



Office of
INDIANA STATE CHEMIST AND SEED COMMISSIONER

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

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Pesticide Enforcement Response Policy

This policy has been developed as guidance to assist the Office of Indiana State Chemist (OISC) in responding to violations and incidents of non-compliance with consistent, predictable, and timely enforcement responses. This policy is based largely on the Indiana pesticide civil penalty assessment legislation found in IC 15-16-4-69 and IC 15-16-5-66, but also encompasses practical experience gained by OISC in administering the requirements under the state and federal pesticide laws and regulations, including experience gained through observing the deliberations and actions of the Indiana Pesticide Review Board (IPRB). The IPRB is charged by law with rule making, case review, and enforcement appeal authorities.

While this policy is only guidance, more stringent enforcement responses such as pesticide credentialing actions allowed under the law may be applied for non-compliant acts that are repetitive or that directly result in significant adverse effects.

I. Legal Citations

The scope of this policy shall be limited to the following legal citations representing Indiana pesticide law and the regulations thereunder.

- 1) IC 15-16-4...Indiana Pesticide Law
- 2) IC 15-16-5...Indiana Pesticide Use and Application Law
- 3) 355 IAC 4...Pesticide Use and Application Rules
- 4) 355 IAC 5...Storage and Secondary Containment of Pesticides Rules
- 5) 357 IAC 1...Use of Pesticides Rules

II. Enforcement Remedies Available

The following enforcement actions may be utilized by OISC to assist in gaining compliance of regulated individuals and businesses. These enforcement options are not mutually exclusive. For example, citations and civil (administrative) penalties are frequently issued for a single violative act. Likewise, a civil penalty and a license suspension may also be assessed for a single violative act that is of a repetitive nature or results in significant adverse effects.

Other than compliance assistance actions and “Stop Action Orders” issued by OISC field staff at the point of non-compliance, these enforcement actions will normally be administered by the OISC Compliance Officer. The range of enforcement remedies include the following:

- 1) Compliance assistance,
- 2) Action Order,
- 3) Written warning,
- 4) Written citation,

- 5) Civil (administrative) penalty,
- 6) License, permit, registration, or certification:
 - a) Denial,
 - b) Modification,
 - c) Suspension,
 - d) Revocation.
- 7) Referral to Indiana county attorney for criminal prosecution, or
- 8) Referral to the U.S Environmental Protection Agency or other agency if it is determined there is a federal violation or that an adequate state remedy is not available.

III. Civil Penalty Assessment

Civil penalty assessment is directed by legislation in IC 15-16-4-69 and IC 15-16-5-66. These sections of law identify which violations are eligible for \$250.00, \$500.00, or \$1000.00 civil penalties. The full text of this law is available at <http://iga.in.gov/legislative/laws/2020/ic/titles/15#15-16-4-69> and <http://iga.in.gov/legislative/laws/2020/ic/titles/15#15-16-5-66> .

IV. Consideration of Adverse Effects

For purposes of assessing a civil penalty and for purposes of evaluating the appropriateness of a credentialing action, “adverse effect” shall have the meaning established in IC 15-16-4-3.5. “Adverse effect” means a pesticide exposure to a nontarget site that results in: (1) a pesticide residue in excess of established food or feed tolerances established by the U.S. EPA; (2) a pesticide residue in excess of environmental standards or benchmarks for pesticides established by a federal or state agency; or (3) visible, measurable, or documented death, illness, stunting, deformation, discoloration, or other effects that are detrimental to the nontarget site.

V. Consideration of Mitigating Actions

For purposes of assessing \$250.00 and \$500.00 civil penalties, and for purposes of evaluating the appropriateness of a credentialing action, the following mitigating actions by the violator will be considered by OISC: 1) cooperated during the investigation or inspection process; 2) took corrective action to prevent future similar violations; and 3) compensated a victim for any adverse effect that resulted from the violation.

VI. Distribution of Violative Pesticide Products

Non-registered, misbranded, or adulterated pesticide products distributed from or into Indiana will most routinely be the legal responsibility of the product registrant or manufacturer listed on the product label. Enforcement and compliance actions will be applied to the responsible registrant or manufacturer. However, OISC will also apply enforcement action to any person found to be responsible for knowingly distributing or

offering to distribute a state unregistered pesticide product to a customer in Indiana. This will apply to distribution from both local brick and mortar locations and virtual marketplace locations.

VII. Off-Target Pesticide Movement (Primarily Drift)

As with most other violation types, OISC will defer to the civil penalty assessment guidance provided in IC 15-16-5-66 when responding to documented off-target movement violations that are based on non-compliance with pesticide label language or the state pesticide drift rule (357 IAC 1-12).

In addition, IC 15-16-5-65 provides that OISC may impose pesticide credentialing denials, modifications, suspensions, and revocations for any documented violation. Historically, OISC has imposed credentialing actions only for those violations that are particularly egregious or harmful to man or the environment on a significant scale or for those persons that are determined to be repeat offenders of the same or similar violation type. Repeat drift violators shall be addressed as follows:

1. After at least three separate and distinct documented off-target drift incident violations involving an adverse effect within any contiguous two-year period, OISC will evaluate the need for a credentialing action.
2. After at least two separate and distinct documented off-target drift incident violations involving human exposure within any contiguous two-year period, OISC will evaluate the need for a credentialing action.
3. The two-year contiguous period will be calculated based on the dates the incidents occurred.

VIII. Worker Protection Standard (WPS)

The WPS rule is detailed, relatively extensive, and contains a great many regulatory requirements that may be characterized as technical violations. Therefore, some minor violations may be addressed by OISC with compliance assistance. OISC will generally not utilize compliance assistance to address the following violations, which OISC considers more significant and more central to the ultimate goals of the WPS regulation:

- 1) No central posting location
- 2) No poster displayed
- 3) No application records available at location
- 4) No Safety Data Sheet (SDS) available at location
- 5) Incomplete application records (REI, app. date, product name, EPA Reg. #)
- 6) Application records not accessible by workers & handlers
- 7) Application records not kept by employer for at least two years
- 8) No emergency medical information
- 9) No safety training provided at all
- 10) No safety training provided before work or annually
- 11) No records of worker or handler training kept for at least two years
- 12) Training not provided by a qualified trainer

- 13) Training materials do not cover all rule requirements
- 14) No decontamination supplies provided to workers & handlers
- 15) No eyewash water provided for workers & handlers
- 16) Decontamination supplies missing water, soap, or change of clothes
- 17) Workers or handlers not notified of applications
- 18) Warning signs not posted
- 19) REIs not implemented
- 20) PPE not provided to workers & handlers
- 21) PPE not maintained
- 22) No medical evaluation for respirator wearing workers & handlers
- 23) No fit testing for respirator wearing workers & handlers
- 24) No resp. training, medical evaluation, or fit testing records kept for two years
- 25) Fumigation precautions not implemented
- 26) Danger/poison precautions not implemented
- 27) Emergency assistance not provided to workers & handlers
- 28) Employer retaliates against workers & handler
- 29) Commercial handler employer fails to provide application info. to grower

IX. Portable Refillable Container (Minibulk) & Containment

OISC will target enforcement response on the following violations found at agricultural repackaging/refilling facilities, most of which are also custom agricultural pesticide application services.

- 1) No repack agreement
- 2) No residue removal procedure
- 3) No description of acceptable containers
- 4) No refilling records
- 5) Refilling records present but missing some required elements
- 6) Portable refillable container (PRC) missing serial # (less than 10%)
- 7) PRC missing one-way valve
- 8) PRC not cleaned over containment area
- 9) PRC not in containment
- 10) No documentation of pressure test for PRC
- 11) Stationary bulk tank (tank) lacks vent
- 12) Tank has external site gauge
- 13) Tank lacks lockable shut-off valve
- 14) Tank missing serial # (less than 10%)

X. Penalty vs. Late Fee

If it is documented that an individual or business was or has been conducting pesticide application operations without the required certification or license or was or has been offering a pesticide product for sale or distribution without the required registration, those violative acts will be addressed through the enforcement procedures outlined in this policy.

However, instead of an enforcement response, OISC will assess a 100% late filing fee in addition to the annual credentialing/registration fee for any individual, business, or product that meets the following criteria:

- 1) The individual, business, or product was credentialed or registered at the close of the previous credentialing/registration year,
- 2) The individual, business, or product was otherwise in compliance with all other pesticide regulatory requirements, and
- 3) The individual, business, or product credentialing or registration deficiency was promptly, upon notice, rectified by filing of all necessary forms, fees, and late filing fees.

XI. Federal Product Violation Referrals to EPA Region 5

All potential FIFRA product violations discovered as the result of OISC's marketplace inspections or state product registration activities will be referred to U.S. EPA Region 5 for consideration of federal enforcement action. These inspections and the associated violations will be conducted and documented in accordance with OISC's standard operating procedures, which have been determined to be equivalent to the guidance provided in the EPA FIFRA Inspection Manual. All inspections conducted with Federal credentials, at the request of EPA, will be forwarded to EPA for further review and enforcement action, regardless of potential violations discovered.

OISC and EPA will follow the below listed outline when processing a referral.

- a. Once OISC has determined that a violation of FIFRA may have been documented as the result of an OISC investigation or inspection, the OISC Compliance Officer or his/her designee will send an e-mail notification to the EPA Region 5 OISC Enforcement Technical Contact, with a copy to the Pesticide & Toxics Compliance Section (PTCS) Section Chief. The e-mail notification will reference the OISC case number, the identified respondent, the suspected FIFRA violation, that all of the case file materials have been copied into the EPA R5 SharePoint file, and the anticipated response date by EPA R5.
- b. Within ten (10) business days of receipt of the e-mail from OISC, the EPA Region 5 Enforcement Technical Contact or his/her designee will e-mail a reply to the OISC Compliance Officer indicating:
 - i. the Region is interested in pursuing the suspected violation
 - ii. the Region requires an additional fifteen (15) days, unless another review period is negotiated with OISC; or
 - iii. the Region is remanding the case to OISC for consideration of state enforcement.
- c. EPA Region 5 and OISC will track the progress and disposition of any referrals through the quarterly enforcement conference calls and the mid-year and end-of-year cooperative agreement review processes.

XII. Appeals of Enforcement Actions

An appeal of any enforcement action by OISC will be administered according to IC 15-16-4-64.5 and IC 15-16-5-67 as follows:

(a) 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.

(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.

Revision History




Date	Change	Justification
1-15-16	Initiated the process of communicating ERP content with entire pesticide staff annually.	Need make policy more transparent to entire OISC staff.
2-15-17	1. Expanded the introduction. 2. Added reference to process for civil penalty assessment. 3. Converted drift response table to text. 4. Added worker protection standard (WPS) guidance. 5. Added portable refillable container and containment guidance. 6. Added termiticide preconstruction application guidance. 7. Added guidance for assessing civil penalty versus late filing fee for annual credentials or registrations.	1. Need to incorporated recognition of OISC practical experience in working with IPRB. 2. Need to highlight the philosophies outlined in the civil penalty rule. 3. Need to relate drift response to civil penalty rule for clarity. 4. Need to identify WPS violations addressed with compliance assistance versus other enforcement options. 5. Need to identify container/containment violations addressed with compliance assistance versus other enforcement options. 6. Need to incorporate a previously separate industry-specific ERP into overall comprehensive ERP. 7. Need to identify and make consistent for various sections within OISC pesticide section when civil penalties versus late filing fees would be appropriate.
3-13-17	Added guidance for federal product violation referrals to EPA Region 5.	Needed to insure consistency regarding how and when documented product violations under FIFRA would be referred to EPA for federal enforcement consideration.
9-1-17	Expanded the drift response guidance to reflect how dicamba drift violations would be assessed differently than	Needed to elevate the level of enforcement response for dicamba-specific drift violations in consideration of IPRB recommendations to OISC intended to insure safe use and preservation of the new much needed resistant weed control technology.

7-27-18	1.Revised WPS guidance to modify the list of violations that would be addressed with compliance assistance. 2. Added enforcement discretion to mitigate size of civil penalty for some violations of a daily repeating nature.	1. Needed to respond to EPA Region 5 request to shift from compliance assistance to enforcement for year old amendments to the WPS reg. 2. Needed to respond to IPRB recommendation to allow for mitigation of excessive civil penalties until formal rulemaking could be undertaken to implement the option.
6-23-19	Revised the drift response guidance to distinguish between violations involving RUPs versus GUPs and clarified when applicator credential suspension would be initiated.	Needed to incorporate the concept of greater potential environmental harm for violations involving RUPs, as it relates to more significant response options such as license suspension.
4-13-21	1.Eliminated the reference to repeat violations. 2.Made revisions to change civil penalty amounts for various violations, made private applicator violations the same as commercial applicator violations, and eliminated the implementation link to a civil penalty rule 357 IAC 1-6. 3. Made minor revisions to the EPA referral process.	1.Needed to comply with revisions enacted by SEA # 438 effective July 1, 2020. 2.Needed to comply with revisions enacted by SEA #227 effective July 1, 2021. 3.Needed to adjust EPA referral process to account for conversion of paper file process to electronic file process, and to account for personnel resource changes in EPA R5.

Document Owner

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Reviewed and Approved

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