

PROSECUTOR'S  
GUIDE TO  
**PESTICIDE** &  
**FERTILIZER**  
ENFORCEMENT IN  
INDIANA

Administered by the Office of Indiana State Chemist  
(OISC)

March 5, 2015

Dear Prosecutor,

The Office of Indiana State Chemist (OISC) is the state regulatory enforcement agency that oversees the production, registration, use and application of pesticides and fertilizers. This agency works closely with enforcement officials from the United States Environmental Protection Agency, the Indiana Department of Environmental Management (IDEM), and the Indiana Department of Natural Resources (IDNR). OISC also works closely with the Purdue Cooperative Extension offices to address training and education needs.

This agency was established in 1881 by the Indiana Legislature. It administers several laws related to pesticides, feeds, fertilizers, and seed, including industrial hemp licensing, under Title 15 of the Indiana Code. OISC is an administratively integrated office at Purdue University, West Lafayette, in the Department of Biochemistry, where it maintains state-of-the-art laboratory facilities to verify pesticide product formulations and to provide forensic services in the pesticide residues laboratory used by OISC investigators. The State Chemist & Seed Commissioner is the administrative head of the agency. Legal representation is provided through the Office of the Indiana Attorney General.

OISC pesticide investigators conduct regulatory work throughout the state responding to residents' calls, investigating sundry issues such as misuse of pesticides, improper pesticide or fertilizer storage or application, off target pesticide drift or fertilizer application, and other related complaints. Our investigators work closely with IDEM concerning pesticide spills and contaminations of waters by pesticides and fertilizer materials; the IDNR regarding fish kills or other wildlife issues resulting from exposure to pesticides and the USEPA in addressing violation of federal pesticide law resulting in criminal enforcement.

Over the past several years, the OISC has annually registered for sale and distribution in Indiana approximately 14,000 pesticide products. Also, on an average annual basis, this agency licenses in excess of 25,000 individuals to use pesticides and apply fertilizers in a variety of formulations and in a variety of situations from farm fields to restaurants and hospitals. OISC investigates approximately 200 complaints every year regarding pesticide or fertilizer misuse.

An OISC investigator may contact you or your designee requesting assistance in enforcing the Indiana Pesticide or Fertilizer laws. It is our hope that we can work together to protect citizens and the environment of Indiana.

Respectfully,

Robert D. Waltz, Ph.D.  
Indiana State Chemist & Seed Commissioner

# AUTHORITY OF REGULATORY AGENCY TO REGULATE PESTICIDE “PRODUCTS”

## I.C. [§] 15-16-4

(Pesticides include insecticides, herbicides, algacides, fungicides, rodenticides, disinfectants, etc.)

### IC [§] 15-16-4-33

#### **"Pesticide product"**

Sec. 33. As used in this chapter, "pesticide product" means a pesticide or device offered for distribution or use, including any labeling. *As added by P.L.2-2008, SEC.7.*

### IC [§] 15-16-4-51

#### **Administration; state chemist**

Sec. 51. The state chemist shall administer this chapter. *As added by P.L.2-2008, SEC.7.*

### IC [§] 15-16-4-53

#### **Delegation of duties**

Sec. 53. The state chemist may delegate to an employee or agent any function that is vested in the state chemist by this chapter. *As added by P.L.2-2008, SEC.7. Amended by P.L.120-2008, SEC.66.*

# AUTHORITY OF REGULATORY AGENCY TO REGULATE PESTICIDE “USE”

## I.C. [§] 15-16-5

### IC [§] 15-16-5-36

#### **"Use"**

Sec. 36. As used in this chapter, "use" means an act of handling, releasing, or exposing individuals or the environment to a pesticide.

The term includes the following:

- (1) Application or supervision of an application of a pesticide, including mixing or loading the pesticide.
- (2) Storage of pesticides and pesticide containers by the intended applicator of the pesticides.
- (3) Transportation of pesticides and pesticide containers by the intended applicator of the pesticides.
- (4) Disposal of pesticides and pesticide containers by the intended applicator of the pesticides.

*As added by P.L.2-2008, SEC.7.*

**IC [§] 15-16-5-39**

**Administration of chapter**

Sec. 39. This chapter shall be administered by the state chemist. *As added by P.L.2-2008, SEC.7.*

**IC [§] 15-16-5-40**

**Delegation of powers**

Sec. 40. The state chemist may delegate to an employee or agent any function that is vested in the state chemist by this chapter. *As added by P.L.2-2008, SEC.7.*

**AUTHORITY OF REGULATORY AGENCY TO REGULATE**

**FERTILIZER “USE”**

**I.C. [§] 15-16-2-24**

**IC [§] 15-16-2-24**

**Office of the state chemist established; appointment; administration**

- Sec. 24. (a) The office of state chemist is established.
- (b) The governor shall appoint the state chemist, who serves at the pleasure of the governor.
- (c) The state chemist shall administer this chapter.
- (d) The state chemist may designate an agent to discharge duties imposed on the state chemist by law.

*As added by P.L.2-2008, SEC.7.*

**PESTICIDE INSPECTION AUTHORITY**

**IC [§] 15-16-4-55**

**Access to pesticide products**

- Sec. 55. 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.

As added by P.L.2-2008, SEC.7. Amended by P.L.120-2008, SEC.67;P.L.99-2012, SEC.9.

## **FERTILIZER INSPECTION AUTHORITY**

### **IC [§] 15-16-2-38**

#### **Inspection, analysis, and tests; entry onto premises; subpoenas**

Sec. 38. (a) The state chemist shall:

(1) Sample, inspect, make analysis of, and test commercial fertilizers distributed within Indiana; and

(2) inspect the storage of bulk fertilizers in Indiana at a time and place and to such an extent as necessary to determine whether the bulk fertilizers and their storage are in compliance with this chapter.

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

(1) fertilizer materials; and

(2) plans and records relating to the transportation, storage, sale, and use of fertilizer materials; subject to this chapter and the rules adopted under this chapter.

(c) The state chemist shall adopt methods of sampling and analysis for commercial fertilizers from sources that may 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 commercial 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 chapter.

*As added by P.L.2-2008, SEC.7. Amended by P.L.81-2009, SEC.22; P.L.99-2012, SEC.4.*

## **PESTICIDE MISUSE CAN BE A CRIMINAL OFFENSE**

**Using a pesticide in violation of label directions or in violation of state and federal regulations can be considered a criminal offense as well as an administrative offense**

### **IC [§] 15-16-5-70**

#### **Violations; penalty; injunction**

Sec. 70.

(a) 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**.

(b) 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**.

(c) 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.

*As added by P.L.2-2008, SEC.7. Amended by P.L.120-2008, SEC.84.*

## **FERTILIZER MISUSE CAN BE A CRIMINAL OFFENSE**

### **IC [§] 15-16-2-49.5**

#### **Violations; penalties**

Sec. 49.5. (a) If a person violates this chapter or a rule adopted under this chapter, 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 chapter.

(b) The state chemist shall adopt by rule, under IC 4-22-2, a schedule of civil penalties that may be imposed under subsection (a). The state chemist may impose a civil penalty only according to a schedule of civil penalties recommended by the board.

**(c) A person who knowingly or intentionally violates this chapter commits a Class A misdemeanor.**

*As added by P.L.120-2008, SEC.59. Amended by P.L.81-2009, SEC.31.*

## **AUTHORITY TO OBTAIN SEARCH WARRANTS**

### **IC [§] 15-16-5-69**

#### **Inspections; search warrant; prosecution; injunction**

Sec. 69.

(a) 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).

(b) 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.

(c) 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.

*As added by P.L.2-2008, SEC.7. Amended by P.L.120-2008, SEC.83; P.L.99-2012, SEC.19.*

## **SUBPOENAS**

### **IC[§] 15-16-5-68**

#### **Subpoenas**

Sec. 68. 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.

*As added by P.L.2-2008, SEC.7.*

## **PESTICIDE PRE-EMPTION**

### **IC [§] 15-16-5-71**

#### **Political subdivision regulation of pesticides prohibited; hearing; variance**

Sec. 71.

(a) A political subdivision (as defined in IC 36-1-2-13) does not have authority to regulate by ordinance the use or application of pesticides.

(b) A political subdivision may, by resolution, petition the board for a hearing to allow a variance from a rule of the board because of special circumstances relating to the use or application of a pesticide. If a petition is received, the board shall hold a public hearing to consider allowing the variance requested. The public hearing shall be conducted in an informal manner. IC 4-21.5 does not apply to the public hearing under this section.

(c) The board may grant a variance requested under this section with or without changes.  
*As added by P.L.2-2008, SEC.7.*

## **FERTILIZER PRE-EMPTION**

### **IC [§] 15-16-2-50**

#### **Regulation by political subdivision prohibited; petition; hearing**

Sec. 50. (a) Except as provided in subsection (b), a political subdivision (as defined in IC 36-1-2-13) does not have authority to regulate by ordinance the storage or use of fertilizer material.

(b) A political subdivision may, by resolution, petition the state chemist for a hearing to allow a waiver to adopt an ordinance because of special circumstances relating to the storage or use of fertilizer material. If a petition is received, the state chemist shall hold a public hearing to consider allowing the waiver requested. The public hearing must be conducted in an informal manner. IC 4-21.5 does not apply to a public hearing under this section.

*As added by P.L.2-2008, SEC.7. Amended by P.L.81-2009, SEC.32.*

## **VIOLATIONS OF THE INDIANA PESTICIDE USE AND APPLICATION LAW**

### **I.C. [§ ] 15-16-5**

#### **Penalty actions for violations**

Sec. 65. Subject to section 66 of this chapter, the state chemist under IC 4-21.5-3-6 may warn, cite, or impose a civil penalty on a person for a violation under this chapter. The state chemist may also deny, suspend, revoke, or modify any provision of any license, permit, registration, or certification issued under this chapter if the state chemist finds that the applicant or the holder of a license, permit, registration, or certification has committed any of the following acts, each of which is a violation of this chapter:

- (1) Made false or fraudulent claims either verbally or through any media misrepresenting the effect of pesticides or methods to be utilized.
- (2) Recommended, used, or supervised the use of any registered pesticide product in a manner inconsistent with its labeling approved by the United States Environmental Protection Agency or Indiana state registration for that pesticide, or in violation of the United States Environmental Protection Agency or Indiana state restrictions on the use of that pesticide product.
- (3) Used known ineffective or improper pesticides or known ineffective amounts of pesticides.
- (4) Operated faulty or unsafe equipment.
- (5) Operated in a careless or negligent manner.
- (6) Neglected or, after notice, refused to comply with this chapter, the rules adopted under this chapter, or of any lawful order of the state chemist or the board.
- (7) Refused or neglected to:

- (A) keep and maintain the records required by this chapter; or

- (B) make reports and supply information when required or requested by the state chemist in the course of an investigation or inspection
- (8) Made false or fraudulent records, invoices, or reports.
- (9) Engaged in or professed to be engaged in the business of:
  - (A) using a pesticide or any other product regulated under this chapter or by rules adopted under this chapter; or
  - (B) 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.
- (10) Used a restricted use pesticide without having an applicator who is licensed or permitted under this chapter, in direct supervision.
- (11) Used fraud or misrepresentation in making an application for, or renewal of, a license, permit, registration, or certification.
- (12) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license, permit, registration, or certification.
- (13) Aided or abetted a person to evade the provisions of this chapter, conspired with a person to evade the provisions of this chapter, or allowed a license, permit, registration, or certification to be used by another person.
- (14) Made false or misleading statements during or after an inspection concerning any infestation or infection of pests.
- (15) Impersonated any federal, state, county, or city inspector, investigator, or official.
- (16) Knowingly purchased or used a pesticide that was not registered under IC 15-16-4.
- (17) Failed to continuously maintain financial responsibility required under section 58 of this chapter or to provide proof of financial responsibility to the state chemist when requested.
- (18) Intentionally altered a duly issued license, permit, registration, or certification.
- (19) Recklessly, knowingly, or intentionally impeded or prevented the state chemist or the state chemist's agent from performing a duty of the state chemist.

*As added by P.L.2-2008, SEC.7. Amended by P.L.120-2008, SEC.82;  
P.L.99-2012, SEC.18.*

# **VIOLATIONS OF THE INDIANA COMMERCIAL FERTILIZER LAW**

## **IC [§] 15-16-2-49**

### **Injunctions**

Sec. 49. The state chemist may apply for a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any rule adopted under this chapter. The injunction shall be issued without bond. The remedies under this subsection are supplemental to other remedies allowed under this section or other law. *As added by P.L.2-2008, SEC.7.*

## **IC [§] 15-16-2-49.5**

### **Violations; penalties**

Sec. 49.5. (a) If a person violates this chapter or a rule adopted under this chapter, 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 chapter.

(b) The state chemist shall adopt by rule, under IC 4-22-2, a schedule of civil penalties that may be imposed under subsection (a). The state chemist may impose a civil penalty only according to a schedule of civil penalties recommended by the board.

(c) A person who knowingly or intentionally violates this chapter commits a **Class A misdemeanor**.

*As added by P.L.120-2008, SEC.59. Amended by P.L.81-2009, SEC.31.*

## **IC [§] 15-15-13**

### **Violations of the Indiana Industrial Hemp Law**

As of the date of this writing (March 2015) it is illegal to grow industrial hemp as defined in the Indiana law (THC < 0.3% dry weight) without a license issued by the Indiana Seed Commissioner, and it is a violation of Indiana and federal law to grow industrial hemp without a permit from DEA to obtain seed. At this time, licenses for growing industrial hemp in Indiana may be issued only to qualified researchers employed in institutions of higher learning for purposes of research subject to United State Code 7 USC 5940 published as P.L. 113-79 (February 7, 2014).

## WHAT ASSISTANCE CAN YOU EXPECT FROM OISC?

- Answers to questions about pesticides (herbicides, insecticides, rodenticides, etc.) and fertilizers from your constituents. Questions should be directed to OISC at **800-893-6637**.
- Timely response to complaints regarding pesticide/fertilizer misuse. Pesticide and fertilizer misuse complaints will be investigated by OISC investigators. Complaints should be directed to OISC at **800-893-6637**.
- Cooperative and competent field investigators will work with you and local law enforcement in cases of Home Improvement Fraud, Vandalism or other crimes that might involve pesticides.
- Access to state-of-the-art, and forensically competent laboratories at OISC that can analyze pesticide products for contaminants; or soils, air, water or other media, for pesticide residue.
- OISC laboratories are committed to investigational and forensic services; the laboratories will not perform analysis just for informational purposes.
- Competent investigational services are provided for case-specific investigations conducted by this Office, generally, without charge.
- Forensic support is provided by OISC investigative staff. Investigators, some of whom are former police officers, have been trained to testify in criminal and administrative hearings.

## WHAT ASSISTANCE MIGHT OISC REQUEST FROM YOU?

- Search warrants for locations when entry is refused or it is suspected that entry will be refused.
- Arrest warrants
  - Although most violations will only be a **Class C misdemeanor**, a second violation of I.C. [§] 15-16-5-65(9) is a **Class A misdemeanor**.
- Temporary restraining orders

## HOW TO CONTACT THE OFFICE OF INDIANA STATE CHEMIST

Office of Indiana State Chemist  
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# Investigators



Kevin Gibson



Kevin Neal



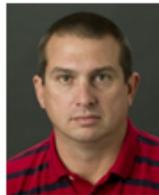
Bob Brewer



Scott Farris



Joe Becovitz



Jay Kelley



Andy Roth



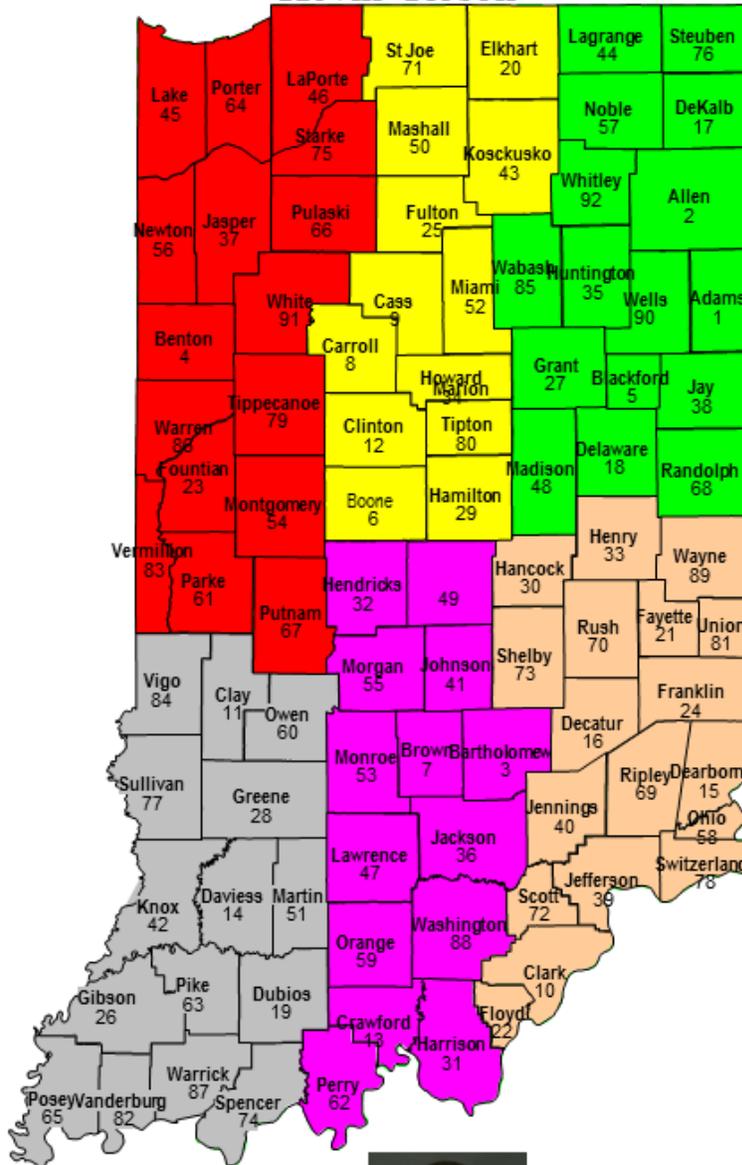
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