

DRAFT 355 IAC 8 fertilizer USE rule 11-30-09.doc
TITLE 355 STATE CHEMIST OF THE STATE OF INDIANA

Proposed Rule
LSA Document #09-XXX

DIGEST

Adds 355 IAC 8-1 to establish the purpose and applicability of the article. Adds 355 IAC 8-2 to establish definitions of terms used in the article. Adds 355 IAC 8-3 to establish the record keeping requirements for distribution and use of fertilizer material. Adds 355 IAC 8-4 to establish application and handling restrictions for organic fertilizer.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

355 IAC 8

SECTION 1. 355 IAC 8 IS ADDED TO READ AS FOLLOWS:

Article 8. Fertilizer Material Use, Distribution and Record Keeping

Rule 1. General Provisions

355 IAC 8-1-1 Purpose

Authority: IC 15-16-2-44

Affected: IC 15-16-2

Sec. 1. The purpose of this article is to ensure fertilizer materials are distributed and used effectively and safely as plant nutrients and to acknowledge related authorities granted to the Indiana Department of Environmental Management (IDEM) pursuant to IC 13-13-5-1(1) to protect waters of the State.

(State Chemist of the State of Indiana; 355 IAC 8-1-1)

355 IAC 8-1-2 Applicability

Authority: IC 15-16-2-44

Affected: IC 15-16-2

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;

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- (2) uses organic fertilizer from a confined feeding operation for purposes of producing an agricultural crop; or
- (3) distributes fertilizer material directly to any person described in 355 IAC 8-1-2

(b) This article does not apply to:

- (1) any person applying or distributing less than ten (10) cubic yards or four thousand (4,000) gallons of organic fertilizer in a calendar year or;
- (2) any person applying biosolid, industrial waste product, or pollutant-bearing water to the land in Indiana that comply with 327 IAC 6.1.

(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 rule, 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.

(State Chemist of the State of Indiana; 355 IAC 8-1-2)

Rule 2. Definitions

355 IAC 8-2-1 Applicability

Authority: IC 15-16-2-44

Affected: IC 15-16-2

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

(State Chemist of the State of Indiana; 355 IAC 8-2-1)

355 IAC 8-2-2 "Agricultural crop" defined

Authority: IC 15-16-2-44

Affected: IC 15-16-2

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.

(State Chemist of the State of Indiana; 355 IAC 8-2-2)

355 IAC 8-2-3 “Animal feeding operation” or “AFO” defined

Authority: IC 15-16-2-44

Affected: IC 15-16-2

Sec. 3. "Animal feeding operation" or "AFO", as defined in 327 IAC 5-4-3(b)(3), means a lot or facility, other than an aquatic animal production facility, where both of the following conditions are met:

(a) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of at least forty-five (45) days in any twelve (12) month period.

(b) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over at least fifty percent (50%) of the lot or facility.

(State Chemist of the State of Indiana; 355 IAC 8-2-3)

355 IAC 8-2-4 "Certified applicator" defined

Authority: IC 15-16-2-44

Affected: IC 15-16-2

Sec. 4. “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 distribute or use fertilizer material. The term includes both commercial applicators and private applicators.

(State Chemist of the State of Indiana; 355 IAC 8-2-4)

355 IAC 8-2-5 “Confined Feeding Operation” or “CFO” defined

Authority: IC 15-16-2-44

Affected: IC 15-16-2

Sec. 5. “Confined Feeding Operation” means any:

(a) confined feeding of at least:

- (1) three hundred (300) cattle;
- (2) six hundred (600) swine or sheep;
- (3) thirty thousand (30,000) fowl; or
- (4) five hundred (500) horses

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

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

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- (1) water pollution control laws;
- (2) any rules of the water pollution control board; or
- (3) IC 13-18-10; or
- (d) animal feeding operation located outside of Indiana that would be a CFO if located in Indiana.

(State Chemist of the State of Indiana; 355 IAC 8-2-5)

355 IAC 8-2-6 “Drainage inlet”

Authority: IC 15-16-2-44

Affected: IC 15-16-2

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

(State Chemist of the State of Indiana; 355 IAC 8-2-6)

355 IAC 8-2-7 “Distribute” defined

Authority: IC 15-16-2-44

Affected: IC 15-16-2

Sec. 7. “Distribute” means to:

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

(State Chemist of the State of Indiana; 355 IAC 8-2-7)

355 IAC 8-2-8 “Fertilizer application plan” defined

Authority: IC 15-16-2-44

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Affected: IC 15-16-2

Sec. 8. "Fertilizer application plan" means a written plan either annual or multi year for production of an agricultural crop that accounts for the reasonable expected nutrient needs of the anticipated crop to be grown.

(State Chemist of the State of Indiana; 355 IAC 8-2-8)

355 IAC 8-2-9 "Fertilizer material" defined

Authority: IC 15-16-2-44

Affected: IC 15-16-2

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 is:

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

The term includes unmanipulated animal and vegetable manures.

(State Chemist of the State of Indiana; 355 IAC 8-2-9)

355 IAC 7-2-10 "Gradient barrier" defined

Authority: IC 15-16-2-44

Affected: IC 15-16-2

Sec. 10. "Gradient barrier" means a structure or feature that prevents run-off from entering waters of the state.

(State Chemist of the State of Indiana; 355 IAC 8-2-10)

355 IAC 8-2-11 "Incorporation" defined

Authority: IC 15-16-2-44

Affected: IC 15-16-2

Sec. 11. "Incorporation" means the mixing of liquid or solid organic fertilizer, with the surface soil using standard agricultural practices, such as tillage.

(State Chemist of the State of Indiana; 355 IAC 8-2-11)

355 IAC 8-2-12 “Injection” defined

Authority: IC 15-16-2-44

Affected: IC 15-16-2

Sec. 12. "Injection" means the placement of liquid organic fertilizer beneath the surface of the soil in the crop root zone using equipment specifically designed for this purpose.

(State Chemist of the State of Indiana; 355 IAC 8-2-12)

355 IAC 8-2-13 “Manure” defined

Authority: IC 15-16-2-44

Affected: IC 15-16-2

Sec. 13. “Manure”, as defined in 327 IAC 16-2-22, means any liquid or solid animal excreta or any used bedding, litter, waste liquid, or contaminated run-off.

(State Chemist of the State of Indiana; 355 IAC 8-2-13)

355 IAC 8-2-14 “National Pollutant Discharge Elimination System Permit” or “NPDES Permit” defined

Authority: IC 15-16-2-44

Affected: IC 15-16-2

Sec. 14. "National Pollutant Discharge Elimination System permit" or “NPDES permit" means a written authorization issued by the commissioner of the Indiana Department of Environmental Management (IDEM) or the United States Environmental Protection Agency (US EPA) to regulate the discharge of pollutants under Section 402 of the Clean Water Act (CWA), (33 U.S.C. 1342), or corresponding state rules (327 IAC 5).

(State Chemist of the State of Indiana; 355 IAC 8-2-14)

355 IAC 8-2-15 “Organic Fertilizer” defined

Authority: IC 15-16-2-44

Affected: IC 15-16-2

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Sec. 15. "Organic Fertilizer" means any fertilizer material derived from either plant or animal products or manures containing one or more elements (other than carbon, hydrogen or oxygen) which are essential for plant growth. For the purpose of this article, the term does not include sludge.

(State Chemist of the State of Indiana; 355 IAC 8-2-15)

355 IAC 8-2-16 "Person" defined

Authority: IC 15-16-2-44

Affected: IC 15-16-2

Sec. 16. "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.

(State Chemist of the State of Indiana; 355 IAC 8-2-16)

355 IAC 8-2-17 "Public water supply surface intake structure" defined

Authority: IC 15-16-2-44

Affected: IC 15-16-2

Sec. 17. "Public water supply surface intake structure" means any structure used for the purpose of providing water through a public water supply system.

(State Chemist of the State of Indiana; 355 IAC 8-2-17)

355 IAC 8-2-18 "Public water supply well" defined

Authority: IC 15-16-2-44

Affected: IC 15-16-2

Sec. 18. "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:

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- (A) drinking;
 - (B) domestic use; or
 - (C) other purposes; or
- (2) has at least fifteen (15) service connections.

(State Chemist of the State of Indiana; 355 IAC 8-2-18)

355 IAC 8-2-19 “Sinkhole” defined

Authority: IC 15-16-2-44

Affected: IC 15-16-2

Sec. 19. “Sinkhole” means natural depression in the surface of the land caused by the collapse of the roof of a cavern or subterranean passage

(State Chemist of the State of Indiana; 355 IAC 8-2-19)

355 IAC 8-2-20 “Staging” defined

Authority: IC 15-16-2-44

Affected: IC 15-16-2

Sec. 20. “Staging” means the temporary placement of organic fertilizer in a pile at the site where the organic fertilizer will be used.

(State Chemist of the State of Indiana; 355 IAC 8-2-20)

355 IAC 8-2-21 “State chemist” defined

Authority: IC 15-16-2-44

Affected: IC 15-16-2

Sec. 21. “State chemist” means the Indiana state chemist or an appointed agent.

(State Chemist of the State of Indiana; 355 IAC 8-2-21)

355 IAC 8-2-22 “Use” defined

Authority: IC 15-16-2-44

Affected: IC 15-16-2

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Sec. 22. "Use", as established in IC 15-16-2-23, means the placement or usage of fertilizer materials on a targeted agricultural crop growing area and includes any references to application of fertilizer material.

(State Chemist of the State of Indiana; 355 IAC 8-2-22)

Rule 3. Fertilizer Material Use, Distribution and Record Keeping

355 IAC 8-3-1 For hire use and application of fertilizer material

Authority: IC 15-16-2-44

Affected: IC 15-16-2

Sec. 1. All fertilizer material applied for hire on the property of another person for purposes of producing an agricultural crop must be applied by a person that holds a valid certification as described in 7-4-1 of this article; and

(2) in accordance with the fertilizer application plan for the target application site.

(State Chemist of the State of Indiana; 355 IAC 8-3-1)

355 IAC 8-3-2 Use and application of organic fertilizer

Authority: IC 15-16-2-44

Affected: IC 15-16-2

Sec. 2. All organic fertilizer from a confined feeding operation applied for purposes of producing an agricultural crop must be applied by a person that holds a valid certification as described in 355 IAC 7-4-1; and

(2) in accordance with the fertilizer application plan for the target application site.

(State Chemist of the State of Indiana; 355 IAC 8-3-2)

355 IAC 8-3-3 Fertilizer material distribution records

Authority: IC 15-16-2-44

Affected: IC 15-16-2

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Sec. 3. (a) All persons or their employees who distribute fertilizer material as described in 355 IAC 7-3-3 shall keep and maintain records of all such distribution.

- (b) The records required under subsection (a) shall include the following:
- (1) Name of the certified applicator accepting receipt of the organic fertilizer.
 - (2) Certification number of the certified applicator in paragraph (1).
 - (3) Amount of organic fertilizer distributed.
 - (4) Representative nutrient value or values of the fertilizer material.
 - (5) Date of distribution.

(State Chemist of the State of Indiana; 355 IAC 8-3-3)

355 IAC 8-3-4 Fertilizer material application records

Authority: IC 15-16-2-44

Affected: IC 15-16-2

Sec. 4. (a) All persons or their employees who apply:

- (1) fertilizer material as described in 355 IAC 8-3-1 or
- (2) organic fertilizer as described in 355 IAC 8-3-2;

shall keep and maintain records of all such applications.

- (b) The records required under subsection (a) shall include the following:
- (1) Address or location description of the application.
 - (2) Name of the certified applicator making or supervising the application.
 - (3) Certification or license number of the certified applicator in paragraph (2).
 - (4) Rate applied.
 - (5) Representative nutrient value or values of the fertilizer material.
 - (6) Date of application.

(State Chemist of the State of Indiana; 355 IAC 8-3-4)

355 IAC 8-3-5 Record keeping period; inspection

Authority: IC 15-16-2-44

Affected: IC 15-16-2

Sec. 5. (a) All records required under this rule shall be:

- (1) created on the day of distribution or application; and
- (2) maintained for a period of two (2) years from the date of distribution or application.

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(b) All required records shall, upon written or oral request, be made available for inspection by the state chemist.

(State Chemist of the State of Indiana; 355 IAC 8-3-5)

Rule 4. Use and Application Restrictions for Organic Fertilizer

355 IAC 8-4-1 Staging restrictions for organic fertilizer

Authority: IC 15-16-2-44

Affected: IC 15-16-2

Sec. 1. (a) A certified applicator that accepts receipt of organic fertilizer that is being staged must apply the fertilizer:

- (1) within seventy-two (72) hours of receipt unless the applicator insures that the fertilizer is covered or otherwise protected from exposure to precipitation;
- (2) within ninety (90) days of receipt even when covered or otherwise protected from precipitation.

(b) A certified applicator may not stage organic fertilizer as follows:

- (1) Within three hundred (300) feet of:
 - (A) surface waters of the state;
 - (B) drainage inlets;
 - (C) sediment control basins; or
 - (D) water wells;

unless a barrier or surface gradient is present to direct any contaminated run-off away from the these items.

- (2) On a surface with a slope greater than six percent (6%), unless run-on and run-off of water is controlled;;
- (3) On standing water; or
- (4) On a waterway.

(State Chemist of the State of Indiana; 355 IAC 8-4-1)

355 IAC 8-4-2 Application restrictions for organic fertilizer

Authority: IC 15-16-2-44

Affected: IC 15-16-2

Sec. 2 (a) Except as provided in subsections (e), (f) and (g), a certified applicator must apply organic fertilizer in accordance with the setback distances in Table 1:

Table 1 SETBACK DISTANCES IN FEET

Known Feature	Liquid Injection or Single Pass Incorporation	Liquid Incorporation; Application to Pasture; or Solid or Composted Organic Fertilizer Application	Liquid Surface Application- Less than or Equal to 6% Slope; or Residue Cover	Liquid Surface Application- Greater than 6% Slope
Public water supply wells and public water supply surface intake structures	500	500	500	500
Surface waters of the state	25	50	100	200
Sinkholes (measured from the surficial opening or the lowest point)	25	50	100	200
Wells	50	50	100	200
Drainage inlets	5	50	100	200
Property lines and public roads	0	10	50	50

(b) Incorporation of liquid organic fertilizer in Table 1 means only liquid organic fertilizer that has been incorporated into the soil within twenty-four (24) hours of placement on the land.

(c) All setback distances must be measured from the edge of the area of actual placement of organic fertilizer on the land.

(d) The property line setback distances specified in subsection (c), Table 1, may be waived in writing by the owner of the adjoining property.

(e) If a properly designed and maintained filter strip is located between the application site and:

- (1) waters of the state;
- (2) any known well;
- (3) the surficial opening or lowest point of any sinkhole; or
- (4) any drainage inlet, including water and sediment control basins;

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then the setback is the width of the filter strip.

(f) The setback is ten (10) feet if a gradient barrier is located between the application site and:

- (1) surface waters of the state;
- (2) any known well;
- (3) the surficial opening or lowest point of any sinkhole; or
- (4) any drainage inlet, including water and sediment control basins.

(g) Any setback approved by the Commissioner of IDEM as provided in 327 IAC 16-10-4(g).

(State Chemist of the State of Indiana; 355 IAC 8-4-2)

Rule 5. Effective Date

355 IAC 8-5-1 Compliance with Effective Date of Rule

Authority: IC 15-16-2-44

Affected: IC 15-16-2

Sec. 1. (a) Full compliance by persons required to be certified under this rule shall be required no later than three (3) years following adoption.

(State Chemist of the State of Indiana; 355 IAC 8-5-1)