



Dave Scott, Secretary

INDIANA PESTICIDE REVIEW BOARD

175 S. University Street
West Lafayette, IN 47907-2063
(765) 494-1492
scottde@purdue.edu

February 20, 2017

BEFORE THE INDIANA PESTICIDE REVIEW BOARD

IN RE:

RURAL KING,

Petitioner,

CASE NO. : 2016/0591

vs.

OFFICE OF THE

INDIANA STATE CHEMIST

Respondent.

SUMMARY OF APPEAL HEARING

On January 13, 2017, from 9:04 a.m. to 11:03 a.m. EST, at the Office of the Indiana State Chemist, 175 South University Street, West Lafayette, Indiana 47907, a hearing was held on the appeal of the citation and \$45,000.00 civil penalty issued by the State Chemist on May 4, 2016, to Mr. Mike Hurley and Rural King, 2300 East Morgan Avenue, Evansville, Indiana 47711, for violation of I.C. 15-16-65(6): "Neglected, or after notice, refused to comply with this chapter, the rules adopted under this chapter, or any lawful order of the state chemist or board," specifically, 355 IAC 5-4-1(a): "Liquid pesticide storage containers shall be located within secondary containment constructed with a base, perimeter wall and sloped floor."

Present representing the Indiana Pesticide Review Board (IPRB) were Ron Hellenthal, Board President, and Administrative Law Judge Panel and Board Members Tim Gibb, Julia Tipton Hogan, and Bob Andrews. Present representing the Office of the Indiana Attorney General was Kevin McDowell. Present representing Rural King was Ray McPherson. Present representing the Office of the Indiana State Chemist was George Saxton. Various members of the public were also present.

Deliberations by the Administrative Law Judge Panel included the following paraphrased comments: 1) Rural King's claim to have instituted standard operating procedures to their bulk pesticide ordering and storage process to prevent any future possibility of uncontained bulk storage is a positive corrective measure; 2) The \$45,000.00 proposed penalty, while calculated and issued by OISC in accordance with the civil penalty rule, is too high and out of line with other penalties issued by OISC; 3) A penalty this large would put many small businesses out of business; 4) Penalties this large could damage the otherwise cooperative working relationship OISC has developed with most regulated industries; 5) This is a penalty to address protection of the public and the environment, so it should be substantial; 6) Based on written communications between Rural King staff, the penalty should be large enough to insure that Rural King upper management will take the issue seriously; 7) There is interest in the size of the penalty OISC would have assessed if OISC had been allowed to mitigate, as they do for other violations; 8) Suggest 50% (\$22,500.00) of the proposed penalty; 9) Still too high, suggest 10% (\$4,500.00); 10) 10% does not seem adequate to help Rural King make a decision on whether they really want to be in the bulk pesticide distribution business, since it seems to be only a small part of their overall business; 11) \$22,500.00 may be too high, but \$4,500.00 is too low; 12) Suggest a middle ground of \$15,000.00; 13) \$15,000.00 is within an order of magnitude of what OISC might have proposed, had they been allowed to mitigate the penalty.

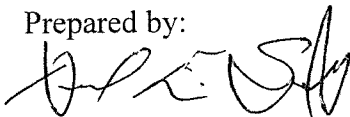
RECOMMENDED DECISION OF THE PANEL

Following deliberations, Bob Andrews and Tim Gibb respectively made a motion and seconded the motion to recommend to the IPRB that the \$45,000.00 civil penalty issued by OISC to Rural King be reduced to \$15,000.00, payable to the State Chemist within thirty (30) days of notification of the final decision by the Board. The panel vote was three in favor of the motion and zero opposed.

RIGHT OF APPEAL OF THIS DECISION

As provided in I.C. 4-21.5-3-29(d), any party aggrieved by the Recommended Decision of the Panel may file written objections with the Indiana Pesticide Review Board. The written objections must be filed with the Board within fifteen (15) days after the Recommended Decision is served. Any written objections must also be provided to the other party in this action.

Prepared by:



David E. Scott
IPRB Secretary

CASE SUMMARY

Case #2016/0591

Complainant: Office of Indiana State Chemist (OISC)
175 S. University Street
West Lafayette, IN 47907-2063
765-494-1585

Respondent: Mike Hurley Manager
John Plymire Assistant Manager
Rural King, Store 14
2300 E. Morgan Avenue
Evansville, IN 47711
(812) 473-5750

1. On March 11, 2016, I visited the Rural King retail store, located on Morgan Avenue in Evansville, Indiana. I found the store had a shuttle container (265 gallons) of Gly Star Plus (glyphosate) manufactured by Albaugh, LLC, Ankeny, Iowa, Establishment Number 42750-MO-001, and EPA Product Number 42750-61, not in secondary containment (figures 1, 2, 3). Listed in store inventory as Glyphosate 41 plus Shuttle 265 with SKU 62580296 (See attachment). After speaking to Mike Hurley, Manager and also John Plymire, Assistant Manager, and checking the documentation, it was determined the shuttle was delivered to this location on February 27, 2015. Mr. Hurley stated he was aware chemical shuttles required secondary containment and also that once received, a shuttle could only be out of containment 30 days. He also stated that this location, at one time, did have a secondary containment for shuttles, but it had been sent to another location because it took up too much space. There was an empty shuttle on display in the store; the full shuttle was located outside on the east side of the building in a secured area. A Stop Action Order was issued requiring the store to return the Gly Star Plus (Glyphosate 41+ Shuttle 265) shuttle to the warehouse for containment.



Figure 1



Figure 2



Figure 3

Jean Schnur
Inspector

Date: March 11, 2016

DISPOSITION:

- A. Rural King, Store 14 was cited for one hundred eighty (180) counts¹ of violation of section 65(6) of the Indiana Pesticide Use and Application Law, specifically 355 IAC 5-4-1(a), for storing bulk pesticides outside of secondary containment. A civil penalty in the amount of \$\$45,000.00 (180 counts x \$250.00 per count) was assessed.²
- B. On June 21, 2016, OISC received two facsimiles from Mike Hurley, Rural King Manager of the Evansville Rural King. One of the facsimiles was a letter dated May 20, 2016, requesting a hearing for the violation and assessed civil penalty. The second facsimile was a cover letter indicating a request for a hearing was made by Mr. Hurley on May 20, 2016, that he believed OISC had not received.
- C. On June 21, 2016, I contacted Mr. Hurley about his request for a formal hearing. He indicated at that time he did not want to dispute the charges but did not feel he should be held accountable because he did not know about the rule requiring bulk pesticides to be in secondary containment. He stated he also thought the amount of civil penalty was excessive. He stated he just wanted to go before the Indiana Pesticide Review Board (IPRB) about the rule.
- D. I told Mr. Hurley the IPRB considered the violation of the secondary containment rule to be serious in that I was not allowed to mitigate this particular penalty. I also advised him I would contact the Secretary for the IPRB and let him know about his request of an audience before the Board.
- E. On January 13, 2017, a three-person Administrative Law Judge (ALJ) panel from the Indiana Pesticide Review Board met to hear evidence in this case. After deliberation, the ALJ panel decided to recommend to the full IPRB that the civil penalty be reduced to \$15,000.00.

George N. Saxton
Compliance Officer

Draft Date: January 13, 2017

¹ By rule, civil penalties may not be imposed for more than one hundred eighty (180) days 357 IAC 1-6-2(b)

² By rule, penalties for this violation may not be mitigated 357 IAC 1-6-2(a)