create an unfunded mandate on state agencies or political subdivisions. All units of government that use pesticides do so by choice rather than by legal requirement. Nothing in these rules mandate pesticide uses by any person, including units of government. Therefore, any current or proposed compliance costs will not be required of government entities. OISC is mandated to administer and ensure compliance with the regulatory requirements. However, all implantation costs are supported by user fees.

4. Cost-Benefit Analysis as described in FMC #2010-4:

a. Statement of Need:

Same or similar definitions and terms used throughout IC 15-16-4, IC 15-16-5, and the rules thereunder are proposed to be consolidated, simplified, clarified, and made consistent to assist pesticide applicators, handlers, and distributors with regulatory compliance and implementation.

Historic confusion about when storage and containment requirements applied to bulk containers and quantities and when they applied to minibulk containers and quantities necessitated a requirement by requirement review and re-evaluation. Analysis of twenty years' worth of compliance and safety data has identified for OISC areas where a reduction in regulatory requirements is justified.

b. Evaluation of Costs and Benefits:

i. Estimate of primary and direct benefits of the rules:

These rules will standardize and clarify the definitions and terminology used throughout all current state pesticide laws and rules, wherever possible. This will simplify regulatory compliance and implementation.

ii. Estimate of secondary or indirect benefits of the rules:

These rules will increase public confidence in the benefits and consistency of the overall pesticide regulatory system and will level the regulatory playing field for all commercial and large-scale pesticide users.

iii. Estimate of compliance costs for regulated entities:

There are no new or additional regulatory requirements created by these amendments, so there will be no new or added compliance costs.

iv. Estimate of administrative expenses imposed by the rules:

There are no new or additional regulatory requirements created by these amendments, so there will be no new or added administrative expenses.

v. Estimate of any costs savings to regulated industries:

In consideration of requirements that have been standardized and simplified, potential consultation and legal expenses should be reduced. However, assessing the specific value of those potential savings is imprecise and beyond the capabilities of this analysis.

c. Examination of Alternatives:

There are no new or additional regulatory requirements created by these amendments, so there is no need to examine alternatives.

d. Total Estimated Impacts on All Regulated Persons:

There are no new or additional regulatory requirements created by these amendments, so there will be no new or added compliance or implementation expenses.

5. Contact information for the OISC and IPRB staff to answer substantive questions:

David E. Scott
Pesticide Administrator, OISC
Secretary, IPRB
765-494-1593 or 765-413-1242(cell)
scottde@purdue.edu

6. Draft of proposed rules:

**DRAFT 7-26-22
Proposed Rule
LSA# 22-BB**

DIGEST

Adds 355 IAC 5-0.5 to identify the scope of the regulated persons under this article. Adds 355 IAC 5-1-0.5 to clarify the applicability of the definitions under IC 15-16-4 and IC 15-16-5 to this article. Amends 355 IAC 5-1-4 to limit the definition to “dry pesticide” to bulk quantities. Adds 355 IAC 5-1-5.5 to add a definition of “isolation area.” Amends 355 IAC 5-1-6 to limit the definition of “liquid bulk pesticide” to bulk quantities only. Amends 355 IAC 5-1-7 to exclude pesticide in application equipment or a delivery vehicle from the definition of “minibulk pesticide.” Adds 355 IAC 5-1-11.5 to add a definition of “service container.” Amends 355 IAC 5-1-13 to clarify the definition of “storage container”. Amends 355 IAC 5-1-15 to limit the definition of “storage facility registry” to bulk storage only. Adds 355 IAC 5-1-16 to add a definition of “wellhead protection area.” Amends 355 IAC 5-2-1 to limit appurtenance requirements to bulk and minibulk only. Amends 355 IAC 5-2-2 to limit underground pesticide storage restrictions to bulk and minibulk only. Amends 355 IAC 5-2-3 to limit abandoned container restrictions to bulk and minibulk only. Amends 355 IAC 5-2-4 to limit container materials restrictions to bulk and minibulk only. Amends 355 IAC 5-2-5 to limit storage container anchoring requirements to bulk and minibulk only. Amends 355 IAC 5-2-6 to limit storage container venting requirements to bulk only. Amends 355 IAC 5-2-8 to limit container filling restrictions to bulk only. Amends 355 IAC 5-2-9 to limit shutoff valve requirements to bulk and minibulk only. Amends 355 IAC 5-2-10 to limit appurtenance requirements to bulk and minibulk only. Amends 355 IAC 5-2-11 to limit leveling gauge requirements to bulk only. Amends 355 IAC 5-2-12 to limit maintenance requirements to bulk and minibulk only. Amends 355 IAC 5-3-1 to limit operational area requirements to bulk and minibulk only. Amends 355 IAC 5-4-1 to differentiate between bulk and minibulk secondary storage requirements. Amends 355 IAC 5-4-2 to clarify the reference to floors of containment structures. Amends 355 IAC 5-4-3 to clarify acceptable materials for floors of secondary containment. Amends 355 IAC 5-4-4 to differentiate between bulk and minibulk drainage requirements. Amends 355 IAC 5-4-7 to permit double wall storage containers to satisfy the secondary containment requirement. Amends 355 IAC 5-5-1 to limit certain storage requirements to dry bulk only. Amends 355 IAC 5-8-1 to limit storage registry requirements to bulk only. Adds 355 IAC 5-10 to consolidate pesticide storage and use restrictions in wellhead protection areas and isolation areas. Adds 355 IAC 5-11 to consolidate pesticide service container requirements. Adds 355 IAC 5-12 to consolidate open burning restrictions for pesticide containers. Repeals 355 IAC 5-1-7.5; 355 IAC 5-1-12; 355 IAC 5-1-15; and 355 IAC 5-2-7. Effective 30 days after filing with the Publisher.

355 IAC 5-0.5; 355 IAC 5-1-4; 355 IAC 5-1-5.5; 355 IAC 5-1-6; 355 IAC 5-1-7; 355 IAC 5-1-11.5; 355 IAC 5-1-11.6; 355 IAC 5-1-13; 355 IAC 5-1-15; 355 IAC 5-1-16; 355 IAC 5-2-1; 355 IAC 5-2-2; 355 IAC 5-2-3; 355 IAC 5-2-4; 355 IAC 5-2-5; 355 IAC 5-2-6; 355 IAC 5-2-8; 355 IAC 5-2-9; 355 IAC 5-2-10; 355 IAC 5-2-11; 355 IAC 5-2-12; 355 IAC 5-3-1; 355 IAC 5-4-1; 355 IAC 5-4-2; 355 IAC 5-4-3; 355 IAC 5-4-4; 355 IAC 5-4-7; 355 IAC 5-5-1; 355 IAC 5-8-1; 355 IAC 5-10; 355 IAC 5-11; 355 IAC 5-12; 355 IAC 5-1-7.5; 355 IAC 5-1-12; 355 IAC 5-1-15; 355 IAC 5-2-7.

ARTICLE 5. STORAGE AND CONTAINMENT OF PESTICIDES

SECTION 1. 355 IAC 5-0.5 IS ADDED TO READ AS FOLLOWS:

Rule 0.5. Applicability

355 IAC 5-0.5-1 Applicability

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64
Affected: IC 15-16-4; IC 15-16-5

Sec. 1. (a) Except as provided in subsections (b) through (d), the requirements in this article apply to all persons that store:

- (1) minibulk pesticide containers;**

- (2) bulk pesticide containers; or
- (3) pesticides within a wellhead protection area zone.

(b) The requirements in this article do not apply to persons that transport, but do not otherwise store, unopened pesticide containers.

(c) The requirements for operational area containment in 355 IAC 5-3 do not apply to persons that store antimicrobial pesticides labeled for legal use in:

- (1) food handling or storage establishments premises and equipment;
- (2) commercial, institutional, and industrial premises and equipment;
- (3) residential and public access premises;
- (4) medical premises and equipment;
- (5) human drinking water systems;
- (6) materials preservatives;
- (7) industrial processes and water systems;
- (8) antifouling coatings;
- (9) wood preservatives; or
- (10) swimming pools.

(d) The requirements for operational area containment in 355 IAC 5-3 and secondary containment in 355 IAC 5-4 do not apply to persons that store a minibulk pesticide container for less than forty-five (45) days, as verified by written delivery documentation.

SECTION 2. 355 IAC 5-1-0.7 IS ADDED TO READ AS FOLLOWS:

355 IAC 5-1-0.7 Definitions

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 0.7. In addition to the definitions in this rule, the definitions in IC 15-16-4 and IC 15-16-5 apply throughout this article.

SECTION 3. 355 IAC 5-1-4 IS AMENDED TO READ AS FOLLOWS:

355 IAC 5-1-4 "Dry bulk pesticide" defined

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 4. ~~As used in this article,~~ "Dry bulk pesticide" means pesticide in an undivided quantity exceeding one hundred (100) pounds that is in solid form prior to any application or mixing for application and includes formulations, such as dusts, wettable powders, dry flowable powders, and granules. (*State Chemist of the State of Indiana; 355 IAC 5-1-4; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1401, eff sixty (60) days after filing with secretary of state; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269; filed Feb 20, 2002, 9:38 a.m.: 25 IR 2213; readopted filed Sep 3, 2008, 1:46 p.m.: 20080924-IR-355080553RFA; readopted filed Sep 25, 2013, 11:11 a.m.: 20131023-IR-355130362RFA; readopted filed Oct 17, 2014, 9:26 a.m.: 20141112-IR-355140342RFA.*)

SECTION 4. 355 IAC 5-1-5.5 IS ADDED TO READ AS FOLLOWS:

355 IAC 5-1-5.5 "Isolation area" defined

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 5.5. "Isolation area" means the area, as referenced in 327 IAC 8-3.4-9, that is located within two hundred (200) feet of a community public water supply system (327 IAC 8-4.1-1(5)) production well and is intended to protect ground water from direct contamination by pesticides.

SECTION 5. 355 IAC 5-1-6 IS AMENDED TO READ AS FOLLOWS:

355 IAC 5-1-6 “Liquid **bulk** pesticide” defined

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 6. ~~As used in this article,~~ “Liquid **bulk** pesticide” means a pesticide in liquid form, including solutions, emulsions, suspensions, and slurries contained in an undivided quantity exceeding fifty-five (55) U.S. gallons. (*State Chemist of the State of Indiana; 355 IAC 5-1-6; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1401, eff sixty (60) days after filing with secretary of state; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269; filed Feb 20, 2002, 9:38 a.m.: 25 IR 2213; readopted filed Sep 3, 2008, 1:46 p.m.: 20080924-IR-355080553RFA; readopted filed Sep 25, 2013, 11:11 a.m.: 20131023-IR-355130362RFA; readopted filed Oct 17, 2014, 9:26 a.m.: 20141112-IR-355140342RFA.*)

SECTION 6. 355 IAC 5-1-7 IS AMENDED TO READ AS FOLLOWS:

355 IAC 5-1-7 “Minibulk pesticide” defined

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 7. ~~As used in this article,~~ “Minibulk pesticide” means an amount of liquid pesticide greater than fifty-five (55) gallons (two hundred eight (208) liters) but not exceeding four hundred (400) gallons (one thousand five hundred fourteen (1,514) liters) which is held in a single container designed for ready handling and transport, ~~has been filled by the original pesticide manufacturer, and to which no substance has been added by any person.~~ **A minibulk pesticide container includes a portable refillable container but does not include a mobile container such as application equipment or a delivery vehicle.** (*State Chemist of the State of Indiana; 355 IAC 5-1-7; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1401, eff sixty (60) days after filing with secretary of state; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269; readopted filed Sep 20, 2007, 1:46 p.m.: 20071010-IR-355070484RFA; readopted filed Sep 25, 2013, 11:11 a.m.: 20131023-IR-355130362RFA; readopted filed Oct 17, 2014, 9:26 a.m.: 20141112-IR-355140342RFA.*)

SECTION 7. 355 IAC 5-1-11.5 IS ADDED TO READ AS FOLLOWS:

355 IAC 5-1-11.5 “Service container” defined

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 11.5. “Service container” means any package, can, bottle, jug, bag, or other containing device used to transport a diluted or undiluted pesticide from a storage site to an application site, and return to the storage site, if needed. The term shall not mean any of the following:

- (1) An original labeled pesticide container provided by the manufacturer.
- (2) A device for measuring a pesticide.
- (3) Equipment used solely for the application of a pesticide.

SECTION 8. 355 IAC 5-1-13 IS AMENDED TO READ AS FOLLOWS:

355 IAC 5-1-13 “Storage container” defined

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 13. (a) ~~As used in this article,~~ “Storage container” means a container used for the storage of liquid or dry pesticide. ~~at a storage facility~~

~~(b) The term does not include a mobile container storing liquid pesticide for less than thirty (30) days. In the case of minibulk pesticide containers, written and verifiable documentation as to the period of storage at the storage facility shall be required and made available to the state chemist upon request. (State Chemist of the State of Indiana; 355 IAC 5-1-13; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1402, eff sixty (60) days after filing with secretary of state; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269; filed Feb 20, 2002, 9:38 a.m.: 25 IR 2213; readopted filed Sep 3, 2008, 1:46 p.m.: 20080924-IR-355080553RFA; readopted filed Sep 25, 2013, 11:11 a.m.: 20131023-IR-355130362RFA; readopted filed Oct 17, 2014, 9:26 a.m.: 20141112-IR-355140342RFA.)~~

SECTION 9. 355 IAC 5-1-16 IS ADDED TO READ AS FOLLOWS:

355 IAC 5-1-16 “Wellhead protection area” defined

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 16. “Wellhead protection area zone” refers to the surface and subsurface area of the wellhead protection area, as referenced in 327 IAC 8-4.1-1(27), that is located within a three thousand (3,000) foot radius of a community public water supply system (327 IAC 8-4.1-1(5)) production well or wellfield and through which contaminants are likely to move.

Rule 2. Storage of Liquid Bulk and Minibulk Pesticide

SECTION 10. 355 IAC 5-2-1 IS AMENDED TO READ AS FOLLOWS:

355 IAC 5-2-1 Liquid bulk and minibulk storage containers and appurtenances; basic requirements

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 1. (a) Bulk and minibulk storage containers and appurtenances shall be constructed, installed, and maintained so as to prevent the discharge or the spill of liquid pesticide.

(b) Storage containers and appurtenances shall be constructed of materials which are resistant to corrosion, puncture, or cracking.

(c) Materials used in the construction or repair of storage containers and appurtenances may not be of a type which react chemically or electrolytically with stored liquid pesticide in a way which may weaken the storage container or appurtenances, create a risk of discharge, or adulterate the pesticide.

(d) Metals used for valves, fittings, and repairs on metal containers shall be compatible with the metals used in the construction of the storage container so that the combination of metals does not cause or increase corrosion which may weaken the storage container or its appurtenances or create a risk of discharge.

(e) Storage containers and appurtenances shall be designed to handle all operating stresses, taking into account static head, pressure build-up from pumps and compressors, and any other mechanical stresses to which the storage containers and appurtenances may be subject in the foreseeable course of operations. (State Chemist of the State of Indiana; 355 IAC 5-2-1; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1402, eff sixty (60) days after filing with secretary of state; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269; readopted filed Sep 20, 2007, 1:46 p.m.: 20071010-IR-355070484RFA; readopted filed Sep 3, 2008, 1:46 p.m.: 20080924-IR-355080553RFA; readopted filed Oct 17, 2014, 9:26 a.m.: 20141112-IR-355140342RFA.)

SECTION 11. 355 IAC 5-2-2 IS AMENDED TO READ AS FOLLOWS:

355 IAC 5-2-2 Prohibition against underground storage of bulk and minibulk pesticides

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 2. Liquid bulk and minibulk pesticide shall not be stored in an underground storage container. (State Chemist of the State of Indiana; 355 IAC 5-2-2; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1403, eff sixty (60) days after filing with secretary of state; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269; filed Feb 20, 2002, 9:38 a.m.: 25 IR 2214; readopted filed Sep 3, 2008, 1:46 p.m.: 20080924-IR-355080553RFA; readopted filed Oct 17, 2014, 9:26 a.m.: 20141112-IR-355140342RFA.)

SECTION 12. 355 IAC 5-2-3 IS AMENDED TO READ AS FOLLOWS:

355 IAC 5-2-3 Abandoned **bulk and minibulk containers and structures**

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 3. (a) **Bulk and minibulk pesticide** storage containers ~~and other containers used at a storage facility to hold pesticide or pesticide rinsate~~ are considered abandoned if they have been out of service for more than six (6) months because of a weakness or leak or have been out of service for any reason for more than two (2) years.

(b) Abandoned underground ~~containers~~ **structures**, including abandoned underground catch basins, shall be thoroughly cleaned and removed from the ground or thoroughly cleaned and filled with an inert solid. All connections and vents shall be disconnected and sealed. A record of the ~~catch basin~~ **structure** size, location, and method of closing shall be maintained at the storage facility or as otherwise provided for in this article.

(c) Abandoned aboveground **bulk and minibulk pesticide** containers shall be thoroughly cleaned. All hatches on the containers shall be left open, and all valves or connections shall be severed and left open.

(d) Secondary containment is not considered abandoned merely because there have been no discharges into the secondary containment. (*State Chemist of the State of Indiana; 355 IAC 5-2-3; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1403, eff sixty (60) days after filing with secretary of state; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269; filed Feb 20, 2002, 9:38 a.m.: 25 IR 2214; readopted filed Sep 3, 2008, 1:46 p.m.: 20080924-IR-355080553RFA; readopted filed Oct 17, 2014, 9:26 a.m.: 20141112-IR-355140342RFA.*)

SECTION 13. 355 IAC 5-2-4 IS AMENDED TO READ AS FOLLOWS:

355 IAC 5-2-4 Prohibited materials

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 4. (a) **Bulk** storage containers and appurtenances shall not be made of polyvinyl chloride.

(b) A **bulk or minibulk** storage container shall not be made of ferrous metals, unless the container is made of stainless steel or other approved materials, or the container has a protective lining that inhibits corrosion and does not react chemically with the stored pesticide. (*State Chemist of the State of Indiana; 355 IAC 5-2-4; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1403, eff sixty (60) days after filing with secretary of state; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269; filed Feb 20, 2002, 9:38 a.m.: 25 IR 2214; readopted filed Sep 3, 2008, 1:46 p.m.: 20080924-IR-355080553RFA; readopted filed Oct 17, 2014, 9:26 a.m.: 20141112-IR-355140342RFA.*)

SECTION 14. 355 IAC 5-2-5 IS AMENDED TO READ AS FOLLOWS:

355 IAC 5-2-5 Anchoring **bulk and minibulk** storage containers

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 5. (a) **Bulk and minibulk** storage containers shall be anchored, ~~as necessary~~, to prevent flotation or instability which might occur as a result of liquid accumulations within secondary containment.

(b) Storage containers shall be considered anchored if, ~~in addition to other approved means~~, the containers:

(1) are placed on a raised area or platform of such height as to prevent flotation or instability in the event of liquid accumulations; or

(2) store product with sufficient volume to rise to at least the height of the secondary containment walls.

(*State Chemist of the State of Indiana; 355 IAC 5-2-5; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1403, eff sixty (60) days after filing with secretary of state; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269; filed Feb 20, 2002, 9:38 a.m.: 25 IR 2215; readopted filed Sep 3, 2008, 1:46 p.m.: 20080924-IR-355080553RFA; readopted filed Oct 17, 2014, 9:26 a.m.: 20141112-IR-355140342RFA.*)

SECTION 15. 355 IAC 5-2-6 IS AMENDED TO READ AS FOLLOWS:

355 IAC 5-2-6 Vents for bulk storage containers

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 6. (a) Each **bulk** storage container shall be equipped with a vent with hood or inverted opening.

(b) Conservation vents shall be used on containers storing products where loss of vapor affects product quality or where the vapor is harmful to plants, animals, or humans.

(c) Conservation vents shall open and close within the designed pressure limits of the storage container. (*State Chemist of the State of Indiana; 355 IAC 5-2-6; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1403, eff sixty (60) days after filing with secretary of state; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269; filed Feb 20, 2002, 9:38 a.m.: 25 IR 2215; readopted filed Sep 3, 2008, 1:46 p.m.: 20080924-IR-355080553RFA; readopted filed Oct 17, 2014, 9:26 a.m.: 20141112-IR-355140342RFA.*)

SECTION 16. 355 IAC 5-2-8 IS AMENDED TO READ AS FOLLOWS:

355 IAC 5-2-8 Filling liquid bulk pesticide containers

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 8. **Liquid bulk pesticide** storage containers shall not be filled to more than ninety-five percent (95%) of capacity unless the storage container construction or location provides constant temperature control, or is otherwise designed to be filled to a capacity of greater than ninety-five percent (95%). (*State Chemist of the State of Indiana; 355 IAC 5-2-8; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1404, eff sixty (60) days after filing with secretary of state; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269; filed Feb 20, 2002, 9:38 a.m.: 25 IR 2215; readopted filed Sep 3, 2008, 1:46 p.m.: 20080924-IR-355080553RFA; readopted filed Oct 17, 2014, 9:26 a.m.: 20141112-IR-355140342RFA*)

SECTION 17. 355 IAC 5-2-9 IS AMENDED TO READ AS FOLLOWS:

355 IAC 5-2-9 Liquid bulk and minibulk shutoff valves

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 9. (a) **Bulk and minibulk** storage container connections, except for safety relief connections, shall be equipped with a shutoff valve located on the storage container or at a distance from the storage container ~~dictated by standard engineering practice~~ **that allows the attending operator to expeditiously stop the flow of pesticide from the container.**

(b) ~~Except for a storage container of minibulk pesticide, All wetted parts inside shutoff valves and connections from the~~ **liquid bulk** storage container to the shutoff valve shall be made of stainless steel. ~~or other approved material.~~ (*State Chemist of the State of Indiana; 355 IAC 5-2-9; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1404, eff sixty (60) days after filing with secretary of state; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269; filed Feb 20, 2002, 9:38 a.m.: 25 IR 2215; readopted filed Sep 3, 2008, 1:46 p.m.: 20080924-IR-355080553RFA; readopted filed Oct 17, 2014, 9:26 a.m.: 20141112-IR-355140342RFA*)

SECTION 18. 355 IAC 5-2-10 IS AMENDED TO READ AS FOLLOWS:

355 IAC 5-2-10 Appurtenances for bulk and minibulk pesticide containers

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 10. Appurtenances **for bulk and minibulk containers** shall be adequately supported to prevent sagging and possible breakage because of gravity and other forces which may be encountered in the ordinary course of operations. (*State Chemist of the State of Indiana; 355 IAC 5-2-10; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1404, eff sixty (60) days after filing with secretary of state; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269; filed Feb 20, 2002, 9:38 a.m.: 25 IR 2216; readopted filed Sep 3, 2008, 1:46 p.m.: 20080924-IR-355080553RFA; readopted filed Oct 17, 2014, 9:26 a.m.: 20141112-IR-355140342RFA.*)

SECTION 19. 355 IAC 5-2-11 IS AMENDED TO READ AS FOLLOWS:

355 IAC 5-2-11 Liquid **bulk pesticide** level gauging device

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 11. (a) **Liquid bulk** storage containers shall be equipped with a liquid level gauging device or other means by which the level of liquid in the storage container can be readily and safely determined.

(b) External sight gauges are prohibited. (*State Chemist of the State of Indiana; 355 IAC 5-2-11; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1404, eff sixty (60) days after filing with secretary of state; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269; filed Feb 20, 2002, 9:38 a.m.: 25 IR 2216; readopted filed Sep 3, 2008, 1:46 p.m.: 20080924-IR-355080553RFA; readopted filed Oct 17, 2014, 9:26 a.m.: 20141112-IR-355140342RFA.*)

SECTION 20. 355 IAC 5-2-12 IS AMENDED TO READ AS FOLLOWS:

355 IAC 5-2-12 Maintenance of **bulk and minibulk pesticide containers and appurtenances**

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 12. **Bulk and minibulk** storage containers and appurtenances shall be maintained to minimize the risk of a discharge. (*State Chemist of the State of Indiana; 355 IAC 5-2-12; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1404, eff sixty (60) days after filing with secretary of state; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269; filed Feb 20, 2002, 9:38 a.m.: 25 IR 2216; readopted filed Sep 3, 2008, 1:46 p.m.: 20080924-IR-355080553RFA; readopted filed Oct 17, 2014, 9:26 a.m.: 20141112-IR-355140342RFA.*)

Rule 3. Operational Area Containment of Liquid **Bulk and Minibulk** Pesticide at Storage Facilities

SECTION 21. 355 IAC 5-3-1 IS AMENDED TO READ AS FOLLOWS:

355 IAC 5-3-1 **Bulk and minibulk** operational area containment

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 1. (a) Operational areas at a storage facility **for bulk and minibulk containers** shall have containment that is curbed and paved with reinforced concrete or other approved material that provides an impervious surface. Operational area activities shall be carried out within this containment.

(b) The operational area containment shall be constructed and reinforced to support the foreseeable maximum gross load of all product, equipment, and motor vehicles utilizing the area. The containment shall have a minimum width of ten (10) feet, a minimum length of twenty (20) feet, and a minimum capacity of seven hundred fifty (750) gallons. Points of loading and unloading shall be positioned over the containment.

(c) Wherever sufficient capacity required in 355 IAC 5-4-1(c) and provisions of this rule are complied with, the secondary containment described in 355 IAC 5-4 may be designed for and jointly used in lieu of a separate operational area containment.

(d) The operational area containment shall form or drain into a watertight catch basin. If the operational area containment drains to a sump, the catch basin may include the sump and an aboveground container, provided a pump is installed which automatically transfers the contents of the sump into an aboveground container. Such containers used for the temporary storage of liquids collected from the operational area containment shall be located within secondary containment.

(e) All liquids shall be promptly removed from the operational area containment for use in the blending process or for proper disposal in accordance with all applicable rules. The capacity required in subsection (b) shall be available at all times.

(f) Storage containers and appurtenances shall be protected against reasonably foreseeable risks of damage by vehicles operating in the area.

(g) This section does not apply to the unloading of mobile containers at the pesticide application site.

(h) Operational area containment shall be maintained as necessary to assure compliance with this rule.

(i) Alternative means, including portable operational area containment systems, shall be permitted to serve as operational area containment systems if approved. (*State Chemist of the State of Indiana; 355 IAC 5-3-1; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1405, eff sixty (60) days after filing with secretary of state; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269; filed Feb 20, 2002, 9:38 a.m.: 25 IR 2216; readopted filed Sep 3, 2008, 1:46 p.m.: 20080924-IR-355080553RFA; readopted filed Oct 17, 2014, 9:26 a.m.: 20141112-IR-355140342RFA.*)

Rule 4. Secondary Containment of Liquid **Bulk and Minibulk** Pesticide

SECTION 22. 355 IAC 5-4-1 IS AMENDED TO READ AS FOLLOWS:

355 IAC 5-4-1 General requirements

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 1. (a) Liquid **bulk and minibulk** pesticide storage containers shall be located within secondary containment constructed with ~~a base an impermeable floor and perimeter wall, and sloped floor.~~ **Secondary containment for liquid bulk storage containers must have a sloped floor.** ~~Exception for a sloped floor may be granted by the state chemist.~~ **Secondary containment for minibulk storage containers is not required to have a sloped floor.**

(b) The **secondary** containment area **for liquid bulk pesticide storage containers** shall be separate from a secondary containment area for **all** other materials, ~~and used only for containment of liquid pesticide storage containers or other pesticide related equipment.~~ **The secondary containment area for liquid minibulk pesticide containers is not required to be separate from a secondary containment area for other chemical storage containers.** Adjoining secondary containment areas may share **impermeable** common walls.

(c) Secondary containment not protected from rainfall shall at all times have a minimum capacity of one hundred percent (100%) of the volume of the largest storage container within the contained area plus the volume displaced by all the other tanks, equipment, and appurtenances in the area up to the safe design level of the containment structure plus a freeboard of six (6) inches.

(d) Secondary containment protected from rainfall is not required to have the freeboard noted in subsection (c), but shall comply with all other requirements therein.

(e) Secondary containment constructed prior to enactment of this rule and that has a capacity of a minimum of one hundred ten percent (110%) of the volume of the largest storage container within the contained area plus the volume displaced by all the other tanks in the area up to the safe design level of the containment structure shall be deemed to be in compliance with this rule. Any such storage facility upon alteration of the secondary containment area or increases in storage container volume shall be brought into full compliance within ninety (90) days of alteration or increase.

(f) **Open drains and permeable** tile drainage shall not be permitted within or under secondary containment. (*State Chemist of the State of Indiana; 355 IAC 5-4-1; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1405, eff sixty (60) days after filing with secretary of state; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269; filed Feb 20, 2002, 9:38 a.m.: 25 IR 2217; readopted filed Sep 3, 2008, 1:46 p.m.: 20080924-IR-355080553RFA; readopted filed Oct 17, 2014, 9:26 a.m.: 20141112-IR-355140342RFA.*)

SECTION 23. 355 IAC 5-4-2 IS AMENDED TO READ AS FOLLOWS:

355 IAC 5-4-2 Walls

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 2. (a) The walls of secondary containment shall be constructed of steel, poured reinforced concrete, pre-casted concrete modules, or solid masonry and be designed to withstand a full hydrostatic head of any discharged liquid and weight load of material used in construction.

(b) Cracks and seams shall be sealed to prevent leakage.

(c) Walls shall not exceed six (6) feet in height above interior grade unless provisions are made for normal access and necessary emergency access to storage containers, valves, and other equipment and for safe exit from the secondary containment.

(d) Walls constructed of concrete or solid masonry shall rest upon a floating ~~base~~ **floor** of concrete prepared as in section 3(b) of this rule or upon suitable concrete footings which extend below the average frost depth. Joints between walls and the ~~base~~ **floor** shall be watertight. (*State Chemist of the State of Indiana; 355 IAC 5-4-2; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1406; errata*

filed May 10, 1991, 2:30 p.m.: 14 IR 1730, eff sixty (60) days after filing with secretary of state; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269; filed Feb 20, 2002, 9:38 a.m.: 25 IR 2217; readopted filed Sep 3, 2008, 1:46 p.m.: 20080924-IR-355080553RFA; readopted filed Oct 17, 2014, 9:26 a.m.: 20141112-IR-355140342RFA.)

SECTION 24. 355 IAC 5-4-3 IS AMENDED AS FOLLOWS:

355 IAC 5-4-3 ~~Base liners~~ Floors

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 3. (a) The ~~base floor~~ of secondary containment shall be ~~lined with~~ **impermeable and constructed of** concrete, steel, or other approved ~~liners materials~~.

(b) Concrete ~~liners floors~~ shall be designed according to good engineering practices to withstand any foreseeable loading conditions, including a full hydrostatic head of discharged fluid and static loads of storage containers, including appurtenances, equipment, and contents. Cracks and seams shall be sealed to prevent leakage.

(c) Steel liners and installation plans shall be approved before use.

(d) Synthetic liners and installation plans shall be approved before use.

(e) Synthetic liners shall have a minimum thickness of thirty (30) mils (eight-tenths (0.8) millimeter) and be chemically compatible with the materials being stored within the containment.

(f) Synthetic liners shall be installed under the supervision of a qualified representative of the manufacturer, and all field constructed seams shall be tested and repaired, if necessary, in accordance with the manufacturer's recommendations. (*State Chemist of the State of Indiana; 355 IAC 5-4-3; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1406, eff sixty (60) days after filing with secretary of state; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269; filed Feb 20, 2002, 9:38 a.m.: 25 IR 2218; readopted filed Sep 3, 2008, 1:46 p.m.: 20080924-IR-355080553RFA; readopted filed Oct 17, 2014, 9:26 a.m.: 20141112-IR-355140342RFA.*)

SECTION 25. 355 IAC 5-4-4 IS AMENDED TO READ AS FOLLOWS:

355 IAC 5-4-4 Drainage from secondary containment

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 4. Secondary containment shall not have a **drain**, relief outlet, or valve. **Except for secondary containment for minibulk containers**, the ~~base floor~~ shall slope to a collecting spot where liquid shall be removed by a manually activated pump over the wall for use in the blending process or for proper disposal in accordance with ~~all applicable regulations~~ **pesticide label directions**. (*State Chemist of the State of Indiana; 355 IAC 5-4-4; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1407, eff sixty (60) days after filing with secretary of state; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269; filed Feb 20, 2002, 9:38 a.m.: 25 IR 2218; readopted filed Sep 3, 2008, 1:46 p.m.: 20080924-IR-355080553RFA; readopted filed Oct 17, 2014, 9:26 a.m.: 20141112-IR-355140342RFA.*)

SECTION 26. 355 IAC 5-4-7 IS AMENDED TO READ AS FOLLOWS:

355 IAC 5-4-7 Alternative to secondary containment for storage containers

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 7. (a) **Approved double wall storage containers may be used to comply with the secondary containment requirements in this rule.**

(b) Individual storage containers not exceeding three thousand (3,000) gallons may be contained within an elephant ring in lieu of secondary containment.

~~(b)~~ (c) Both the storage container and the elephant ring shall be fabricated of materials compatible with each other and with the pesticide being stored. The storage container and the elephant ring shall be constructed of similar metals. Elephant rings shall not be constructed of plastic.

(d) The height of the elephant ring wall shall not exceed four (4) feet. The minimum capacity of the elephant ring shall be one hundred percent (100%) of the volume of the storage container plus the volume displaced by all equipment, and appurtenances in the secondary containment vessel up to the safe storage level of the elephant ring, plus a freeboard of six (6) inches. An elephant ring protected from rainfall is not required to have the freeboard of six (6) inches.

(e) The elephant ring shall be free of leaks and structural defects. The base shall be protected from corrosion, both from inside and outside, and shall be underlain by a concrete pad or by eight (8) inches of compacted gravel beneath four (4) inches of compacted sand or as recommended by the manufacturer of the elephant ring and approved by the state chemist.

(f) The elephant ring shall not have a relief outlet or valve. No appurtenances shall extend through the wall of the elephant ring. Pumps located within the elephant ring shall be placed on an elevated platform.

(g) Liquid shall be removed from the elephant ring by means of a manually activated pump for use in the blending process or disposal in accordance with all applicable regulations.

(h) Elephant rings shall be maintained as necessary to assure compliance with this rule. *(State Chemist of the State of Indiana; 355 IAC 5-4-7; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1407, eff sixty (60) days after filing with secretary of state; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269; filed Feb 20, 2002, 9:38 a.m.: 25 IR 2218; readopted filed Sep 3, 2008, 1:46 p.m.: 20080924-IR-355080553RFA; readopted filed Oct 17, 2014, 9:26 a.m.: 20141112-IR-355140342RFA.)*

SECTION 27. 355 IAC 5-5-1 IS AMENDED TO READ AS FOLLOWS:

355 IAC 5-5-1 Storage requirements for dry bulk pesticide

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 1. (a) Dry **bulk** pesticide shall be kept in storage containers effectively designed and constructed to hold dry pesticide. Storage containers shall be constructed of materials that are compatible with the pesticide being stored resistant to corrosion, puncture, or cracking, and shall be maintained in a good state of repair. Storage containers shall be placed on pallets or on a raised concrete platform which is drained to prevent the accumulation of water in or under the pesticide.

(b) Except during loading or unloading, stored dry **bulk** pesticide shall be covered by a roof or tarpaulin that will keep precipitation off the pesticide.

(c) Storage facilities shall be secured to provide reasonable protection from wildlife, vandalism, and unauthorized access. *(State Chemist of the State of Indiana; 355 IAC 5-5-1; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1408, eff sixty (60) days after filing with secretary of state; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269; filed Feb 20, 2002, 9:38 a.m.: 25 IR 2219; readopted filed Sep 3, 2008, 1:46 p.m.: 20080924-IR-355080553RFA; readopted filed Oct 17, 2014, 9:26 a.m.: 20141112-IR-355140342RFA.)*

Rule 8. Bulk Pesticide Storage Facility Registry

SECTION 28. 355 IAC 5-8-1 IS AMENDED TO READ AS FOLLOWS:

355 IAC 5-8-1 Annual bulk pesticide facility registry

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 1. **Bulk pesticide** storage facilities shall notify the state chemist each year of the facilities' location and status. The notice shall include the facilities':

- (1) mailing address;
- (2) owner or manager name;
- (3) rated or calculated capacity off all storage containers; and
- (4) physical location of storage containers.

(State Chemist of the State of Indiana; 355 IAC 5-8-1; filed Mar 8, 1991, 2:45 p.m.: 14 IR 1410, eff sixty (60) days after filing with secretary of state; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269; filed Feb 20, 2002, 9:38 a.m.: 25 IR 2219; readopted filed Sep 3, 2008, 1:46 p.m.: 20080924-IR-355080553RFA; readopted filed Oct 17, 2014, 9:26 a.m.: 20141112-IR-355140342RFA.)

SECTION 29. 355 IAC 5-10 IS ADDED TO READ AS FOLLOWS:

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

355 IAC 5-10-1 Pesticide storage and use within the isolation area

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-44; IC 15-16-5-45; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 1. (a) Except for pesticides labeled for use in the treatment of drinking water, pesticide storage, mixing, and loading shall be prohibited within the two hundred (200) foot isolation area.

(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.

355 IAC 5-10-2 Pesticide storage within the wellhead protection area zone and outside the isolation area

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-44; IC 15-16-5-45; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 2. Except for bulk and minibulk pesticide storage containers in compliance with 355 IAC 5-2 through 355 IAC 5-9 of this article, all other pesticide storage containers located within the wellhead protection area zone and outside of the isolation area shall be stored:

- (1) on an impervious surface designed to contain a discharge of the entire contents of the largest storage container plus the volume displaced by all the other items within the contained area; and
- (2) in an area protected from precipitation.

355 IAC 5-10-3 Pesticide spills or discharges within the wellhead protection area zone

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-44; IC 15-16-5-45; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 3. All pesticide spills or discharges within the wellhead protection area zone shall be cleaned up immediately, in a manner that prevents the pesticide from threatening waters of the state, dry wells, storm sewers, sanitary sewers, or septic systems.

SECTION 30. 355 IAC 5-11 IS ADDED TO READ AS FOLLOWS:

Rule 11. Use and Labeling of Pesticide Service Containers

355 IAC 5-11-1 Use of service containers

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-44; IC 15-16-5-45; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 1. (a) Except as provided in subsection (b), a certified applicator or an individual working under the supervision of a certified applicator may transfer a diluted or an undiluted pesticide to a service container, as defined in 355 IAC 5-1-11.5.

(b) Use of a service container shall not be permitted if the label of the pesticide:

- (1) requires storage in the original container; or
- (2) prohibits transfer to other containers.

355 IAC 5-11-2 Labeling of service containers

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-44; IC 15-16-5-45; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec.2. (a) The certified applicator must securely attach to the service container labeling for the pesticide that includes the following:

- (1) The complete brand name.**
- (2) The United States Environmental Protection Agency (EPA) registration number.**
- (3) The name of the active ingredient or ingredients.**
- (4) The percentage or percentages of the active ingredient or ingredients.**

(b) The individual transporting the service container must have in the individual's possession a complete representative copy of the entire label for the pesticide.

SECTION 31. 355 IAC 5-12 IS ADDED TO READ AS FOLLOWS:

Rule 12. Open Burning of Pesticide Containers

355 IAC 5-12-1 Prohibition against open burning of pesticide containers

Authority: IC 15-16-4-50; IC 15-16-4-52; IC 15-16-5-64

Affected: IC 15-16-4; IC 15-16-5

Sec. 1. A person may not cause the open burning of any pesticide container in a manner that allows air contaminants resulting from combustion to be emitted directly into the air, without passing through a stack or chimney from an enclosed chamber, as described in 326 IAC 4-1-0.5(6).

SECTION 32. THE FOLLOWING ARE REPEALED: 355 IAC 5-1-2; 355 IAC 5-1-7.5; 355 IAC 5-1-10; 355 IAC 5-1-12; 355 IAC 5-2-7; 355 IAC 5-2-13; 355 IAC 5-3-2; 355 IAC 5-4-5; 355 IAC 5-4-6; 355 IAC 5-4-9; 355 IAC 5-5-2; 355 IAC 5-8-2.