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## INDIANA STATE CHEMIST AND SEED COMMISSIONER

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### FY'95 ENFORCEMENT RESPONSE POLICY (ERP)

This policy has been developed to provide a mechanism to assist in the evaluation of the gravity of each situation and violation encountered, and to assist the Office of the Indiana State Chemist (OISC) in responding in a predictable, uniform, and timely manner with an appropriate enforcement action.

#### I. VIOLATIONS LIKELY TO BE ENCOUNTERED

##### A) Pesticide Use and Application Law (IC 15-3-3.6)

Made false or fraudulent claims through any media, misrepresenting the effect of pesticides or methods to be utilized.

Recommended, used, or supervised the use of any registered pesticide in a manner inconsistent with its labeling approved by the United States Environmental Protection Agency or Indiana state registration for that pesticide, or in violation of the United States Environmental Protection Agency or Indiana state restrictions on the use of that pesticide.

Used known ineffective or improper pesticides.

Operated faulty or unsafe equipment.

Operated in a careless or negligent manner.

Neglected or, after notice, refused to comply with this chapter, the rules adopted under this chapter, or of any lawful order or the state chemist.

Refused or neglected to keep and maintain the records required by this chapter, or to make reports and supply information when required

Made false or fraudulent records, invoices or reports

Engaged in or professed to be engaged in the business of using a pesticide for hire on the property of another without having a pesticide business license.

Used a restricted use pesticide without having a licensed applicator or a licensed certified operator in direct supervision.

Used fraud or misrepresentation in making an application for, or renewal of, a license, permit, registration, or certification.

Refused or neglected to comply with any limitations or restriction on or in a duly issued license, permit, registration or certification.

Aided or abetted a person to evade the provisions of this chapter, conspired with a licensed or unlicensed person to evade the provisions of this chapter, or allowed a license, permit, registration or certification to be used by another person.

Made false or misleading statements during or after an inspection concerning any infestation or infection of pests.

Impersonated any federal, state, county or city inspector, investigator, or official.

Knowingly purchased or used a pesticide that was not registered under IC 15-3-3.5.

Failed to continuously maintain financial responsibility required under section 13 of this chapter.

B) Pesticide Registration Law (IC 15-3-3.5)

Distributing a non-registered pesticide.

Distributing a misbranded pesticide.

Distributing an adulterated pesticide.

Violating a Stop Sale, Use, or Removal Order.

Storing pesticides in an unsafe manner.

Disposing of pesticides in an unsafe manner.

## II. DETERMINING GRAVITY OF VIOLATION AND LEVEL OF ENFORCEMENT

### 1. The nature or gravity of the violation.

Includes, without limitation, concepts such as and relating to: seriousness of violation; type of violation; character of violation; frequency, duration, persistence of violation; whether repeated or continuous; whether damage susceptible to cleanup or abatement; likelihood of permanent injury; population at risk; and degree of harm, potential harm, effect on or risk to public health, safety and welfare, the environment, or the reasonable use of property.

### 2. The degree of the violator's culpability.

Includes, without limitation, concepts such as and relating to: whether violation was reported or concealed; whether cause of violation was result of accident, mistake, or omission, negligence or intentional act, gross negligence, reckless, wanton misconduct, willfulness, recalcitrance, defiance or indifference, misrepresentations, knowing falsities, fraud or recurrent pattern; and degree of care to prevent violations.

### 3. The extent of the violator's good faith efforts to comply.

Includes, without limitations, concepts such as and relating to: cooperativeness of violator; effectiveness of response actions or corrective measures and efforts to comply; available technology; ability to comply, time necessary to comply; opportunity an degree of difficulty to correct; technical practicability and economic reasonableness of reducing or eliminating contamination; voluntary cleanup; unproven or innovative nature of control equipment; extent to which violation continued after notice to correct; and amount necessary to ensure immediate and continued compliance.

### 4. The economic benefit from delayed compliance.

Includes, without limitation, concepts such as and relating to: amount of money violator saved by not having made necessary expenditures; profit realized, advantages gained by noncompliance; and economic savings realized.

### 5. The history of prior violations.

Includes, without limitation, concepts such as relating to previous compliance record; and record of maintenance.

6. The economic impact of penalty on the violator.

Includes, without limitation, concepts such as and relating to: effect of penalty on ability to continue in business; appropriateness of penalty to size of business; violator's ability to pay, if fine, economic and financial status of violator; gross revenues of violator; and size of operation.

7. The deterrent effect of the penalty.

Includes, without limitation, concepts such as and relating to: amount which would constitute actual and substantial economic deterrent to violation for which it is assessed; and penalty substantial enough to deter others from similar violations.

8. The costs to the state of enforcing against the violator, or of cleaning up its pollution.

Includes, without limitation, concepts such as and relating to: costs of investigation, enforcement and/or cleanup; restoration of environmental and natural resources; replenishing wildlife; other extraordinary costs to state; and reasonable compensation for adverse environmental effects determined by toxicity, degradability, and dispersal effects of contamination, sensitivity of the receiving environment and degree of existing environmental quality.

9. A balancing of the competing interests served by penalizing or not penalizing the violator.

Includes, without limitation, concepts such as and relating to: weighing societal costs and benefits by considering advantages and disadvantages to residents and businesses, social and economic value of activity, use of property, area suitability; and practicability of reducing or eliminating contamination.

10. Other relevant factors.

The Pesticide Investigator is responsible for case development and preparation of recommended enforcement action. The case file is then forwarded to the Pesticide Administrator who makes the final decision after consultation with the Investigator, respective Program Manager and, if necessary, legal counsel.

### III. ENFORCEMENT REMEDIES AVAILABLE

#### A) Pesticide Use and Application Law (IC 15-3-3.6)

1) Administrative Actions By OISC

Advisory letter

Warning letter

Citation for violation

    Informal hearing

    Formal hearing

License, Certification, Permit or Registration modification

License, Certification, Permit or Registration suspension without modification

License, Certification, Permit or Registration suspension with modification

License, Certification, Permit or Registration revocation

License, Certification, Permit or Registration denial.

2) Injunctive Relief Through a Court

    To enjoin violations or threatened violations

3) Criminal Prosecution Through a Court

    Class C Misdemeanor (maximum \$500 fine and sixty (60) days in jail)

4) Civil Penalty Imposed by OISC

    The Indiana Pesticide Review Board shall establish a schedule of civil penalties that may be imposed by OISC for violations. The Board has developed a rule (357 IAC 1-7) that establishes the penalty schedule.

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

    For a violation by a person who is not described above the following:

        Two hundred fifty dollars (\$250) maximum for a persons first violation.

        Five hundred dollars (\$500) maximum for a persons second violation.

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

- The state chemist may impose a civil penalty for a person's first violation **only** after the board has approved the imposition of the civil penalty.
- If a violation is of a continuing nature, the state chemist may impose a civil penalty for each day that the violation occurred.
- \* A proceeding that involves the imposition of a civil penalty may be consolidated with any other proceeding commenced to enforce this chapter or the rules adopted under this chapter.
- Money collected for civil penalties shall be credited to the agricultural extension service. The money may be used only for the purpose of providing education about pesticides.

## B. Pesticide Registration Law (IC 15-3-3.5)

### 1) Administrative Action By OISC

- Advisory letter
- Warning letter
- Citation for violation
- Stop Sale, Use or Removal Order
- Recall Order
- Informal hearing
- Formal hearing
- Registration denial
- Registration suspension
- Registration revocation
- Registration cancellation
- Registration amendment

### 2) Injunctive Relief Through a Court

- To enjoin violations or continued violations

3) Criminal Prosecution Through a Court

Class C Misdemeanor (maximum \$500 fine and sixty (60) days in jail)

4) Civil Penalty Imposed by OISC

The Indiana Pesticide Review Board shall establish a schedule of civil penalties that may be imposed by OISC for violations. The Board has developed a rule (357 IAC 1-6) that establishes this schedule.

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

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A proceeding that involves the imposition of a civil penalty may be consolidated with any other proceeding commenced to enforce this chapter of the rules adopted under this chapter.

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