



INDIANA PESTICIDE REVIEW BOARD

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Recommendations and Report Concerning Civil Penalties from the IPRB Working Group

Questions regarding this report may be directed to IPRB secretary David Scott at (765)494-1593 or scottde@purdue.edu.

Legislative Background

IC 15-16-4-42 establishes the Indiana Pesticide Review Board (IPRB). Voting members of the IPRB are appointed by the Governor.

IC 15-16-4-48 provides that the IPRB may (1) collect; (2) analyze; and (3) interpret; information on matters relating to the registration and use of pesticides.

IC 15-16-5-39.6 establishes that the IPRB shall establish a working group to review civil penalties. Before December 1, 2020, the working group shall make recommendations concerning civil penalties to the: (1) board; and (2) general assembly in an electronic format under IC 5-14-6.

Working Group Activities and Process

1. The IPRB Civil Penalty Working Group was chaired by Dr. Bruce Bordelon, current vice chair of the IPRB. Working group members included representatives of most major pesticide stakeholder groups, as follows:
 - a. Bruce Bordelon (Chair); Horticulture, Purdue University; bordelon@purdue.edu
 - b. Lee Green; Category 8 commercial applicators; LeGreen@isdh.IN.gov
 - c. Bob Andrews; Category 3A & 3B commercial applicator; rea@thegreenskeeper.com
 - d. Bill DeBoer; Indiana Nursery and Landscape Assoc.; bdeboer@woodywarehouse.com
 - e. Julia Tipton Hogan; Public representative; jhogan5402@aol.com
 - f. Austin Ferguson; Indiana Wine Grape Growers; austin@dulciusvineyards.com
 - g. Matthew Johnson; Category 5 commercial applicators; MattJ@aquaticcontrol.com
 - h. Rod Miller; Category 1A commercial applicators; rlmiller@ekova.com
 - i. Kevin Underwood; Private applicators; klufarm89@gmail.com
 - j. Matt Kraushar; Category 6 commercial applicators; mkraushar@indot.in.gov
 - k. David Songer; Category 11 aerial applicators; swiaviation@gmail.com
 - l. Steve Smith; Red Gold Tomatoes; ssmith@REDGOLD.com
 - m. Scott Robbins; Category 7A, 7B, 7D commercial applicators; scottr@actionpest.com

2. Due to COVID-19 restrictions, the working group was required to hold its meetings via virtual Webex communications. In addition, participation in those working group meetings was also made available to the public through live Webex communications. Both meeting minutes and recordings of the Webex meetings were posted to the IPRB web site at <https://www.oisc.purdue.edu/pesticide/iprb.html>. These internet postings have been maintained throughout the entire working group process.
3. Public working group meetings were held approximately every two weeks, from May 8, 2020, through June 19, 2020. Resulting draft recommendations from the working group to the full IPRB were presented at the IPRB public meeting on July 9, 2020. The IPRB voted to return the draft recommendations to the working group to fine tune a couple of items identified during the IPRB review process. The working group met again on July 17, 2020 to address those identified items. Revised recommendations, dated July 18, 2020, were submitted by the working group to the full IPRB at their public meeting on August 6, 2020. The IPRB voted unanimously to accept and endorse the July 18, 2020, recommendations from the working group.
4. The recommendations for pesticide civil penalty implementation and assessment under IC 15-16-4 and IC 15-16-5 include the following underlying concepts and provisions:
 - a. Three levels of civil penalty, with higher penalty amounts for violations involving restricted use pesticides versus general use pesticides, violations associated with knowing intent and fraud, violations resulting in documentable adverse effects to man, wildlife, or the environment, and violations with generally greater potential to cause adverse effects.
 - b. Addition of a definition of “adverse effect”, based on a similar definition of “sufficient quantity to cause harm” that has existed in state drift regulations for over a decade.
 - c. Provisions for civil penalty amount mitigation for all but the most egregious types of violations.
 - d. Requirements for warnings versus civil penalties for the first count of violation of the lowest level violative acts.
 - e. Elimination of automatic escalation of civil penalty amounts based solely on repetition of the violation within a five-year period.
 - f. Elimination of the need for an IPRB rule for implementation of the statute.

Draft Recommended Language (July 18, 2020)

IC 15-16-4-3.5 “Adverse Effect”

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

- (1) pesticide residues in excess of established food or feed tolerances established by the U.S. Environmental Protection Agency;**
- (2) environmental media standards or benchmarks for pesticides established by a federal or state agency;**
- (3) visible, measurable, or documented:**
 - (i) death;**

(ii) illness;

(iii) stunting;

(iv) deformation;

(v) discoloration; or

(vi) other effects;

that are detrimental to the nontarget site.

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

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

(1) deny;

(2) suspend;

(3) revoke; or

(4) amend;

the person's registration under this chapter.

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

~~(1) Two hundred fifty dollars (\$250) for a person's first violation.~~

~~(2) Five hundred dollars (\$500) for a person's second violation.~~

~~(3) One thousand dollars (\$1,000) for a person's third violation and each subsequent violation.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As added by P.L.2-2008, SEC.7. Amended by P.L.91-2020, SEC.11.

IC 15-16-5-0.5 “Adverse Effect”

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

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

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

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

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

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

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

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

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

- (1) IC 15-16-5-65(2), recommend, use, or supervise the use of a nonrestricted general use pesticide product in a manner inconsistent with its labeling and resulting in an adverse effect.**
- (2) IC 15-16-5-65(2), recommend, use, or supervise the use of a restricted use pesticide product in a manner inconsistent with its labeling and resulting in no adverse effect.**
- (3) IC 15-16-5-65(7), after written notice, neglect to keep and maintain the records required by IC 15-16-5.**
- (4) IC 15-16-5-65(8), make false records, invoices, or reports.**
- (5) IC 15-16-5-65(9), unknowingly engage in or profess to engage in the business of using a pesticide or any other product regulated under this chapter or by rules adopted under this chapter or making a diagnostic inspection to determine infestations of a wood destroying pest for hire on the property of another without having a pesticide business license issued by the state chemist.**
- (6) IC 15-16-5-65(10), unknowingly use a restricted use pesticide without having an applicator, who is licensed or permitted under IC 15-16-5, in direct supervision.**
- (7) IC 15-16-5-65(12), after written notice, neglect to comply with any limitations or restrictions on or in a duly issued license, permit, registration, or certification.**
- (8) IC 15-16-5-65(14), make false or misleading statements during or after an inspection concerning any infestation or infection of pests.**
- (9) IC 15-16-5-65(16), knowingly purchase or use a pesticide product that was not registered under IC 15-16-4.**
- (10) 357 IAC 1-12-2, apply a nonrestricted general use pesticide in a manner that allows it to drift from the target site in sufficient quantity to cause an adverse effect to a nontarget site.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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