

# CASE SUMMARY

Case #PS19-0235

**Complainant:** Anonymous Complainant

**Respondent:** Joe Frey  
Shelby Frey  
Union Ag LLC  
4999 East 150 North  
Crawfordsville, Indiana 47933  
Certified Applicator

1. On June 11, 2019, an anonymous complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC), via the Indiana Department of Environmental Management (IDEM), and stated Joe Frey “*is storing chemicals without secondary containment and some tanks are on a hillside*”.
2. On June 12, 2019, I went to the Frey Farm and met with Shelby Frey. I observed eight (8) bulk pesticide containers that were out of containment located at 1303 N 425 E Crawfordsville, Indiana. Mr. Frey was advised to place the containers in containment and was issued an Action Order.



3. The shuttles contained the following products:
  - a. Prefix (EPA Reg. #100-1268) active ingredients metolachlor and fomesafen;
  - b. Rifle (EPA Reg. #34704-861) active ingredient dicamba;
  - c. Mad Dog Plus (EPA Reg. #34704-890) active ingredient glyphosate; and
  - d. Atrazine 4L (EPA Reg. #34704-69) active ingredient atrazine.
4. I then obtained from Nutrien Ag in Clarks Hill, Indiana invoices which indicate the Mad Dog Plus and the Atrazine 4L were received on March 7, 2019 and the Prefix and Rifle were received on March 28, 2019.

5. This would then indicate that the Mad Dog Plus and Atrazine 4L were out of containment according to regulations for a total of sixty-six (66) days on my visit. The Prefix and Rifle were out of containment for a total of forty-five (45) days. This is a 'per day' violation. After considering the thirty (30) day grace period for shuttles out of containment, the remaining thirty-six (36) days would count as violations.

Kevin W. Neal  
Investigator

Date: June 12, 2019

**Disposition:**

- A. Shelby Frey and Union Ag LLC were cited for thirty-six (36) counts of violation of section 65(6) of the Indiana Pesticide Use and Application Law, specifically 355 IAC 5-4-1(a), for storing bulk storage containers outside of secondary containment. A civil penalty in the amount of \$9,000.00 (36 counts x \$250.00 per count) was assessed. Consideration was given to the fact a restricted use pesticide was involved. By rule, this violation may not be mitigated by the Office of Indiana State Chemist.
- B. On October 3, 2019, I received an email from Shelby Frey indicating the \$9,000.00 civil penalty was 'very unfair'. I returned the email indicating that I was not allowed to mitigate the civil penalty but would propose reducing the penalty to \$1,800.00 to the Indiana Pesticide Review Board (IPRB).
- C. On October 4, 2019, I receive another email from Shelby Frey indicating that the \$1,800.00 civil penalty was too high and that a 'warning' should have been issued. Mr. Frey requested a formal hearing before the IPRB. This information was immediately forwarded to David Scott, Secretary to the Board.
- D. On February 21, 2020, a formal hearing was held with a panel of the IPRB, at the Daniel's Turf Center. The panel upheld the \$1,800.00 civil penalty.

George N. Saxton  
Compliance Officer

Draft Date: February 27, 2020