



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

Applicator Certification & Education Statutes & Regulations

Indiana

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Applicator Certification & Education

STATE OF INDIANA

1) Ind. Code Ann. § 15-16-2-44; 355 Ind. Admin. Code 7, 8, 9

The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Indiana Legislative Council.

1) Ind. Code Ann. § 15-16-2-44; 355 Ind. Admin. Code 7, 8, 9

§ 15-16-2-44. Rules adopted under IC 4-22-2.

(a) The state chemist may adopt rules under IC 4-22-2 concerning the following:

- (1) The distribution and use of fertilizer material, including standards to protect waters of the state.
- (2) The distribution and storage of bulk fertilizers, including standards for the storage of bulk fertilizers to protect the waters of the state.

(b) The state chemist shall adopt rules under IC 4-22-2 concerning the following:

(1) Subject to subsection (e), the establishment of certification and educational programs, as determined by the state chemist, relating to the application of fertilizer material, the transportation of fertilizer material, or both for the following:

(A) Persons who apply fertilizer material for hire, transport fertilizer material for hire, or both.

(B) Persons who apply fertilizer material, transport fertilizer material, or both from the following:

(i) Confined feeding operations (as defined in IC 13-11-2-40).

(ii) Operations outside Indiana that would be confined feeding operations (as defined in IC 13-11-2-40) if they were located in Indiana.

(2) The establishment of fees for the certification and education programs established under subdivision (1).

(c) The state chemist shall adopt rules under IC 4-22-2 before July 1, 2012, concerning the staging, management, and land application of fertilizer material.

(d) Any fees collected for a certification and educational programs under subsection (b)(1) shall be collected by the state chemist and deposited and administered under section 44.5 [IC 15-16-2-44.5] of this chapter.

(e) The state chemist may waive all or part of the certification requirements established under subsection (b)(1) on a reciprocal basis with any state agency or federal agency that has substantially the same certification standards.

Article 7. Certification for Distributors and Users of Fertilizer Material

Rule 1. General Provisions

7-1-1 Purpose

Sec. 1. The purpose of this article is to ensure fertilizer materials are distributed and used effectively and safely:

- (1) as plant nutrients through training and education of distributors and users; and
- (2) in a manner that protects water quality;

and acknowledges authorities granted to the Indiana Department of Environmental Management (IDEM) pursuant to IC 13-13-5-1(1).

7-1-2 Applicability

Sec. 2.

- (a) Except as provided in subsection (b), this article applies to any person that:
 - (1) uses fertilizer material for hire on the property of another person for purposes of producing an agricultural crop;
 - (2) uses organic fertilizer from a CFO for purposes of producing an agricultural crop; or
 - (3) distributes fertilizer material directly to any person described in this subsection.
- (b) This article does not apply to any person who:
 - (1) uses or distributes less than ten (10) cubic yards or four thousand (4,000) gallons of organic fertilizer obtained from a CFO in a calendar year;

- (2) uses biosolids on land in Indiana that comply with 327 IAC 6.1; or
- (3) distributing sic inorganic fertilizer to retail facilities.

Rule 2. Definitions

7-2-1 Applicability

Sec. 1. The definitions in this rule apply throughout this article.

7-2-2 “Agricultural crop” defined

Sec. 2. "Agricultural crop" means any plant or part of a plant, produced primarily for sale, consumption, propagation, or other use by humans or animals. For the purposes of this article, the term does not include turf, trees, or ornamental plantings.

7-2-3 “Biosolid” defined

Sec. 3.

(a) "Biosolid", as defined in 327 IAC 6.1-2-7, means solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Examples of biosolid include, but are not limited to, the following:

- (1) Scum or solids removed in primary, secondary, or advanced wastewater treatment processes.
- (2) A material derived from biosolid.
- (3) An industrial waste product that contains domestic sewage or material under subdivision (1) or (2).

(b) The term does not include ash generated during the firing of biosolid in a biosolid incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

7-2-3 “CCH” defined

Sec. 4. "CCH" means a continuing certification hour for certified applicators. One (1) CCH is equivalent to one (1) hour of fertilizer material-related instruction or training that has been evaluated and approved by the state chemist.

7-2-5 “Certified applicator” defined

Sec. 5. "Certified applicator" means any individual who has been issued a certificate or licensing credential under this article as evidence of the individual's qualifications to use fertilizer material. The term includes both commercial applicators and private applicators.

7-2-6 "Commercial applicator license" defined

Sec. 6. "Commercial applicator license" means the licensing credential issued annually to a certified applicator who:

(1) uses; or

(2) supervises the use of;

fertilizer material for purposes of producing an agricultural crop on the property of another person for hire.

7-2-7 "Confined feeding operation" or "CFO" defined

Sec. 7. "Confined feeding operation" or "CFO" means any:

(1) confined feeding of at least:

(A) three hundred (300) cattle;

(B) six hundred (600) swine or sheep;

(C) thirty thousand (30,000) fowl; or

(D) five hundred (500) horses;

(2) animal feeding operation electing to be subject to IC 13-18-10;

(3) animal feeding operation that causes a violation of:

(A) water pollution control laws;

(B) any rules of the water pollution control board; or

(C) IC 13-18-10; or

(4) animal feeding operation located outside of Indiana that would be a CFO if located in Indiana.

7-2-8 "Distribute" defined

Sec. 8. "Distribute" means to:

- (1) offer for sale;
 - (2) sell;
 - (3) exchange;
 - (4) barter;
 - (5) supply; or
 - (6) offer to supply;
- fertilizer material.

7-2-9 “Fertilizer business license” defined

Sec. 9. "Fertilizer business license" means the licensing credential issued annually to a person that is engaged in or professes to be engaged in distributing or using fertilizer material on the property of another person for hire.

7-2-10 “Fertilizer material” defined

Sec. 10. "Fertilizer material", as defined in IC 15-16-2-11, means any substance containing nitrogen, phosphate, potash, or any recognized plant nutrient that:

- (1) is used for the plant nutrient content; and
- (2) has nutrient value in promoting plant growth.

The term includes unmanipulated animal and vegetable manures.

7-2-11 “Inorganic fertilizer” defined

Sec. 11. "Inorganic fertilizer" means any fertilizer material:

- (1) manufactured by means of a man-made chemical reaction; and
- (2) that does not contain any plant or animal products, manures or renderings.

For the purposes of this article, urea is considered to be an inorganic fertilizer, not an organic fertilizer.

7-2-12 “Manure” defined

Sec. 12. "Manure" means any:

- (1) liquid or solid animal excreta;
- (2) used bedding, litter, waste liquid, or contaminated runoff; or
- (3) plant remains or vegetable refuse from processing.

7-2-13 "Organic fertilizer" defined

Sec. 13. "Organic fertilizer" means any fertilizer material derived from either plant or animal products or manures containing one (1) or more nutrients (other than carbon, hydrogen, or oxygen) that are essential for plant growth. For the purpose of this article, the term does not include biosolids.

7-2-14 "PARP" defined

Sec. 14. "PARP" means a private applicator recertification program of fertilizer material-related instruction or training that has been evaluated and approved by the state chemist.

7-2-15 "Person" defined

Sec. 15. "Person", as defined in IC 15-16-2-17, means:

- (1) an individual;
- (2) a partnership;
- (3) an association;
- (4) a firm;
- (5) a limited liability company; or
- (6) a corporation.

7-2-16 "Private applicator certification" defined

Sec. 16. "Private applicator certification" means the licensing credential issued to a certified applicator who:

- (1) uses; or
- (2) supervises the use of;

organic fertilizer for purposes of producing any agricultural crop on property owned, rented, or managed by the employer or the applicator.

7-2-17 "State chemist" defined

Sec. 17. "State chemist" means the Indiana state chemist or an appointed agent.

7-2-18 "Trained employee" defined

Sec. 18. "Trained employee" means any individual who:

- (1) is operating as an employee, agent, or contractor of a certified applicator; and
- (2) has received training required under this article to use fertilizer material under the supervision of the certified applicator.

7-2-19 "Use" defined

Sec. 19. "Use" means the:

- (1) application of fertilizer material on an agricultural crop growing area;
- (2) handling of fertilizer materials; or
- (3) transportation of fertilizer materials.

Rule 3. Credentialing Requirements for Distribution or Use of Fertilizer Material

7-3-1 For hire use of fertilizer material

Sec. 1. All fertilizer material used for hire on the property of another person for purposes of producing an agricultural crop must be used by:

- (1) an individual that has a valid commercial applicator license; or
- (2) an individual that:
 - (A) has been trained as provided in section 4(b) of this rule; and
 - (B) is operating under the supervision of a certified applicator as provided in section 4 of this rule.

7-3-2 Use of organic fertilizer

Sec. 2. All organic fertilizer from a CFO used for purposes of producing an agricultural crop must be used by:

- (1) an individual that has a valid:

(A) commercial applicator license; or

(B) private applicator certification; or

(2) an individual that:

(A) has been trained as described in section 4(b) of this rule; and

(B) is operating under the supervision of a certified applicator as described in section 4 of this rule.

7-3-3 Distribution of fertilizer material

Sec. 3. All fertilizer material distributed for the purpose of producing an agricultural crop must be distributed:

(1) by a person that has a valid fertilizer business license; and

(2) to a person that has a valid:

(A) fertilizer business license;

(B) commercial applicator license; or

(C) private applicator certification.

7-3-4 Supervision of noncertified individuals

Sec. 4.

(a) Fertilizer materials covered by this article may be used by a noncertified trained employee who is working under the supervision of a certified applicator affiliated with the person performing the use or distribution.

(b) The training required in this section shall be as follows:

(1) Identified and approved by the state chemist.

(2) Repeated by the noncertified trained employee when that individual moves from one (1) employer to another.

(c) The supervising certified applicator shall be responsible for the following:

(1) Ensuring that the noncertified employee has received the training required in this section.

- (2) Keeping a record of the training required in this section.
 - (3) Providing the supervised noncertified trained employee with the means and instructions to:
 - (A) establish direct voice communication during the use or distribution of fertilizer material; and
 - (B) immediately contact the Indiana department of environmental management to report any fertilizer material spill that may threaten waters of the state.
 - (4) Making work assignments to the supervised noncertified trained employee.
 - (5) Knowing the status of the work assignments made to supervised trained employee.
- (d) A certified applicator shall supervise not more than ten (10) noncertified trained employees at any time.

Rule 4. Applicator Certification Standards

7-4-1 Certification standards

Sec. 1.

- (a) An individual may become eligible to be a certified applicator by passing the certification examination described in subsection (b).
- (b) The certification examination shall be a written, closed book examination developed by the state chemist. The minimum passing score for the examination shall be seventy-five percent (75%) unless another minimum passing score has been established by the state chemist after consideration of the recommendations of the standards committee described in subsection (c).
- (c) The state chemist shall appoint a standards committee to develop certification subject matter and standards for the certification examination. Members of this committee shall include, at a minimum, individuals representing the following:
 - (1) The state chemist.
 - (2) The Purdue University cooperative extension service.
 - (3) The inorganic fertilizer industry.

(4) The organic fertilizer industry.

(d) Certification eligibility shall remain in force from the date of completing the requirements in subsection (a) through December 31 of the fourth year following the year during which the requirements were met.

(e) No examination may be attempted by any individual more than three (3) times in any twelve (12) month period. The twelve (12) month period shall commence on the date that the first examination failure occurs.

(f) The state chemist shall specify examination procedures that must be followed by any individual taking an examination. Failure to comply with these procedures or any unauthorized assistance provided by or received by an individual during the examining period shall be cause for immediate termination of the examining process for all involved individuals and no additional opportunity to take any examinations shall be provided to the involved individuals for a period of five (5) years.

7-4-2 Certification renewal standards

Sec. 2.

(a) An individual may become eligible for certification renewal by completing one (1) of the following:

(1) The written examination procedures for initial certification established in section 1 of this rule.

(2) Accumulating at least three (3) fertilizer material CCHs before the expiration of the individual's certification period.

(3) Attending at least three (3) fertilizer material PARPs before the expiration of the individual's certification period.

(b) An individual can accumulate CCHs or PARPs only after the individual is certified.

(c) An individual can accumulate a maximum of two (2) fertilizer material CCHs or PARP credits in any one (1) year of the individual's five (5) year certification period.

(d) Credit for accumulating in excess of three (3) fertilizer material CCHs or PARP credits shall not be carried forward to the next certification period.

(e) Eligibility for renewed certification shall remain in force through December 31 of the fifth year following renewal unless revoked or suspended prior to that date.

7-4-3 Criteria and procedures for approving fertilizer material CCHs and PARPs

Sec. 3.

(a) The state chemist shall be responsible for evaluating all instruction and training opportunities submitted for consideration of approval for CCHs or PARP credits.

(b) Training and instruction may be evaluated and approved for both CCHs and PARP credits.

(c) All requests for CCH or PARP approval must be submitted to the state chemist as follows:

(1) At least twenty-one (21) days prior to the date that the instruction or training event will occur.

(2) In a format determined by the state chemist.

(3) By an individual directly responsible for the CCH instruction or training event.

(4) By the county extension educator with the Purdue Cooperative Extension Service for the PARP instruction or training.

(d) Criteria to be followed by the state chemist for the evaluation of instruction and training events for CCH and PARP approval shall include, but may not be limited to, the following:

(1) Must be open to all certified applicators.

(2) Except as provided in subdivision (3), any costs or participation fees to cover expenses incurred by the training providers must be the same for all certified applicators.

(3) Professional educational organizations claiming Internal Revenue Service 501(c) status and governmental organizations may charge variable participation fees.

(4) Must not be in-house training.

(5) The venue must be large enough to accommodate a reasonable number of certified applicators from outside of the immediate organization facilitating the instruction or training.

(6) Must be open without fee or charge to the state chemist for monitoring.

(7) Must have an effective mechanism for the person responsible for the training to verify participation of the certified applicator from the start to the conclusion of the CCH or PARP event.

(8) Must include at least one (1) state chemist approved regulatory topic.

(9) Subject matter and content must include, but may not be limited to, at least one (1) of the following:

(A) Fertilizer material storage.

(B) Fertilizer material chemistry.

(C) Fertilizer material equipment calibration and maintenance.

(D) Fertilizer material use.

(E) Fertilizer material transportation.

(F) Fertilizer material application development and implementation.

(G) Spill response procedures.

(H) Public and customer safety.

(I) Public and customer concerns.

(J) Applicator safety.

(K) Environmental safety.

(L) Environmental issues.

(M) Employee training.

(N) Associated state and federal laws or regulations affecting fertilizer materials or fertilizer material applicators.

(10) Subject matter and content must not include any of the following:

- (A) Product or service sales or promotions.
- (B) Employee hiring or retention.
- (C) General business practices.

7-4-4 Regulatory response to CCH and PARP violations

Sec. 4.

(a) A certified applicator that makes false or fraudulent reports or in any way misrepresents his or her participation in the certification renewal process shall be subject to the following:

- (1) Revocation of all accumulated CCHs or PARP credits to date.
- (2) Regulatory provisions in IC 15-16-2-49.5.

(b) A person who makes false or fraudulent reports or in any way misrepresents information that is part of the certification renewal process shall be subject to the following:

- (1) Revocation of authority and privilege to participate in any future CCH or PARP events.
- (2) Regulatory provisions in IC 15-16-2-49.5.

7-4-5 Applications for license or certification

Sec. 5.

(a) A person applying for a fertilizer business license must submit the following:

(1) An application to the state chemist on a form provided by the state chemist.

(2) Except for a person that has paid a pesticide business license fee under IC 15-16-5-48 for the current year, a fee of forty-five dollars (\$45) to the state chemist.

(b) An individual applying for a commercial applicator license must do the following:

- (1) Meet the certification standards described in section 1(a) of this rule.

(2) Submit an application to the state chemist on a form provided by the state chemist.

(3) Except for a person that has paid a pesticide commercial applicator license fee under IC 15-16-5-52 for the current year, submit a fee of forty-five dollars (\$45) to the state chemist.

(c) An individual applying for a private applicator certification credential must do the following:

(1) Meet the certification standards described in section 1(a) of this rule.

(2) Submit an application to the state chemist on a form provided by the state chemist.

(3) Except for a person that has paid a pesticide private applicator permit fee under IC 15-16-5-54 for the current certification period, submit a fee of twenty dollars (\$20) to the state chemist.

(d) If the state chemist does not issue a license or certification to a person who applied for a license or certification described under this article, the state chemist shall inform the person in writing of the reason the license was not issued.

(e) A person who has been issued a license or certification under this article:

(1) shall notify the state chemist in writing within ten (10) days after a change in or termination of the person's employment or status as a licensed or certified applicator; and

(2) may apply to the state chemist to transfer or amend the person's license or certification by submitting an updated application form described in this section.

(f) A license issued under subsection (a) or (b) expires on January 1 of each year.

(g) A certification issued under subsection (c) expires on January 1 of the fifth year following the year of issuance.

7-4-6 Late fees

Sec. 6. A person who:

(1) is required to pay a fee under this article 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.

7-4-7 Reciprocity; waiver of requirements

Sec. 7. The state chemist may waive all or part of the requirements provided for under section 5 of this rule on a reciprocal basis with any other state agency or federal agency that has substantially the same standards.

Rule 5. Effective Date

7-5-1 Compliance with effective date of rule

Sec. 1. Full compliance by persons required to be certified or licensed under this rule shall be required not later than January 1 of the second year following adoption.

Article 8. Fertilizer Material Use, Distribution, and Record Keeping

Rule 1. General Provisions

8-1-1 Purpose

Sec. 1. The purpose of this article is to:

(1) ensure fertilizer materials are distributed and used effectively and safely:

(A) as plant nutrients; and

(B) in a manner that protects water quality; and

(2) complement authorities granted to the Indiana department of environmental management under IC 13-13-5-1(1).

8-1-2 Applicability

Sec. 2.

(a) Except as provided in subsection (b), this article applies to any person that:

(1) uses; or

(2) distributes;
fertilizer material for the purposes of producing an agricultural crop.

(b) This article does not apply to any person who uses or distributes less than ten (10) cubic yards or four thousand (4,000) gallons of fertilizer material in a calendar year.

(c) This article is in addition to rules passed by the water pollution control board regulating confined feeding operations. To the extent that provisions of those rules require conditions or actions that are more stringent than any of the provisions in this article, operations which have a confined feeding operation or NPDES permit approval must comply with the more stringent provision. Compliance with the more stringent provision will satisfy the similar requirement of this article.

Rule 2. Definitions

8-2-1 Applicability

Sec. 1. The definitions in this rule apply throughout this article.

8-2-2 "Agricultural crop" defined

Sec. 2. "Agricultural crop" means any plant or part of a plant produced primarily for sale, consumption, propagation, or other use by humans or animals. For purposes of this article, the term does not include turf, trees, or ornamental plantings.

8-2-3 "Agronomic rate" defined

Sec. 3. "Agronomic rate" means a rate of application of fertilizer material to the land based on the following:

- (1) The nutrient content of the fertilizer material to be applied.
- (2) The fertility level of the soil.
- (3) The nutrient needs of the current or planned crops.
- (4) The nutrient holding capacity of the soil.
- (5) Additional sources of nutrients, including legume credits, process wastewater, or biosolids.
- (6) Reasonable nitrogen losses.
- (7) Reasonable phosphorus levels.

8-2-4 "Biosolid" defined

Sec. 4.

(a) "Biosolid", as defined in 327 IAC 6.1-2-7, means solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Examples of biosolid include, but are not limited to, the following:

(1) Scum or a solid removed in primary, secondary, or advanced wastewater treatment processes.

(2) A material derived from biosolid.

(3) An industrial waste product that contains domestic sewage or material under subdivision (1) or (2).

(b) The term does not include ash generated during the firing of biosolid in a biosolid incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

8-2-5 "Certified applicator" defined

Sec. 5. "Certified applicator" means any individual who has been issued a certificate or licensing credential under 355 IAC 7 as evidence of the individual's qualifications to distribute or use fertilizer material.

8-2-6 "Drainage inlet"

Sec. 6. "Drainage inlet" means any surficial opening to an underground agricultural tile drainage system that drains surface waters. For purposes of this article, the term includes water and sediment control basins.

8-2-7 "Distribute" defined

Sec. 7. "Distribute" means to:

(1) offer for sale;

(2) sell;

(3) exchange;

(4) barter;

(5) supply; or

(6) offer to supply;
fertilizer material.

8-2-8 "Fertilizer application plan" defined

Sec. 8. "Fertilizer application plan" means a written annual or multi-year plan for nutrient application at agronomic rates for producing an agricultural crop.

8-2-9 "Fertilizer material" defined

Sec. 9. "Fertilizer material", as defined in IC 15-16-2-11, means any substance containing nitrogen, phosphate, potash, or any recognized plant nutrient that:

- (1) is used for the plant nutrient content; and
- (2) has nutrient value in promoting plant growth.

The term includes unmanipulated animal and vegetable manures.

8-2-10 "Filter strip" defined

Sec. 10. "Filter strip" means a vegetative area between a surface water body and an agricultural production field with a minimum width of fifty (50) feet and designed and maintained to intercept surface water runoff.

8-2-11 "Floodway" defined

Sec. 11. "Floodway" means the channel of a river or stream and those portions of the floodplain adjoining the channel that are reasonably required to efficiently carry and discharge the peak flood flow of a one hundred (100) year flood as determined by 312 IAC 10.

8-2-12 "Gradient barrier" defined

Sec. 12. "Gradient barrier" means a structure or feature that prevents runoff from entering surface waters.

8-2-13 "Highly erodible land" defined

Sec. 13. "Highly erodible land" means soil that has a high potential to erode based on site-specific characteristics, such as:

- (1) slope length and steepness;
- (2) soil erodibility; and
- (3) rainfall;

as defined by the United States Department of Agriculture Natural Resources Conservation Services and Farm Service Agency maps.

8-2-14 "Incorporation" defined

Sec. 14. "Incorporation" means the mixing of fertilizer material with the surface soil using standard agricultural practices, such as tillage.

8-2-15 "Injection" defined

Sec. 15. "Injection" means the placement of liquid fertilizer material beneath the surface of the soil in the crop root zone using equipment specifically designed for this purpose.

8-2-16 "Inorganic fertilizer" defined

Sec. 16. "Inorganic fertilizer" means any fertilizer material:

- (1) manufactured by means of a man-made chemical reaction; and
- (2) that does not contain any plant or animal products, manures, or renderings.

For purposes of this article, urea is considered to be an inorganic fertilizer, not an organic fertilizer.

8-2-17 "Manipulated organic fertilizer" defined

Sec. 17. "Manipulated organic fertilizer" means any organic fertilizer that is not included in the definition of manure as defined in 355 IAC 8-2-18 section 18 of this rule .

8-2-18 "Manure" defined

Sec. 18. "Manure" means any of the following:

- (1) Liquid or solid animal excreta.
- (2) Waste liquid generated at a livestock or poultry production area, including the following:
 - (A) Excess drinking water.
 - (B) Cleanup water.
 - (C) Contaminated livestock truck or trailer washwater.
 - (D) Milking parlor wastewater.

(E) Milk house washwater.

(F) Egg washwater.

(G) Silage leachate.

(3) Any precipitation or surface water that has come into contact with the following:

(A) Liquid or solid animal excreta.

(B) Used bedding.

(C) Litter.

(D) Liquid described in subdivision (4).

(4) Any other materials generated at a livestock or poultry production area commingled with the materials listed in subdivisions (1) through (3).

8-2-19 "Organic fertilizer" defined

Sec. 19. "Organic fertilizer" means any fertilizer material derived from either plant or animal products or manures containing one (1) or more nutrients that are essential for plant growth. For purposes of this article, the term does not include biosolids.

8-2-20 "Person" defined

Sec. 20. "Person", as defined in IC 15-16-2-17, means:

(1) an individual;

(2) a partnership;

(3) an association;

(4) a firm;

(5) a limited liability company; or

(6) a corporation.

8-2-21 "Public water supply surface intake structure" defined

Sec. 21. "Public water supply surface intake structure" means any structure used for the purpose of providing water through a public water supply system.

8-2-22 "Public water supply well" defined

Sec. 22. "Public water supply well" means any well that provides water to the public through a water distribution system that:

(1) serves at least twenty-five (25) persons per day for:

(A) drinking;

(B) domestic use; or

(C) other purposes; or

(2) has at least fifteen (15) service connections.

8-2-23 "Saturated ground" defined

Sec. 23. "Saturated ground" means soil soaked with moisture so that it cannot absorb any more liquid.

8-2-24 "Sinkhole" defined

Sec. 24. "Sinkhole" means a natural depression in the surface of the land caused by the collapse of the roof of a cavern or subterranean passage.

8-2-25 "Staging" defined

Sec. 25. "Staging" means the temporary placement of fertilizer material in a pile to be used for field application.

8-2-26 "State chemist" defined

Sec. 26. "State chemist" means the Indiana state chemist or an appointed agent.

8-2-27 "Surface application" defined

Sec. 27. "Surface application" means the placement of fertilizer material by spraying or spreading onto the land surface.

8-2-28 "Surface water" defined

Sec. 28.

(a) "Surface water" means waters of the state, as described in IC 13-11-2-265, present on the surface of the earth, including the following:

- (1) Streams.
- (2) Lakes.
- (3) Ponds.
- (4) Rivers.
- (5) Swamps.
- (6) Marshes.
- (7) Wetlands.

(b) The term does not include the following:

- (1) Temporary ponding in an agricultural crop growing area.
- (2) Temporary puddles.
- (3) Farmed wetlands.
- (4) Private ponds that:
 - (A) are under the care, custody, and control of the person applying or ordering the application of fertilizer material;
and
 - (B) do not have an outfall to other surface waters.

8-2-29 "Use" defined

Sec. 29. "Use" means the:

- (1) application of fertilizer material on an agricultural crop growing area;
- (2) handling of fertilizer materials; or
- (3) transportation of fertilizer materials.

Rule 3. Fertilizer Material Application

8-3-1 Application of fertilizer material

Sec. 1. A person applying fertilizer material for the purposes of producing an agricultural crop shall:

- (1) develop a fertilizer application plan prior to application;
- (2) apply fertilizer material in accordance with the fertilizer application plan for the target application site;
- (3) not apply fertilizer material directly to surface water;
- (4) not apply fertilizer material to saturated ground; and
- (5) not apply fertilizer material from a public road.

8-3-2 Application of unmanipulated organic fertilizer

Sec. 2. Unless there is a gradient barrier and a minimum setback of ten (10) feet or a filter strip with a minimum width of fifty (50) feet located between the application site and any of the known features in Table 1, a person shall apply unmanipulated organic fertilizer according to the setback distances in the following table:

Table 1 - Unmanipulated Organic Fertilizer Application Setback Distances (in feet)

(1) All setback distances shall be measured from the edge of the area of actual application of unmanipulated organic fertilizer on the ground.

Table 1 – Unmanipulated Organic Fertilizer Application Setback Distances (in feet)				
Known Feature	Liquid – Injection or Single Pass Incorporation (liquid/solid)	Liquid – Incorporation; Surface Application (solid or compost); or Surface Application to Pasture	Liquid – Surface Application	
			< 6% Slope; or Residue Cover	> 6% Slope
Public Water Supply Wells and Surface Intake	500	500	500	500
Surface Waters	25	50	100	200
Sinkholes	25	50	100	200
Water Wells	50	50	100	200
Drainage Inlets	5	50	100	200
Property Lines and Public Roads	0	10	50	50

(2) Liquid incorporation in Table 1 means only unmanipulated organic fertilizer that has been incorporated into the soil within twenty-four (24) hours of application.

8-3-3 Application of unmanipulated organic fertilizer to highly erodible land

Sec. 3. A person shall not apply unmanipulated organic fertilizer to highly erodible land, unless the land has:

- (1) at least forty percent (40%) crop residue; or
- (2) a vegetative cover crop.

8-3-4 Application of unmanipulated organic fertilizer to frozen or snow covered ground

Sec. 4.

(a) Except as provided in subsection (b), a person shall not apply unmanipulated organic fertilizer to frozen or snow covered ground as follows:

- (1) Within two hundred (200) feet of surface water.
- (2) Within a floodway.
- (3) In an amount that exceeds fifty percent (50%) of the agronomic rate for the planned crop.
- (4) With greater than two percent (2%) slope unless the ground has:
 - (A) at least forty percent (40%) crop residue; or
 - (B) a vegetative cover crop.

(b) Unmanipulated organic fertilizer applied by means of injection or same day incorporation means the ground is not considered frozen or snow covered.

8-3-5 Unmanipulated organic fertilizer application monitoring

Sec. 5. A person who applies unmanipulated organic fertilizer shall do the following:

- (1) For the twenty-four (24) hour period immediately before the application, monitor application site soil conditions and the weather forecast for predicted rain events to ensure that fertilizer runoff does not occur.
- (2) During and immediately following the application, monitor the application site effluent from field tile outlets and surface water conveyance channels for a change of:
 - (A) color;

(B) flow; or

(C) volume.

(3) If there is a change to the effluent caused by the application:

(A) stop the application immediately;

(B) stop or capture the effluent; and

(C) land apply or store the effluent.

Rule 4. Staging of Fertilizer Material

8-4-1 Staging restrictions for inorganic fertilizer

Sec. 1. A person shall not stage inorganic fertilizer as follows:

(1) Within three hundred (300) feet of:

(A) surface waters;

(B) drainage inlets; or

(C) water wells.

(2) In standing water, a waterway, or a floodway.

(3) For more than seventy-two (72) hours unless the fertilizer is as follows:

(A) Covered with a tarpaulin or other suitable covering.

(B) Applied to a target field within thirty (30) days.

8-4-2 Staging restrictions for organic fertilizer

Sec. 2.

(a) A person shall not stage organic fertilizer as follows:

(1) Within three hundred (300) feet of surface waters, drainage inlets, or water wells unless there is a:

(A) cover; or

(B) gradient barrier that contains or directs any organic fertilizer away from the surface waters, drainage inlets, or water wells.

(2) On an area with a slope greater than six percent (6%) unless run-on and runoff are controlled.

(3) On any standing water or waterway or floodway.

(b) Organic fertilizer that is staged for more than seventy-two (72) hours shall be as follows:

(1) Protected by a:

(A) cover; or

(B) gradient barrier.

(2) Applied within ninety (90) days.

(3) Set back from property lines one hundred (100) feet.

(4) Set back from public roads one hundred (100) feet.

(5) Set back from residential buildings four hundred (400) feet.

Rule 5. Fertilizer Material Use Record Keeping

8-5-1 Organic fertilizer distribution records

Sec. 1.

(a) All persons required to be licensed under 355 IAC 7 who distribute organic fertilizer material as described in 355 IAC 7-3-3 shall keep and maintain records of such distribution.

(b) The records required under subsection (a) shall include the following:

(1) The name of the certified applicator accepting receipt of the organic fertilizer.

(2) The certification number of the certified applicator.

(3) The amount of fertilizer distributed.

(4) The representative nutrient value or values of the organic fertilizer.

(5) The month, day, and year of distribution.

8-5-2 Fertilizer material application records

Sec. 2.

(a) All persons required to be licensed under 355 IAC 7 who apply:

(1) fertilizer material as described in 355 IAC 7-3-1; or

(2) organic fertilizer as described in 355 IAC 7-3-2; shall keep and maintain records of all such applications.

(b) The records required under subsection (a) shall include the following:

(1) The address or location description of the application site.

(2) The name of the certified applicator making or supervising the application.

(3) The certification number of the certified applicator.

(4) The rate applied.

(5) The representative nutrient value or values of the fertilizer material.

(6) The type of fertilizer material applied.

(7) The method of fertilizer application.

(8) The month, date, and year of application.

8-5-3 Record keeping period; inspection

Sec. 3. All records required under this rule shall be as follows:

(1) Kept and maintained for a period of two (2) years.

(2) Made available for inspection or copying within thirty (30) days of written or oral request by the state chemist.

Rule 6. Effective Date

8-6-1 Compliance with effective date of article

Sec. 1. Full compliance by persons affected by this article shall be required no later than one (1) year following adoption.

Article 9. Fertilizer Civil Penalty Schedule

Rule 1. General Provisions

9-1-1 Purpose

Sec. 1. The purpose of this article is to establish a civil penalty schedule for violation of IC 15-16-2 or rules adopted under that statute.

Rule 2. Definitions

9-2-1 Applicability

Sec. 1. The definitions in this rule apply throughout this article.

9-2-2 "Board" defined

Sec. 2. "Board" means the Indiana fertilizer advisory board established by IC 15-16-25 sic, IC 15-16-2-25.

9-2-3 "Legal citation" defined

Sec. 3. "Legal citation" means the Indiana Code or the Indiana Administrative Code section or subsection cited on the schedule to describe the relevant portion of a fertilizer statute or rule that has been violated.

9-2-4 "Per day" defined

Sec. 4. "Per day" means the method to be utilized for determining the civil penalty to be assessed for a violation that is of a continuing nature but may be the result of one (1) distinguishable act or failure to act. The violation number shall remain the same when assessing civil penalties for multiple counts of violation on a per day basis.

9-2-5 "Per incident" defined

Sec. 5. "Per incident" means the method to be utilized for determining the violation number for a violation that is usually not of a continuing nature and is the result of a separate and distinguishable act or failure to act. Violations involving separate and distinguishable acts may be assigned accumulating violation numbers.

9-2-6 "Per year" defined

Sec. 6. "Per year" means the method to be utilized for determining the violation number for a violation that may be documented on several dates or at several locations but is the result of one (1) distinguishable act or failure to act.

9-2-7 "Schedule" defined

Sec. 7. "Schedule" means the civil penalty schedule required by IC 15-16-2-49.5(b) and as specified in section 9 of this rule.

9-2-8 "Violation assessment" defined

Sec. 8. "Violation assessment" means the scheme to be utilized for determining the violation number and the count of violations eligible to be assessed civil penalties on the schedule. This scheme includes the concept of assessing civil penalties on a:

- (1) per incident;
- (2) per day;
- (3) per product; and
- (4) per year;

basis as indicated on the schedule.

Rule 3. Civil Penalty Schedule

9-3-1 Schedule

Sec. 1. The schedule of civil penalties for violations of IC 15-16-2, the Indiana commercial fertilizers law, and the rules adopted under this law are as follows:

- (1) Each penalty for each violation, if the violation is of a continuing nature, shall not be imposed for more than one hundred eighty (180) days when assessed on a per day basis.
- (2) Each penalty for each violation, if the violation is of an identical repetitive nature, shall not be imposed for more than one hundred eighty (180) incidents when assessed on a per incident basis.

Legal Citation	General Description of Violation	Violation Number			Violation Assessment
		1	2	3 and subsequent	
355 IAC 2-3-1 and 355 IAC 2-3-4	Store a fertilizer in a bulk container made of improper design or materials.	\$100	\$200	\$300	Per incident

355 IAC 2-3-1(e)	Operate storage containers or appurtenances with an improper design.	\$100	\$200	\$300	Per incident
355 IAC 2-3-2	Store a fertilizer in an underground bulk container.	\$250	\$500	\$1,000	Per day
355 IAC 2-3-3	Abandon a bulk storage container improperly.	\$250	\$500	\$1,000	Per incident
355 IAC 2-3-5(a)	Fail to anchor bulk storage containers properly.	\$100	\$250	\$500	Per incident
355 IAC 2-3-6	Fail to provide bulk container security.	\$100	\$250	\$500	Per incident
355 IAC 2-3-7	Fill bulk container beyond intended capacity.	\$100	\$200	\$300	Per incident
355 IAC 2-3-8	Fail to support or contain appurtenances.	\$50	\$50	\$50	Per day
355 IAC 2-3-9	Fail to provide a liquid level device or secure liquid level gauge.	\$50	\$100	\$150	Per incident
355 IAC 2-3-10	Fail to properly label bulk container.	\$25	\$50	\$100	Per incident
355 IAC 2-3-11	Fail to maintain bulk container or appurtenance.	\$100	\$200	\$300	Per day
355 IAC 2-4-1(a)	Fail to carry out operational area activities within contained area.	\$250	\$500	\$1,000	Per incident
355 IAC 2-4-1(b)	Operate operational area containment with improper design, construction, or capacity.	\$100	\$200	\$300	Per day
355 IAC 2-4-1(d)	Operate operational area with a relief outlet, valve, or improper pump.	\$100	\$200	\$300	Per day
355 IAC 2-4-1(e)	Fail to remove liquids promptly from operational area containment.	\$100	\$200	\$300	Per incident
355 IAC 2-4-1(f)	Fail to protect storage containers and appurtenances from damage by vehicles.	\$100	\$200	\$300	Per incident
355 IAC 2-4-1(i)	Fail to maintain operational area containment.	\$100	\$200	\$300	Per day
355 IAC 2-5-1(a)	Store a bulk container outside of secondary containment.	\$250	\$500	\$1,000	Per day
355 IAC 2-5-1(b)	Fail to separate fertilizer secondary containment from other materials.	\$100	\$200	\$300	Per day
355 IAC 2-5-1(c) and 355 IAC 2-5-12.5(b)	Fail to maintain required capacity for secondary containment.	\$100	\$200	\$300	Per day
355 IAC 2-5-1(f)	Operate secondary containment with tile drainage within or under the containment.	\$100	\$200	\$300	Per day
355 IAC 2-5-2(a)	Operate secondary containment with improperly constructed or sealed walls.	\$100	\$200	\$300	Per day
355 IAC 2-5-3, 355 IAC 2-5-4, 355 IAC 2-	Operate secondary containment with improperly constructed or sealed base.	\$100	\$200	\$300	Per day

5-5, 355 IAC 2-5-6, or 355 IAC 2-5-7					
355 IAC 2-5-12	Operate an improperly designed, constructed, or maintained elephant ring.	\$100	\$200	\$300	Per day
355 IAC 2-5-12.5(a)	Operate secondary containment with a relief outlet, valve, or improper pump.	\$100	\$200	\$300	Per day
355 IAC 2-5-13(a)	Fail to maintain secondary containment.	\$100	\$200	\$300	Per day
355 IAC 2-5-13(b)	Fail to maintain secondary containment free of debris and foreign matter.	\$25	\$50	\$100	Per day
355 IAC 2-6-1.5(a)	Store dry bulk fertilizer in an unsound manner.	\$250	\$500	\$1,000	Per day
355 IAC 2-6-1.5(b)	Fail to provide a dry fertilizer operations pad.	\$250	\$500	\$1,000	Per incident
355 IAC 2-9-1	Fail to notify the state chemist annually of the bulk storage facility location and status.	\$50	\$100	\$150	Per year
IC 15-16-2-46	Sell, use, or remove without permission a product placed under a stop sale, use, or removal order.	\$250*	\$500*	\$1,000*	Per incident
355 IAC 7-3-1 and 355 IAC 7-3-2	Use fertilizer material without certification.	\$100	\$200	\$300	Per day
355 IAC 7-3-1	Engage in business for hire without a business license.	\$250	\$500	\$1,000	Per day
355 IAC 7-3-3	Distribute fertilizer material without a business license.	\$250	\$500	\$1,000	Per day
355 IAC 7-3-3	Distribute fertilizer material to an unlicensed user.	\$100	\$200	\$300	Per incident
355 IAC 7-3-4	Fail to train employees.	\$100	\$200	\$300	Per incident
355 IAC 7-3-4	Supervise more than 10 employees.	\$100	\$100	\$100	Per day and per person
355 IAC 7-3-4	Fail to properly supervise employee.	\$125	\$250	\$500	Per day
IC 15-16-2-43 and 355 IAC 7-4-4	Use fraud in applying for license, permit, or registration.	\$250	\$500	\$1,000	Per incident
355 IAC 8-3-1(1) and 355 IAC 8-3-1(2)	Fail to develop or follow a fertilizer application plan.	\$100	\$250	\$500	Per incident
355 IAC 8-3-1(3)	Apply fertilizer material directly to surface water.	\$100	\$250	\$500	Per incident
355 IAC 8-3-1(4)	Apply fertilizer material to saturated ground.	\$100	\$250	\$500	Per incident
355 IAC 8-3-1(5)	Apply fertilizer material from a public road.	\$100*	\$250*	\$500*	Per incident

355 IAC 8-3-2	Fail to follow proper unmanipulated organic fertilizer application setback or incorporation requirements.	\$250	\$500	\$1,000	Per incident
355 IAC 8-3-3	Improper application of unmanipulated organic fertilizer to highly erodible land.	\$250	\$500	\$1,000	Per incident
355 IAC 8-3-4	Improper application of unmanipulated organic fertilizer to frozen or snow covered ground.	\$250	\$500	\$1,000	Per incident
355 IAC 8-3-5	Fail to properly monitor organic fertilizer application.	\$100	\$250	\$500	Per day
355 IAC 8-4-1	Fail to properly stage inorganic fertilizer.	\$250	\$500	\$1,000	Per incident and per day
355 IAC 8-4-2	Fail to properly stage organic fertilizer.	\$250	\$500	\$1,000	Per incident and per day
355 IAC 8-5-1	Fail to keep proper distribution records.	\$25	\$50	\$75	Per day
355 IAC 8-5-2	Fail to keep proper application records.	\$25	\$50	\$75	Per day
355 IAC 8-5-3	Fail to make records available.	\$100*	\$250*	\$500*	Per incident
355 IAC 8-5-1 and 355 IAC 8-5-2	Make false records.	\$250*	\$500*	\$1,000*	Per incident

*This penalty shall not be subject to the potential for mitigation listed in section 3 of this rule.

9-3-2 Determining the violation number and count of violations to be assessed

Sec. 2. For purposes of imposing civil penalties, the state chemist shall comply with the following when determining the violation number and the count of violations:

- (1) Only violations committed within the immediate past five (5) years of the date of the violation being addressed shall be considered.
- (2) A person's violation numbers shall accumulate as first, second, third, etc., independently for each violation listed on the schedule.
- (3) When multiple different but similar or related violations are committed by a single distinguishable act or failure to act, only one (1) of those violations may be subject to a civil penalty for that act. This subdivision is intended to avoid duplicating civil penalty assessment for violation of multiple provisions of the statute or rule that may be essentially the same or closely related. This subdivision is not intended to limit in any way civil penalty assessment for violations that are the result of more than one (1) distinguishable unrelated act or failure to act or a violation of a continuing or repetitive nature.
- (4) When civil penalty assessment procedures outlined in subdivision (3) are being followed, the state chemist will utilize the appropriate violation with the highest penalty listed on the schedule.

9-3-3 Potential penalty mitigation

Sec. 3.

(a) The amount of a civil penalty may be adjusted downward to reflect particular mitigating factors. Some factors that may be considered are the following:

- (1) Good faith efforts of the violator to comply.
- (2) Cooperation by the violator with the state chemist during the investigation process.
- (3) The violator's history of compliance.
- (4) The potential for damage.
- (5) Remedial or corrective action taken by the violator.

(b) Failure to pay the full amount of any previously mitigated civil penalty by the date prescribed by the state chemist may subject the violator to the full amount of the nonmitigated civil penalty.

9-3-4 Notification of legal recourse

Sec. 4. The state chemist shall notify in writing each person on whom a civil penalty may be imposed of the opportunity to obtain a hearing on the proposed action by filing with the board within thirty (30) days notice of the action.

9-3-5 Imposition of civil penalties

Sec. 5.

(a) Nothing in this article shall require the state chemist to impose a civil penalty for a violation.

(b) The state chemist may initiate any of the following enforcement actions for a violation instead of or in addition to a civil penalty:

- (1) A warning.
- (2) A citation.
- (3) A license, permit, registration, or certification:

(A) denial;

(B) modification;

(C) suspension; or

(D) revocation.

(4) Referral for criminal prosecution.

(5) Referral to another appropriate agency.

9-3-6 Penalty money collected

Sec. 6. The state chemist shall credit all money collected for civil penalties to the Purdue Pesticide Programs for the purpose of providing education about fertilizers.