

## **IC 15-16-5**

### **Chapter 5. Pesticide Use and Application**

#### **IC 15-16-5-1**

##### **"Agricultural commodity"**

Sec. 1. As used in this chapter, "agricultural commodity" means any plant or part of a plant and animals or animal products produced primarily for sale, consumption, propagation, or other use by humans or animals.

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

#### **IC 15-16-5-2**

##### **"Animal"**

Sec. 2. As used in this chapter, "animal" means all vertebrate and invertebrate species, including humans and other mammals, birds, fish, and shellfish.

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

#### **IC 15-16-5-3**

##### **"Beneficial insects"**

Sec. 3. As used in this chapter, "beneficial insects" means insects that, during some part of their life cycles, are effective pollinators of plants, are parasites or predators of pests, or are useful to humans.

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

#### **IC 15-16-5-4**

##### **"Board"**

Sec. 4. As used in this chapter, "board" means the Indiana pesticide review board established by IC 15-16-4-42.

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

#### **IC 15-16-5-5**

##### **"Certificate of financial responsibility"**

Sec. 5. As used in this chapter, "certificate of financial responsibility" means a notarized statement from an officer of a bank or other financial institution attesting to the fact that a licensee under this chapter has adequate financial resources equal to the amount of liability insurance or bonding required by rule under section 58 of this chapter to protect persons who may suffer legal damages as a result of the applicator's pesticide operations or the pest inspector's inspections.

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

#### **IC 15-16-5-6**

##### **"Certified applicator"**

Sec. 6. As used in this chapter, "certified applicator" means any individual who is certified under this chapter as qualified to use or supervise the use of pesticides and has been issued a license or permit as evidence of the individual's qualifications.

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

**IC 15-16-5-7****"Commercial applicator"**

Sec. 7. As used in this chapter, "commercial applicator" means a certified applicator, whether or not a private applicator with respect to some uses, who uses or supervises the use of pesticides for any purpose or on any property other than as provided by section 30 of this chapter.

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

**IC 15-16-5-8****"Defoliant"**

Sec. 8. As used in this chapter, "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

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

**IC 15-16-5-9****"Desiccant"**

Sec. 9. As used in this chapter, "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

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

**IC 15-16-5-10****"Device"**

Sec. 10. As used in this chapter, "device" means any instrument or contrivance, other than a firearm, that is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life other than bacteria, viruses, or other microorganisms on or in living humans or other living animals. The term does not include equipment used for the application of pesticides when sold separately from the pesticides.

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

**IC 15-16-5-11****"Distribute"**

Sec. 11. As used in this chapter, "distribute" means to offer for sale, sell, exchange, or barter, or supply or offer to supply a pesticide.

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

**IC 15-16-5-12****"Environment"**

Sec. 12. As used in this chapter, "environment" includes water, air, land, and all plants and humans and other animals living in water, air, or on land and the interrelationships that exist among these.

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

**IC 15-16-5-13****"Equipment"**

Sec. 13. As used in this chapter, "equipment" means any type of ground, water, or aerial apparatus or contrivance using motorized, mechanical, or pressurized power to apply any pesticide.  
*As added by P.L.2-2008, SEC.7.*

#### **IC 15-16-5-14**

##### **"Fungus"**

Sec. 14. As used in this chapter, "fungus" means any nonchlorophyll-bearing plant of a lower order than mosses and liverworts, including:

- (1) rust;
- (2) smut;
- (3) mildew;
- (4) mold;
- (5) yeast; and
- (6) bacteria;

except those on or in living humans or other animals, and those on or in processed food, beverages, or pharmaceuticals.

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

#### **IC 15-16-5-15**

##### **"Insect"**

Sec. 15. As used in this chapter, "insect" means any small invertebrate animal:

- (1) generally having the body more or less obviously segmented;
- (2) for the most part belonging to the class Insecta; and
- (3) comprising:
  - (A) six (6) legged usually winged forms, including beetles, bugs, bees, flies; or
  - (B) other allied classes of arthropods whose members are wingless and usually have more than six (6) legs, including spiders, mites, ticks, centipedes, and wood lice.

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

#### **IC 15-16-5-16**

##### **"Licensed applicator for hire"**

Sec. 16. As used in this chapter, "licensed applicator for hire" means any licensed certified commercial applicator who is employed by a licensed pesticide business to use or to supervise the use of any pesticide on the property of another and who has assumed direct responsibility for the use or supervision of the use of pesticides by the business.

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

#### **IC 15-16-5-17**

##### **"Licensed applicator not for hire"**

Sec. 17. As used in this chapter, "licensed applicator not for hire" means a licensed certified commercial applicator who is employed by a private employer to use or supervise the use of a restricted use

pesticide only on the property of the employer. The term includes a commercial applicator using a pesticide in a potentially hazardous situation or site as determined by the board.

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

#### **IC 15-16-5-18**

##### **"Licensed pest inspector"**

Sec. 18. As used in this chapter, "licensed pest inspector" means an individual licensed under this chapter to make diagnostic inspections or reports to determine infestations of wood destroying pests on the property of another person and meets the requirements under section 58 of this chapter.

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

#### **IC 15-16-5-19**

##### **"Licensed pesticide business"**

Sec. 19. As used in this chapter, "licensed pesticide business" means any licensed person that owns, operates, or manages a business that is engaged in or professes to be engaged in:

- (1) using any pesticide, including restricted use pesticides; or
- (2) making diagnostic inspections or reports to determine infestations of wood destroying pests.

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

#### **IC 15-16-5-20**

##### **"Licensed public applicator"**

Sec. 20. As used in this chapter, "licensed public applicator" means a licensed certified commercial applicator who uses or supervises the use of a restricted use pesticide as an employee of a state agency, municipal corporation, or other governmental agency. The term includes a commercial applicator using a pesticide in a potentially hazardous situation or site as determined by the board.

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

#### **IC 15-16-5-21**

##### **"Nematode"**

Sec. 21. As used in this chapter, "nematode", commonly known as a nema or an eelworm, means an invertebrate animal of the phylum nemathelminthes and class nematoda that is an unsegmented roundworm:

- (1) with an elongated, fusiform, or saclike body covered with cuticle; and
- (2) that inhabits soil, water, plants, or plant parts.

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

#### **IC 15-16-5-22**

##### **"Permit"**

Sec. 22. As used in this chapter, "permit" means a written certificate issued by the state chemist or the state chemist's agent to a private applicator, authorizing the purchase, possession, or use of

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

#### **IC 15-16-5-23**

##### **"Person"**

Sec. 23. As used in this chapter, "person" means any individual, partnership, association, fiduciary, corporation, or any organized group of persons whether incorporated or not.

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

#### **IC 15-16-5-24**

##### **"Pest"**

Sec. 24. As used in this chapter, "pest" means:

- (1) any insect, rodent, nematode, fungus, or weed; or
- (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other microorganisms on or in living humans or other living animals) that is declared to be a pest by the administrator of the United States Environmental Protection Agency or by the board.

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

#### **IC 15-16-5-25**

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

Sec. 25. As used in this chapter, "pesticide" means:

- (1) any substance or mixture of substances intended for:
  - (A) preventing;
  - (B) destroying;
  - (C) repelling; or
  - (D) mitigating;

a pest; or

- (2) any substance or mixture of substances intended for use as a:

- (A) plant regulator;
- (B) defoliant; or
- (C) desiccant.

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

#### **IC 15-16-5-26**

##### **"Pesticide consultant"**

Sec. 26. As used in this chapter, "pesticide consultant" means a person engaged in the retail sale of pesticides who:

- (1) offers or supplies technical advice to;
- (2) aids; or
- (3) makes recommendations to;

another person concerning the use of a pesticide as part of business.

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

#### **IC 15-16-5-27**

##### **"Pesticide formulation"**

Sec. 27. As used in this chapter, "pesticide formulation" means a pesticide product comprised of all active ingredients and inert ingredients.

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

#### **IC 15-16-5-28**

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

Sec. 28. 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 15-16-5-29**

##### **"Plant regulator"**

Sec. 29. As used in this chapter, "plant regulator" means any substance or mixture of substances intended, through physiological action, for:

- (1) accelerating or retarding the rate of growth or rate of maturation; or
- (2) altering the behavior of plants or the produce of plants.

The term does not include substances to the extent they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

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

#### **IC 15-16-5-30**

##### **"Private applicator"**

Sec. 30. As used in this chapter, "private applicator" means a certified applicator who uses or supervises the use of pesticides for purposes of producing any agricultural commodity on property owned, rented, or managed by the employer or the applicator, if applied without compensation on the property of another person.

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

#### **IC 15-16-5-31**

##### **"Property"**

Sec. 31. As used in this chapter, "property" means all:

- (1) land and water areas, including airspace; and
- (2) plants, animals, structures, buildings, contrivances, vehicles, and machinery, appurtenant to or situated on land and water areas, fixed or mobile, including any used for transportation.

*As added by P.L.2-2008, SEC.7. Amended by P.L.120-2008, SEC.73.*

#### **IC 15-16-5-32**

##### **"Registered pesticide dealer"**

Sec. 32. As used in this chapter, "registered pesticide dealer" means any person who distributes any restricted use pesticide.

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

#### **IC 15-16-5-33**

**"Registered technician"**

Sec. 33. As used in this chapter, "registered technician" means a person who:

- (1) is not licensed under this chapter;
- (2) has registered with the state chemist; and
- (3) is authorized to engage in pesticide use and related activities under the direct supervision of a licensed and certified applicator.

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

**IC 15-16-5-34**

**"Restricted use pesticide"**

Sec. 34. As used in this chapter, "restricted use pesticide" means:

- (1) any pesticide classified as restricted by the administrator of the United States Environmental Protection Agency; or
- (2) a pesticide that the board has determined to be unduly hazardous to persons, animals, plants, wildlife, waters, or lands other than the pests the pesticide is intended to prevent, destroy, control, or mitigate.

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

**IC 15-16-5-35**

**"Unreasonable adverse effects on the environment"**

Sec. 35. As used in this chapter, "unreasonable adverse effects on the environment" means an unreasonable risk to humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

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

**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 15-16-5-37**

**"Weed"**

Sec. 37. As used in this chapter, "weed" means any plant that grows where the plant is not wanted.

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

**IC 15-16-5-38****"Wildlife"**

Sec. 38. As used in this chapter, "wildlife" means all living things that are not human, domesticated, or pests. This term includes mammals, birds, reptiles, and aquatic life.

*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.*

**IC 15-16-5-41****Rules; confidentiality**

Sec. 41. The state chemist may adopt rules to declare that information required to be submitted under this chapter is confidential.

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

**IC 15-16-5-42****Reciprocity; waiver of requirements**

Sec. 42. The state chemist may waive all or part of the requirements provided for in sections 45, 46, 48, 49, 50, 51, 52, 54, 56, and 57 of this chapter on a reciprocal basis with any other state agency or federal agency that has substantially the same standards.

*As added by P.L.2-2008, SEC.7. Amended by P.L.120-2008, SEC.74; P.L.99-2012, SEC.14.*

**IC 15-16-5-43****Instruction and training in pesticide use**

Sec. 43. 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.

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

**IC 15-16-5-44****Rules; use; application; inspections**

Sec. 44. (a) The board 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.

(b) For the purpose of 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.

(c) 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.

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

#### **IC 15-16-5-45**

##### **Rules; categories and classifications for certification and licensure; certification of applicators**

Sec. 45. (a) The state chemist 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. Each category is subject to separate testing procedures and requirements. A person is not required to pay an additional license fee if the person desires to be licensed in more than one (1) of the license categories provided for by the state chemist under this section.

(b) The state chemist, in adopting rules under this section, shall establish standards for the certification of persons who use pesticides or who make diagnostic inspections and reports for wood destroying pests. The standards must relate to the use and handling of pesticides, or to the use and handling of the pesticide or class of pesticides covered by the individual's certification and must be relative to the hazards involved. In determining standards, the state chemist shall consider the characteristics of the pesticide formulation, including the acute dermal and inhalation toxicity, the persistence, mobility, and susceptibility to biological concentration, the use experience that may reflect an inherent misuse or an unexpected good safety record that does not always follow laboratory toxicological information, the relative hazards of patterns of use, including granular soil applications, ultra-low volume or dust aerial applications, or air blast sprayer applications, and the extent of the intended use. The state chemist shall observe the relevant regulations of Section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.).

(c) The state chemist may require a person certified under this chapter as a commercial applicator or a private applicator to renew the person's certification, under requirements and standards established by the state chemist, to assure that the person maintains a level of competence and ability to use pesticides safely and properly.

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

**IC 15-16-5-46****Certification and registration requirements; compliance**

Sec. 46. A person required to be certified or registered under this chapter may not:

- (1) use or supervise the use of any pesticide; or
- (2) make diagnostic inspections or reports to determine infestations of wood destroying pests;

unless the person complies with the certification or registration requirements under this chapter and any other requirements determined by the state chemist to be necessary to prevent unreasonable adverse effects on the environment.

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

**IC 15-16-5-47****Licenses and certificates not transferable**

Sec. 47. (a) A license issued under this chapter is not transferable except in the event of disability or death of the licensee. The state chemist may transfer a license by issuing a temporary permit to provide for the operation of the business until the expiration of the permanent license.

(b) A certificate issued under this chapter is not transferable.

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

**IC 15-16-5-48****Pesticide business license**

Sec. 48. (a) Subject to section 55 of this chapter, a person may not engage in or profess to engage in the business of:

- (1) using a pesticide; or
- (2) making diagnostic inspections or reports to determine infestations of wood destroying pests;

on the property of another for hire at any time without a pesticide business license issued by the state chemist. The state chemist shall require an annual license fee of forty-five dollars (\$45) for each pesticide business license that is issued.

(b) A pesticide business license must be obtained for each business location from which pesticide use or application is conducted.

(c) The application for a license must be on a form provided by the state chemist. Each application must contain information necessary for the administration of this chapter.

(d) The state chemist may not issue a pesticide business license until the applicant or a pesticide applicator in the applicant's hire who uses or supervises the use of a pesticide on the property of another is certified by passing an examination to demonstrate to the state chemist the applicant's or applicator's knowledge of the:

- (1) use of pesticides under the category for which the applicant or applicator has applied; and
- (2) nature and effect of pesticides the applicant or applicator may apply under the categories.

At least one (1) licensed applicator for hire must be associated with

each location from which pesticides are used for hire.

(e) The state chemist may renew any pesticide business license.

(f) Subject to subsections (a), (b), (c), and (d) and section 65 of this chapter, if:

(1) the state chemist finds the applicant qualified to engage in the business of using pesticides or making diagnostic inspections or reports to determine infestations of wood destroying pests on the property of another;

(2) the applicant files evidence of financial responsibility required under section 58 of this chapter; and

(3) the applicant applying for a license involving aerial application of pesticides has met all of the requirements of:

(A) the Federal Aviation Administration;

(B) the Indiana department of transportation; and

(C) any other applicable federal or state statutes or regulations to operate the equipment described in the application;

the state chemist may issue a pesticide business license limited to the categories for which the applicant or a pesticide applicator in the applicant's hire is qualified. The license expires January 1 of the year following issue unless it has been invalidated, revoked, or suspended earlier by the state chemist. A surety bond or certificate of liability insurance in force or certificate of financial responsibility required under section 58 of this chapter must be maintained and in effect on a continuing basis.

(g) The state chemist may limit a license or the operation of a business to the use of certain pesticides, or to certain areas, or to certain types of equipment if the applicant is only so qualified.

(h) If a license is not issued as applied for, the state chemist shall inform the applicant in writing of the reasons the license was not issued.

*As added by P.L.2-2008, SEC.7. Amended by P.L.120-2008, SEC.75.*

#### **IC 15-16-5-49**

#### **Licensed applicators and pest inspectors; licensed applicator for hire and licensed pest inspector**

Sec. 49. A person may not:

(1) act as an employee of a licensed pesticide business and use or supervise the use of a pesticide on another person's property;  
or

(2) make diagnostic inspections or reports to determine infestations of wood destroying pests on another person's property;

without having obtained a license to act as a licensed applicator for hire or a licensed pest inspector from the state chemist. However, a competent person who is not a licensed applicator for hire may use a pesticide under the direct supervision of a licensed applicator. An applicator's license and a pest inspector's license does not relieve the person from the responsibility of obtaining any other license or permit required for the operation or use of any equipment.

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

#### **IC 15-16-5-50**

##### **Licensed applicators not for hire**

Sec. 50. (a) Except as provided in subsection (b), a person may not act as a licensed applicator not for hire unless the person has obtained a license from the state chemist.

(b) A person who is not a licensed applicator not for hire may use a pesticide if the person is under the direct supervision of a licensed applicator not for hire.

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

#### **IC 15-16-5-51**

##### **Public employees; public applicator**

Sec. 51. (a) All state agencies, municipal corporations, and other governmental agencies are subject to this chapter and rules adopted under this chapter concerning the application of pesticides.

(b) Except as provided in subsection (c), a person may not act as a licensed public applicator unless the person has obtained a license from the state chemist.

(c) A person who is not a licensed public applicator may use a pesticide if the person is under the direct supervision of a licensed public applicator.

(d) The public applicator's license is valid only when the applicator is using or supervising the use of pesticides by public agencies. Government research personnel are not exempt from the licensing requirement when using pesticides.

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

#### **IC 15-16-5-52**

##### **Applications for licensure; denials; expiration; renewal**

Sec. 52. (a) A person applying for a license described under section 49, 50, or 51 of this chapter must:

- (1) submit an application to the state chemist on a form provided by the state chemist;
- (2) pass the appropriate examination provided under section 45 of this chapter;
- (3) except for a person who is:
  - (A) applying for a licensed public applicator's license; or
  - (B) an employee of a nonprofit organization;submit a fee of forty-five dollars (\$45) to the state chemist; and
- (4) if the person will engage in the aerial application of pesticides, submit proof to the state chemist that the person has satisfied aerial application requirements under applicable state and federal laws.

(b) Subject to section 65 of this chapter, if a person meets the requirements under subsection (a), the state chemist shall issue the appropriate license to the person.

(c) If the state chemist does not issue a license to a person who applied for a license described under subsection (a), the state chemist

shall inform the person in writing of the reason the license was not issued.

- (d) A person who has been issued a license under subsection (b):
  - (1) shall notify the state chemist in writing within ten (10) days after a change in or termination of the person's employment as a licensed applicator for hire, a licensed applicator not for hire, or a licensed public applicator; and
  - (2) may apply to the state chemist to transfer or amend the person's license by submitting an updated application form described under subsection (a)(1).
- (e) A license issued under subsection (b):
  - (1) expires January 1 of each year; and
  - (2) subject to section 65 of this chapter, may be renewed by the person holding the license if the person:
    - (A) submits a renewal application on a form provided by the state chemist; and
    - (B) except for a person renewing a licensed public applicator's license or an employee of a nonprofit organization, pays a forty-five dollar (\$45) renewal fee; before January 1.

*As added by P.L.2-2008, SEC.7. Amended by P.L.120-2008, SEC.76; P.L.99-2012, SEC.15.*

#### **IC 15-16-5-53**

##### **Repealed**

*(Repealed by P.L.99-2012, SEC.16.)*

#### **IC 15-16-5-54**

##### **Private applicator; certification**

Sec. 54. (a) A private applicator may not be issued a permit to use a restricted use pesticide without first complying with the certification requirements, including passing an examination, determined by the state chemist necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons.

(b) Certification standards to determine a person's competency with respect to the use and handling of the pesticide or class of pesticides that the private applicator is to be certified to use must be relative to hazards as described in section 45 of this chapter. In determining these standards, the state chemist shall observe those standards for private applicator certification provided by the U.S. Environmental Protection Agency.

(c) A fee of twenty dollars (\$20) must be paid to the state chemist by each person applying for a certification as a private applicator under this section.

(d) If the state chemist does not certify the private applicator under this section, the state chemist shall inform the applicant of the reasons the applicant was not certified and return the applicant's application fee.

(e) The state chemist may require additional knowledge to ensure

that applicators continue to meet the requirements of changing technology and to assure a continuing level of competence and ability to use pesticides safely and properly.

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

#### **IC 15-16-5-55**

##### **Exemptions from licenses**

Sec. 55. Section 48 of this chapter relating to licenses and requirements for their issuance does not apply to the following:

(1) A farmer who applies pesticides for the farmer's own use or with ground equipment or manually for the farmer's neighbors if:

(A) the farmer operates farm property and operates and maintains pesticide application equipment primarily for the farmer's own use;

(B) the farmer is not engaged in the business of applying pesticides for hire and the farmer does not publicly profess to be a pesticide business;

(C) the farmer operates the farmer's pesticide application equipment only in the vicinity of the farmer's own property and for the accommodation of the farmer's neighbors; and

(D) the farmer is certified as a private applicator if the farmer uses restricted use pesticides.

(2) A veterinarian who uses pesticides as an incidental part of the veterinarian's practice, if the veterinarian is not regularly engaged in or does not profess to be engaged in the business of using pesticides for hire.

(3) Research personnel applying pesticides only to bona fide experimental plots.

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

#### **IC 15-16-5-56**

##### **Registration of registered technicians**

Sec. 56. The state chemist shall establish and administer a program to register individuals as registered technicians.

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

#### **IC 15-16-5-57**

##### **Restricted use pesticide dealer; registration; fees; exemptions**

Sec. 57. (a) Each person who is a restricted use pesticide dealer shall register with the state chemist. Registration shall be required for each business location distributing restricted use pesticides and shall be accomplished on a form to be provided by the state chemist. A registration expires January 1 following issuance unless the registration is renewed annually. A registration fee of forty-five dollars (\$45) must accompany the application.

(b) This section does not apply to:

(1) a licensed pesticide business that sells pesticides only as an integral part of its pesticide application service when the pesticides are dispensed only through equipment used for this

pesticide application;

(2) any federal, state, county, or municipal agency that provides pesticides only for its own programs; or

(3) any person who is the final purchaser of a pesticide for application to property or property rights owned, leased, or acquired by the person.

(c) Each registered pesticide dealer is responsible for the acts of each person employed by the dealer in the solicitation and sale of restricted use pesticides and all claims and recommendations for use of pesticides. The dealer's registration is subject to sections 65 and 66 of this chapter for any violation of this chapter whether committed by the dealer or by the dealer's officer, agent, or employee.

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

### **IC 15-16-5-58**

#### **Pesticide business license and pest inspector license; financial responsibility**

Sec. 58. (a) The state chemist may not issue a pesticide business license or a pest inspector license until the applicant for the license has furnished a surety bond, a certificate of liability insurance in force, or a certificate of financial responsibility to protect persons who may suffer legal damages as a result of the pesticide operations or pest inspections of the applicant. If the surety bond, liability insurance, or financial responsibility is not maintained at all times during the licensing period, the pesticide business license, pest inspector license, and any associated commercial applicator licenses and technician registrations are invalid. The applicant may not engage in or profess to be engaged in the business of using pesticides or pest inspection until the financial responsibility is in compliance and the applicant's license is reinstated by the state chemist.

(b) This chapter does not relieve any person from liability for any damage to the person or property of another caused by the use of pesticides even though the use conforms to the rules adopted under this chapter.

*As added by P.L.2-2008, SEC.7. Amended by P.L.120-2008, SEC.77.*

### **IC 15-16-5-59**

#### **Maintenance of records**

Sec. 59. (a) Commercial applicators and licensed pest inspectors shall maintain records concerning:

(1) the application of restricted use pesticides;

(2) diagnostic inspections to determine infestations of wood destroying pests; and

(3) any relevant information that the state chemist determines by rule is necessary for purposes of this chapter.

(b) The state chemist may require certified applicators to maintain records related to applications of state restricted pesticide uses.

(c) Records required under this section must be kept for:

(1) two (2) years after the date of the inspection or the application of the pesticide; or

(2) the time specified by rule.

(d) The state chemist shall be provided access to the records by the commercial applicator or licensed pest inspector.

*As added by P.L.2-2008, SEC.7. Amended by P.L.120-2008, SEC.78.*

### **IC 15-16-5-60**

#### **Late fees**

Sec. 60. A person who:

(1) is required to pay a fee under this chapter to the state chemist; and

(2) does not pay the fee before the date the fee is due;

shall pay a penalty fee to the state chemist equal to one hundred percent (100%) of the required fee when the person pays the required fee.

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

### **IC 15-16-5-61**

#### **Disposition of fees**

Sec. 61. (a) 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.

(b) From the account described in subsection (a), 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.

(c) 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.

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

### **IC 15-16-5-62**

#### **Pesticide accident reporting and claims**

Sec. 62. (a) The state chemist may adopt rules to require the reporting of significant pesticide accidents or incidents.

(b) Any person:

(1) claiming damages from a pesticide accident or incident; and

(2) requesting an investigation of those damages by the state chemist;  
must file a report with the state chemist. If a growing crop is alleged to have been damaged, the report must be filed before twenty-five percent (25%) of the crop has been harvested.  
*As added by P.L.2-2008, SEC.7. Amended by P.L.120-2008, SEC.79.*

### **IC 15-16-5-63**

#### **Agreements with other agencies**

Sec. 63. 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.

*As added by P.L.2-2008, SEC.7. Amended by P.L.120-2008, SEC.80.*

### **IC 15-16-5-64**

#### **Injury or pollution; rules**

Sec. 64. (a) A person may not produce, transport, store, handle, or dispose of any pesticide product or pesticide product containers in a manner that may:

- (1) cause injury to:
  - (A) humans;
  - (B) beneficial vegetation;
  - (C) crops;
  - (D) livestock;
  - (E) wildlife; or
  - (F) beneficial insects; or
- (2) pollute any waterway in a way harmful to any wildlife in a waterway.

(b) The board 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.

*As added by P.L.2-2008, SEC.7. Amended by P.L.120-2008, SEC.81; P.L.99-2012, SEC.17.*

## **IC 15-16-5-65**

### **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 pesticide products or methods to be used.
- (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 pesticide products 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 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 this chapter, conspired

with a person to evade 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 product 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.*

#### **IC 15-16-5-66**

##### **Violations; civil penalties; disposition of penalties**

Sec. 66. (a) The state chemist may impose civil penalties only in accordance with the schedule of civil penalties adopted by the board.

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

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

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

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

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

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

(c) If a violation is of a continuing nature, the state chemist may impose a civil penalty for each day that the violation occurred.

(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.

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

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

#### **IC 15-16-5-67**

### **Review of state chemist actions; hearing**

Sec. 67. (a) A person who is:

- (1) regulated 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) A person aggrieved by any action of the board may obtain judicial review under IC 4-21.5-5.

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

### **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.*

### **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.*

#### **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.*

#### **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.*