

## A Summary of Cases

October 26, 2020

2018/0766 On July 5, 2018, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report a possible misapplication to his agricultural field.

**Disposition:** Kevin Hannon, Joseph Walterhouse and Westville Farm Supply/Northwest Farm Fertilizers were cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift and/or application speed restrictions. A civil penalty in the amount of \$250.00 was assessed for this violation. Consideration was given to the fact this was their first violation of similar nature. Consideration was also given to the fact a restricted use pesticide was involved.

PS19-0047 On November 9, 2018, the complainant Amy Fiekas contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report a pesticide business named “No More Bites Tonight” attempted to do a bed bug treatment for hire at the Roselawn Apartment Complex without approval from the apartment complex management.

**Disposition:** This case was forwarded to E.P.A. Criminal Investigation Division (CID) and Office of Pesticide Programs (OPP) for federal review.

PS19-0053 On November 19, 2018, I visited the Facebook page for “No More Bites Tonight.” I saw a Facebook post from Marie Orr in Butler, Indiana dated September 19, 2018 which showed the following (figure 1):

*“I have had nothing but problems cleaning this up, I still have spiders, and fleas. i have ruined a shop vac, ruined a Dyson vacuum, and ruined a shark vacuum. this powder is horrible to clean up off the walls, floors and everything it is on. it makes a paste like where you have to wash it several times had a professional cleaner come into my house to clean it up, worse mistake ever having this powder in my house especially with my 4 month old, 2 year old, 9 year old, and 11 year old children along with my poordog. we have all gotten sick from me cleaning the powder up. please please do no get this powder in your house unless you really want to spent more money cleaning*

**Disposition:** This case was forwarded to EPA’s Criminal Investigation Division (CID) and Office of Pesticide Programs (OPP) for federal review.

PS19-0054 On November 21, 2018, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report an IDEM permitted confined feeding operation (CFO) is allegedly distributing manure without a fertilizer business license.

**Disposition:** Joseph Yoder was cited for four (4) counts for violation of Section 44 of the Indiana Commercial Fertilizer Law, specifically 355 IAC 7-3-3, for distribution of fertilizer material without a business license. A civil penalty in the amount of \$1,000.00

(4 counts x \$250.00 per count) was assessed. However, the civil penalty was reduced to \$200.00. Consideration was given to the fact Joseph Yoder cooperated during the investigation; corrective action was taken; there was a good-faith effort to comply and no previous violations of similar nature were documented.

**PS19-0206** On May 28, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report on May 21, 2019, the neighboring farmer made a pesticide application to a farm field and the complainant now has what appears to be a pesticide exposure symptom to his trees.

**Disposition:** Anthony Herd and Herd Agri Enterprises were cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift management. A civil penalty in the amount of \$100.00 was assessed for this violation. In addition, the Private Applicator permit issued to Mr. Herd was suspended from April 1, 2020 through September 30, 2020. Consideration was given to the fact this was his sixth violation of similar nature within the past five (5) years. See case numbers 2017/1095, 2017/1086, 2017/1041, 2017/1104 and 2017/1075.

Anthony Herd was cited for violation of section 65(8) of the Indiana Pesticide Use and Application Law for making a false or fraudulent record, invoice or report. A civil penalty in the amount of \$100.00 was assessed for this violation.

**PS19-0220** On June 4, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report agricultural drift to his bees from an aerial application made to a neighboring alfalfa field.

**Disposition:** Russell Guse and Bluebird Ag were cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift management and application when bees are present. A civil penalty in the amount of \$250.00 was assessed for this violation. Consideration was given to the fact this was his first violation of similar nature. Consideration was also given to the fact a restricted use pesticide was involved.

Russell Guse and Bluebird Ag was cited for violation of section 65(6) of the Indiana Pesticide Use and Application Law, specifically 357 IAC 1-12-2, for applying a pesticide in a manner that allows it to drift from the target site in sufficient quantity to cause harm to a non-target site.

**PS19-0341** On July 15, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report that he believes a neighboring farmer applied dicamba to a field that drifted onto his Liberty Link soybeans.

**Disposition:** Carl Seib was cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift management. A civil penalty in the amount of \$100.00 was assessed for this violation.

Consideration was given to the fact this was his first violation of similar nature. Consideration was also given to the fact a restricted use pesticide was involved.

Ps19-0364 On July 19, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report that his non-DT beans appear to have been affected by dicamba sprayed to one of the neighboring fields.

**Disposition:** Based on the evidence collected in this investigation, it has been determined that Clunette Elevator Co. Inc. and Duane Metzger was in violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to comply with the drift management restrictions on the label for the herbicide Fexapan. A civil penalty in the amount of \$250.00 was assessed for this violation. Consideration was given to the fact this was Mr. Metzger's first violation of similar nature. Consideration was also given to the fact a restricted use pesticide was involved.

Clunette Elevator Co. Inc. and Duane Metzger were cited for violation of section 65(6) of the Indiana Pesticide Use and Application Law, specifically 357 IAC 1-12-2, for applying a pesticide in a manner that allows it to drift from the target site in sufficient quantity as to cause harm to a non-target site.

It should be noted that OISC was not able to determine whether the herbicide moved off-target as the result of drift, application into an inversion, or volatilization at some point after the application, and was not able to clearly identify the source of the off-target movement.

PS19-0374 On July 9, 2019, during my investigation of a potential drift case (see case #PS19-0320), I found that Scott Odle had been applying and purchasing Restricted Use Pesticides (RUP) without being certified through the Office of Indiana State Chemist (OISC). Mr. Odle's OISC Private Applicator certification was found to have expired on December 31, 2015. Mr. Odle advised he believed he had completed his recertification and was unaware he was unlawfully purchasing and applying the RUPs. Mr. Odle had informed me he had purchased the RUPs from Nutrien Ag Solutions Inc. (Nutrien), formerly Crop Production Services Inc., and Windy Ridge Ag LLC (see case #PS20-0043).

**Disposition:** Nutrien Ag Solutions Inc. was cited for two (2) counts of violation of section 65(6) of the Indiana Pesticide Use and Application Law, specifically 357 IAC 1-3-2, for distributing a restricted use pesticide product to a non-certified user. A civil penalty in the amount of \$500.00 (2 counts x \$250.00 per count) was assessed. By rule, this civil penalty may not be mitigated by the Office of Indiana State Chemist.

PS19-0404 On July 30, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report that this past Saturday, he and his family were doing a yard sale when an aerial applicator flew over them and sprayed them. Complainant stated his wife's glasses are spotted from the spray. Allegedly some adults and children became ill as a result. Complainant stated he has photos and clothing he will

surrender to OISC with the understanding the clothing will be destroyed in the laboratory process.

**Disposition:** Michael Parker and Ed Air, Inc. were cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding to drift. A civil penalty in the amount of \$250.00 was assessed for this violation. Consideration was given to the fact this was Mr. Parker's first violation of similar nature. Consideration was also given to the fact there was potential for human harm.

**PS19-0408** On July 26, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report a pesticide application of dicamba to a neighboring farm field drifted onto his Liberty Link soybeans.

**Disposition:** Colin Solms was cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift management. A civil penalty in the amount of \$100.00 was assessed for this violation. Consideration was given to the fact this was his first violation of similar nature. Consideration was also given to the fact a restricted use pesticide was involved.

**PS19-0425** On August 1, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report an application of dicamba to a neighboring farm field drifted onto his Liberty Link soybeans.

**Disposition:** Douglas Morrow was cited for violation of section 65(8) of the Indiana Pesticide Use and Application Law for making a false or fraudulent record, invoice or report. A civil penalty in the amount of \$100.00 was assessed for this violation.

As of May 21, 2020, Douglas Morrow had not paid the \$100.00 civil penalty assessed for this violation. The case was closed and forwarded to Purdue Collections.

**PS19-0440** On August 2, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report he suspected a neighboring farmer applied dicamba to corn that adversely affected his soybeans.

**Disposition:** Douglas Morrow was cited for violation of section 65(8) of the Indiana Pesticide Use and Application Law for making a false or fraudulent record, invoice or report. A civil penalty in the amount of \$100.00 was assessed for this violation.

As of May 21, 2020, Douglas Morrow had not paid the \$100.00 civil penalty assessed for this violation. The case was closed and forwarded to Purdue Collections.

**PS19-0443** On August 5, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report on August 3, 2019 an aerial application to a neighboring farm field sprayed him and his property.



**Disposition:** Colby Smith and Dungan Aerial Services Inc. were cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift to people. A civil penalty in the amount of \$1,000.00 was assessed for this violation. Consideration was given to the fact this was Colby Smith's third violation of similar nature. See case numbers 2016/1090 and 2016/1083. In lieu of a license suspension, Dungan Aerial Services agreed to:

- a. Use a wider boom-width for fewer passes;
- b. Decrease swath width;
- c. Pull weather data from more than one source;
- d. Take more time to survey the area;
- e. Look for people, vehicles and other equipment near or in the treatment area.

PS19-0452 On August 5, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report that an arborist advised him that a pesticide applied to a neighboring farm field has adversely affected his trees.

**Disposition:** Darrell Shemwell and Posey County Co-Op were cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift management. A civil penalty in the amount of \$250.00 was assessed for this violation. Consideration was given to the fact this was Mr. Shemwell's first violation of similar nature. Consideration was also given to the fact a restricted use pesticide was involved.

PS19-0468 On August 7, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report last Thursday (August 1, 2019) a helicopter made a pesticide application to a field that drifted onto his property and made him and his wife ill.

**Disposition:** Nathan Schrock and Crosswind Aviation Services LLC were cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift. A civil penalty in the amount of \$500.00 was assessed for this violation. Consideration was given to the fact this was his third violation of similar nature within the past five (5) years. See case numbers 2017/1082 and 2017/1189.

PS19-0469 On August 8, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report that a neighboring farmer made a pesticide application to a nearby field and the pesticide drifted onto him. He stated he has a shirt he will surrender for analysis with the understanding the shirt will not be returned.

**Disposition:** Todd Kirkman and Co-Alliance LLP were cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift to people. A civil penalty in the amount of \$250.00 was assessed for this violation. Consideration was given to the fact this was Mr. Kirkman's first violation of similar nature. Consideration was also given to the fact there was potential for human harm.

PS19-0477 On August 8, 2019, Agent Joe Becovitz, Agent Sarah Caffery and I performed a Producer Establishment Inspection (PEI) at BHC, Inc. in Indianapolis, Indiana. A Notice of Inspection was issued and state credentials were presented to Yangsheng Zhang, Director R&D. I explained that this was a for-cause inspection and that I would be inspecting repackaging agreements, inbound, production and distribution records, bin labels and any product that was packaged, labeled and ready for shipment. I explained that the reason the inspection was for-cause was that it was believed that unregistered pesticides were being produced at this location.

**Disposition:** This case was forwarded to USEPA for federal review.

PS19-0485 On August 12, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report that a neighboring farmer apparently sprayed a field with dicamba which adversely affected his non dicamba-tolerant (DT) soybeans.

**Disposition:** Tad Hook and The Andersons were cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift management. A civil penalty in the amount of \$500.00 was assessed for this violation. Consideration was given to the fact this was Tad Hook's second violation of similar nature (see case number 2018/0745). Consideration was also given to the fact a restricted use pesticide was involved.

PS19-0506 On August 14, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report that it appears a neighboring farmer applied dicamba to a field that adversely affected the complainant's Liberty beans.

**Disposition:** Jason Vaughn and Premier Ag were cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift management. A civil penalty in the amount of \$250.00 was assessed for this violation. Consideration was given to the fact this was Mr. Vaughn's first violation of similar nature. Consideration was also given to the fact a restricted use pesticide was involved.

Based on the evidence collected in this investigation, it has been determined that Mr. Vaughn failed to comply with the drift management restrictions on the label for the herbicide Engenia. It should also be noted that OISC was not able to determine whether the herbicide moved off-target as the result of drift, application into an inversion, or volatilization at some point after the application, and was not able to clearly identify the source of the off-target movement.

PS19-0512 On August 14, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report that the pesticide from an aerial pesticide application to the field north of her residence, drifted onto her property and her as she was on the back porch. She stated her eyes and throat were burning.

**Disposition:** Nathan Schrock and Crosswind Aviation Services, LLC were cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift management. A civil penalty in the amount of \$500.00 was assessed for this violation. Consideration was given to the fact this was Mr. Schrock's second violation of similar nature and there was potential for human harm. See case number 2017/1189.

**PS19-0526** On August 16, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report that today, an aerial applicator flew over his house drifting onto his property; children's playground equipment and bicycles.

**Disposition:** Edward L. Huddleston and Ed Air, Inc. were cited for violation of section 65(5) of the Indiana Pesticide Use and Application Law for operating in a careless and/or negligent manner. A civil penalty in the amount of \$1,000.00 was assessed for this violation. Consideration was given to the fact this was his third violation of similar nature. See case numbers 2017/1103 and 2018/0797.

**PS19-0527** On August 16, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report a neighboring farmer applied dicamba that has adversely affected his beans.

**Disposition:** Jesse Spurgeon and CFS (KOVA) were cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift management. A civil penalty in the amount of \$250.00 was assessed for this violation. Consideration was given to the fact this was Mr. Spurgeon's first violation of similar nature. Consideration was also given to the fact a restricted use pesticide was involved.

**PS19-0532** On August 5, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report that an arborist advised him that a pesticide applied to a neighboring farm field has adversely affected his trees.

**Disposition:** Darrell Shemwell and Posey County Co-Op were cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift management. Consideration was given to the fact this was Mr. Shemwell's first violation of similar nature. Consideration was also given to the fact a restricted use pesticide was involved. A civil penalty in the amount of \$250.00 had already been assessed for this application in case number PS19-0452.

**PS19-0573** On August 27, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report an improper bedbug treatment.

**Disposition:** This case was referred to the U.S. E.P.A. Criminal Investigation Division (CID) for federal investigation.

**PS19-0605** On September 9, 2019, I performed a routine Producer Establishment Inspection (PEI) at Hawkins Inc. in Muncie, IN. A Notice of Inspection was issued and state credentials were presented to Keith Uccello, Branch Manager. I explained that this was a routine not-for-cause inspection and that I would be inspecting repackaging agreements, inbound, production and distribution records, bin labels and any product that was packaged, labeled and ready for shipment.

**Disposition:**

A. A label review was requested on September 17, 2019.

B. On November 8, 2019, the label review was completed and revealed that as determined during the initial review, label had incorrect EPA Est. Number. Additional concerns:

The label is misbranded;

- i. Storage and Disposal section is required to be "clearly set apart (as blocked or in a box) from the rest of the "Directions for Use" (See §156.10(i)(2)(ix) and PR Notice 83-3)
- ii. NSF Certification: The master label indicates no certification to NSF, in order to place this certification on the label it must appear on the master label.
- iii. The following statement is not on the master label: "AZONE 15 is registered for other uses. Contact HAWKINS INC for additional approved uses and directions". A pesticide product must be used in accordance with the labeling available with the product. Additional uses must be provided (in a booklet or pull-off label).

C. Hawkins Inc. was cited for violation of section 57(5) of the Indiana Pesticide Registration Law for distributing a pesticide product that was misbranded. A civil penalty in the amount of \$250.00 was assessed for this violation.

**PS19-0626** On August 14, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report that it appears a neighboring farmer applied dicamba to a field that adversely affected the complainant's Liberty beans.

**Disposition:** Brian Wischmeier was cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift management. A civil penalty in the amount of \$100.00 was assessed for this violation. Consideration was given to the fact this was his first violation of similar nature. Consideration was also given to the fact a restricted use pesticides was involved.

**PS20-0022** 1. April 19, 2017, Ed White, Assistant Pesticide Administrator, sent a package to FL Dept. of Agriculture & Consumer Services in regard to concerns that were brought to his attention regarding GreenAgri Solutions LLC. Concerns about the product included:

- a. At that time, GreenAgri Solutions could not be located in the EPA database as a primary or distributor company.

- b. Mr. White confirmed concerns about the unregistered pesticide from the company's website ([www.greenagrisolutions.com](http://www.greenagrisolutions.com)).
  - i. An unregistered antimicrobial product called SAFE-ZONE LOD or SAFE-ZONE LOD PW3300
  - ii. Misleading information about the product's active ingredient. The website claimed, "stabilized ozone" represented as "mineral oxy-chloride". However, these ingredients cannot be located in EPA's chemical name dictionary.

2. Mr. White did not receive any response from Florida in regards to this letter.

3. On September 10, 2019, the Office of Indiana State Chemist (OISC) pesticide registration department received an application to register AG 5000 (EPA Reg. No. 92945-1-93735) from Green Agri Solutions LLC.

4. Our initial review of the label identified claims on the marketplace label that were not supported by the master label or the basic registration through U.S. EPA. Upon identifying concerns of the products labeling, Mr. White recommended collaboration between OISC pesticide registration and enforcement departments to determine current distribution and use of the product in Indiana and pending registration.

**Disposition:** Green Agri Solutions, LLC was cited for violation of section 57(1) of the Indiana Pesticide Registration Law for distributing a pesticide product that was not registered in the state of Indiana. A civil penalty in the amount of \$250.00 was assessed for this violation.

Green Agri Solutions, LLC was cited for violation of section 57(5) of the Indiana Pesticide Registration Law for distributing a pesticide product that was adulterated or misbranded. A civil penalty in the amount of \$250.00 was assessed for this violation.

Green Agri Solutions, LLC was cited for violation of section 57(9) of the Indiana Pesticide Registration Law for distributing a pesticide product that violates the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) or regulations adopted under the Act. A civil penalty in the amount of \$250.00 was assessed for this violation.

PS20-0044 While investigating an agricultural drift incident (case #PS19-0320), I found that Restricted Use Dealers (RUD), Windy Ridge Ag LLC (WRA); West Lafayette, IN (case #PS20-0043), and Nutrien Ag Solutions; Clarks Hill, IN (case #PS19-0374), had been distributing Restricted Use Pesticides (RUP) to customers that were not certified through the Office of Indiana State Chemist (OISC). I identified Keith Morgan, Brookston, IN, as one of the customers that had unlawfully purchased RUPs from WRA.

**Disposition:** Keith A. Morgan was cited for eleven (11) counts of violation of section 65(10) of the Indiana Pesticide Use and Application Law for using a restricted use pesticide without having an applicator who is licensed or permitted under IC 15-16-5, in

direct supervision. A civil penalty in the amount of \$1,100.00 (11 counts x \$100.00 per count) was assessed. However, the civil penalty was reduced to \$330.00. Consideration was given to the fact Mr. Morgan cooperated during the investigation; corrective action was immediately taken and there were no previous violations of similar nature.

**PS20-0045** While investigating an agricultural drift incident (case #PS19-0320), I found that Restricted Use Dealers (RUD), Windy Ridge Ag LLC (WRA); West Lafayette, IN (case #PS20-0043), and Nutrien Ag Solutions; Clarks Hill, IN (case #PS19-0374), had been distributing Restricted Use Pesticides (RUP) to customers that were not certified through the Office of Indiana State Chemist (OISC). I identified Chad Sterrett; Battle Ground, IN, as one of the customers that had unlawfully purchased a RUP from WRA.

**Disposition:** Chad Sterrett was cited for four (4) counts of violation of section 65(10) of the Indiana Pesticide Use and Application Law for using a restricted use pesticide without having an applicator who is licensed or permitted under IC 15-16-5, in direct supervision. A civil penalty in the amount of \$400.00 (4 counts x \$100.00 per count) was assessed. However, the civil penalty was reduced to \$220.00. Consideration was given to the fact Mr. Sterrett cooperated during the investigation and there were no previous violations of similar nature.

**PS20-0049** While investigating an agricultural drift incident (case #PS19-0320), I found that Restricted Use Dealers (RUD), Windy Ridge Ag LLC (WRA); West Lafayette, IN (case #PS20-0043), and Nutrien Ag Solutions; Clarks Hill, IN (case #PS19-0374), had been distributing Restricted Use Pesticides (RUP) to customers that were not certified through the Office of Indiana State Chemist (OISC). I identified Andrew Cole, Williamsport, IN, as one of the customers that had unlawfully purchased RUPs from WRA.

**Disposition:** Andrew Cole was cited for three (3) counts of violation of section 65(10) of the Indiana Pesticide Use and Application Law for using a restricted use pesticide without having an applicator, who is licensed or permitted under IC 15-16-5, in direct supervision. A civil penalty in the amount of \$300.00 (3 counts x \$100.00 per count) was assessed. However, the civil penalty was reduced to \$165.00. Consideration was given to the fact Mr. Cole cooperated during the investigation and there were no previous violations of similar nature.

**PS20-0065** On February 7, 2020, Tom Logwood of Affordable Bio Control Pest Management contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report a possible unlicensed pesticide application in Michigan City, Indiana. Mr. Logwood stated he was hired by Robert Bober (landlord) to make a pesticide application for bedbugs at an apartment located at 913 Wabash Street Unit 1, Michigan City, Indiana. Mr. Logwood stated when he arrived at the apartment, he saw a white powdery substance throughout the entire apartment (figures 12-14). Mr. Logwood stated he asked the tenant (Deidra Splechter) what it was, and she told him Timothy Marshall came to her apartment and made a pesticide application with diatomaceous earth to her apartment.

**Disposition:** This case was forwarded to EPA's Criminal Investigation Division (CID) and Office of Pesticide Programs (OPP) for federal review.

**PS20-0067** On September 4, 2019, I, OISC Investigator Melissa Rosch was notified by OISC Investigator Jay Kelley regarding a possible **ACTION ORDER** violation. Investigator Kelley stated it appeared the respondent Timothy Marshall had continued to make unlicensed pest control applications for hire in Indiana and advertising for a pest control company in Indiana via the “No More Bites Tonight” facebook website (OISC Case#2019-0573). The **ACTION ORDER** was issued to Tim Marshall and/or the business “No More Bites Tonight” on December 4, 2018 (OISC Case#2019-0047) and ordered the abovementioned to, *“Stop advertising or making pesticide applications for hire in Indiana until your business is registered with OISC.”*

**Disposition:** This case was forwarded to EPA’s Criminal Investigation Division (CID) and Office of Pesticide Programs (OPP) for federal review.

**PS20-0071** On February 26, 2020, I was proctoring the Turf Management exam at the Daniel Turf Center of Stewart Center on Purdue University campus

**Disposition:** E. Issac C. Jones was cited for violation of section 65(6) of the Indiana Pesticide Use and Application Law, specifically 355 IAC 4-1-2.1 (f), for failure to comply with instructions during an examination. Mr. Jones’ exam was not scored, and he was prohibited from taking an exam for a period of 5 years from April 8, 2020.

## CASE SUMMARY

Case #2018/0766

**Complainant:** John Graff  
676 E 1325 N  
Michigan City, Indiana 46360

**Respondent:** Westville Farm Supply/Northwest Farm Fertilizers Licensed Business  
Kevin Hannon Certified Applicator  
Joseph Walterhouse Registered Technician  
4725 South US Hwy 421  
Westville, Indiana 46391

1. On July 5, 2018, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report a possible misapplication to his agricultural field.
2. On July 10, 2018, I met with the complainant John Graff at his field location in Michigan City, Indiana. Mr. Graff stated he hired Westville Farm Supply/Northwest Farm and Fertilizer to make a custom herbicide application to his agricultural field to do a burn down. Mr. Graff stated on May 18, 2018 he saw the agricultural sprayer in his field but it appeared that one or more of the nozzles were not working on one of the booms for a period of time. Mr. Graff stated he was concerned for the even application to his agricultural field burn down because one area he saw being sprayed had less crop growth than another. I took one soil sample from the area Mr. Graff believed to have more of the chemical (figure 2) and one soil sample from an area Mr. Graff believed to have the regular flow of the chemical (figure 1). I submitted the samples to the OISC Pesticide Residue Laboratory for analysis.



Figure 1



Figure 2

\*Figure 1 is a photograph of the area believed to have the regular flow of herbicide

\*Figure 2 is a photograph of the area believed to have more herbicide/burnt



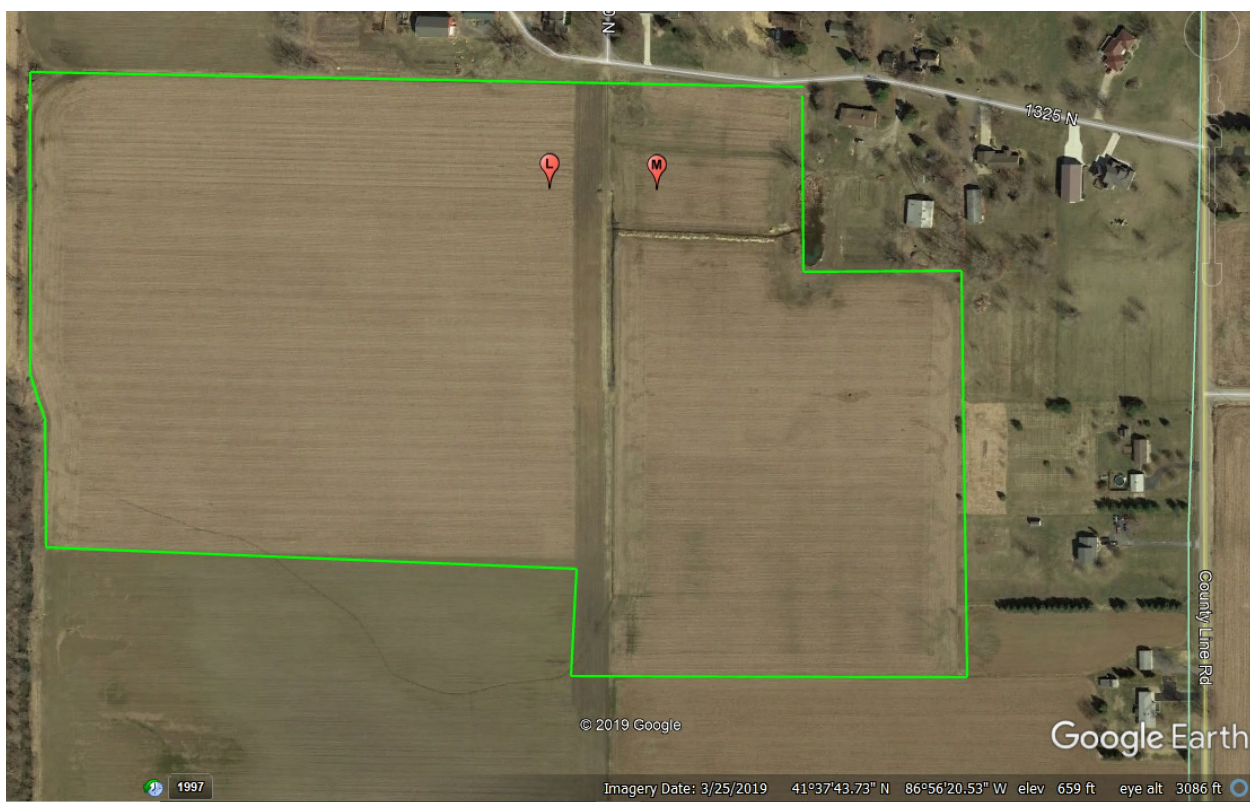


Figure 3

- \*Figure 3 is a Google Earth Image of the complainant's property outlined in green
- \*The M Marker is for the approximate area of the soil sample taken for Sample #7235
- \*The L Marker is for the approximate are of the soil sample taken for Sample #7236

3. I received the spray application records which show the following:

- Applicator Name: Joe Walterhouse
- Date: May 18, 2018
- Time: 10:08 am to 11:29am
- Target Crop: Cover Crop Burn down
- Acreage: 52.2
- Wind Direction at boom height start: East/ end: East
- Wind Speed at boom height start: 7mph/ end: 8mph
- Application Equipment: RO Gator 1100
- Nozzle, make, model, pressure: XR TeeJet, 8006VS, 35 psi
- Boom Height: 3 feet
- Application Ground Speed: 12mph (included printout in PII)
- Pesticide Used: **Gramoxone Inteon, EPA #100-1217, Active Ingredient 30.1% Paraquat dichloride**
- Application Rate: 3.065 pts/acre

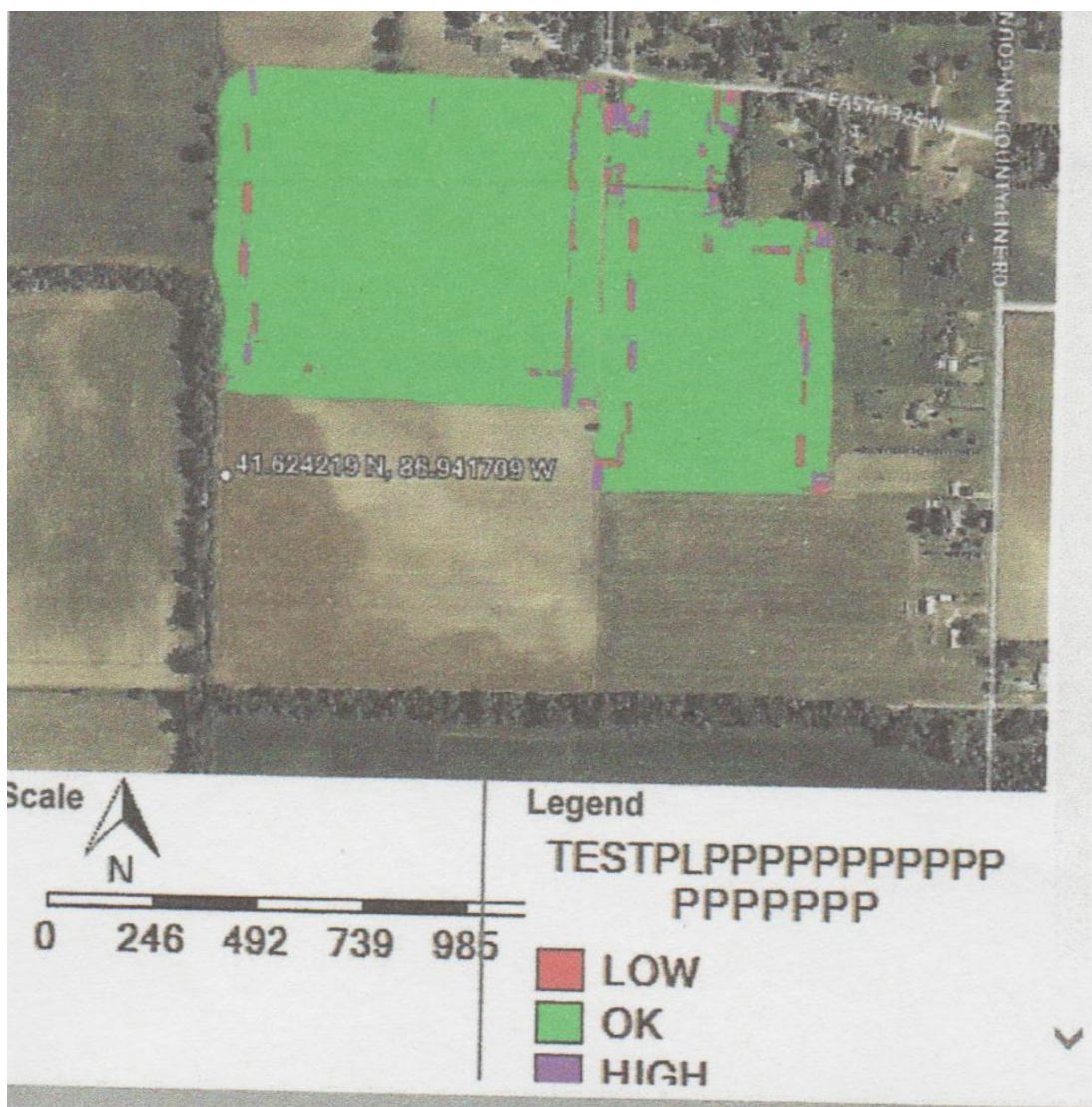


Figure 4

\*Figure 4 is a spray application map provided by the respondent

4. I received the OISC Pesticide Residue Laboratory Report, which shows the residue analysis.

Case # 2018/0766		Investigator: M. Rosch	
Sample #	Sample Description	Sample Matrix	Amount Found (ppb)
			Paraquat
2018-35-7235	Soil burnt side	Soil	56.5
2018-35-7236	Soil regular flow soil	Soil	BQL
PPM= Parts Per Million; PPB=Parts Per Billion; CONF=Confirmed; LOQ=Limit of Quantitation; BDL=Below detection Limits; this analyte was not detected using the standard analytical methods employed by OISC; BQL=Below quantification limits: this analyte was detected however the amount was lower than the quantification limit established using the standard analytical methods employed by OISC			
LOQ = 12.5 ppb			
Signature		Date	11/2/18

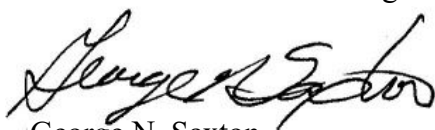
5. The **Gramoxone Inteon , EPA# 100-1217, Active Ingredient 30.1% Paraquat dichloride** label shows the following:
  - Page 8 states the Flat Fan Nozzle Type Maximum Speed is 10mph (the nozzle used by the applicator is a Flat Fan Type)
6. There appears to be a violation in this case based on the following:
  - a. Product Label Violation in Paragraph 5- The average speed during the application was 12mph, which exceeds maximum speed allowed by the label to produce an even chemical application



Melissa D. Rosch  
Investigator

Date: January 29, 2020

**Disposition:** Kevin Hannon, Joseph Walterhouse and Westville Farm Supply/Northwest Farm Fertilizers were cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift and/or application speed restrictions. A civil penalty in the amount of \$250.00 was assessed for this violation. Consideration was given to the fact this was their first violation of similar nature. Consideration was also given to the fact a restricted use pesticide was involved.



George N. Saxton  
Compliance Officer

Draft Date: March 20, 2020  
Case Closed: May 5, 2020

## CASE SUMMARY

Case #PS19-0047

**Complainant:** Amy Fiekas  
Roselawn Apartments  
1105 W. 10th Street  
La Porte, Indiana 46350

**Respondent:** Timothy Marshall  
No More Bites Tonight  
63 Candlelite Lane  
Pontiac, Michigan 48340  
248-402-3405

Unlicensed Applicator  
Unlicensed Business

1. On November 9, 2018, the complainant Amy Fiekas contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report a pesticide business named “No More Bites Tonight” attempted to do a bed bug treatment for hire at the Roselawn Apartment Complex without approval from the apartment complex management.
2. On November 16, 2018, I visited the suspected business website of “<http://www.bedbugremovalinpontiacmi.com/>” for “No More Bites Tonight” which showed advertisements for pest control in Indiana (Figures 1-5). On figure 5, the website showed a business location in “Pontiac, MI 48340.”

Additionally, on the “No More Bites Tonight” website, it shows hyperlinks for additional pesticide business advertising on Facebook (figure 6 & 7), Yelp (figure 8), and Google places (figure 9). The business web addresses are:

Facebook: <https://www.facebook.com/marshallaw1260/>

Yelp: <https://www.yelp.com/biz/no-more-bites-tonight-marshall-2>

Google: <https://plus.google.com/104075537668102943936>

Also linked to the main website advertisements for pest control with “No More Bites Tonight” was a YouTube Video with the link (figure 10):

YouTube: <https://youtu.be/ijhbJQWQSFg> - “No More Bites Tonight 1 4 of the poison price%2C Immediately relief%2C and Protection for the future”

(Note: The YouTube account associated with this video is titled “No More Bed Bugs Tonight’ Bed Bug removal and Prevention.”

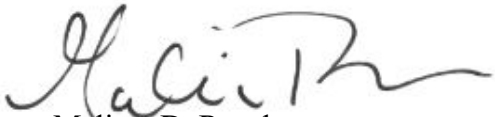
3. On November 20, 2018, I met the complainant Amy Fiekas at Roselawn Apartments. Ms. Fiekas stated she is the property manager for the Roselawn Apartment Complex and on November 9, 2018, the maintenance employee Mike Andrews saw a male in the Roselawn Apartment parking lot unloading several items from his vehicle. Mr. Andrews asked him what he was doing on the Roselawn Apartment property and the respondent Timothy Marshall stated he was there to treat for bed bugs and he had the right to be there. Mr. Andrews told Mr. Marshall he needed to leave because Roselawn Apartments is contracted with another pest control company for pest control. Mr. Andrews stated Mr. Marshall told him they didn't know what they were doing (regarding pest control) and he was the only one who knows how to treat bedbugs. Mr. Marshall insisted on going to the apartment to speak to the customer and then spilled what is believed to be diatomaceous earth powder in the parking lot and hallway of the apartment building (figures 11-16). Ms. Fiekas stated the tenant in apartment 216 (Morgan Aurand) contacted the respondent Timothy Marshall to make a pesticide application for bedbugs in her apartment. Ms. Fiekas stated the tenant did not know she was supposed to contact the apartment complex manager or maintenance staff for pest control. I tried to contact the tenant Ms. Aurand for further information but she did not respond. I took two samples of the powder residue to the OISC Pesticide Residue laboratory for analysis.
4. On November 21, 2018, I verified with the Michigan Department of Agriculture and Rural Development (MDARD) that Mr. Marshall did have a 2018 Michigan Pesticide Applicator license. MDARD documented in March of 2018 that Mr. Marshall used Perma-Guard food-grade diatomaceous earth distributed by Seven Springs Farm in Virginia. Also, MDARD did not have an updated business insurance certificate for "No More Bites Tonight" at the time.
5. OISC Agent Roth stated on or about July 26, 2018, Mr. Marshall made an unlicensed pesticide application for hire in Indiana. On July 30, 2019 Agent Roth advised Mr. Marshall he is required to have an Indiana Pesticide Business License to apply a pesticide to the property of another for hire. On November 28, 2018 Mr. Marshall told Agent Roth he sent the pesticide license application paperwork to OISC Licensing Division but was never issued a license. I checked with the OISC licensing division to confirm the information and sent Mr. Marshall the following email:

*"Our licensing division shows you attempted to submit Certificate of Insurance/Liability proof to our office on or about 10/22/18 with Cincinnati Insurance Co. I have attached the documents that were submitted and verified with the OISC licensing division that they are not the required/requested documents for the OISC pesticide business license. The OISC licensing division has sent a notification of this via certified mail on or about November 1, 2018. I have also verified with Cincinnati Insurance Co. the insurance policy that was submitted to OISC licensing division was canceled on 10/25/18."*
6. On December 4, 2018, I contacted the respondent, Mr. Marshall, via email at tm1260@gmail.com. The contact information was provided by OISC Investigator Andy Roth from a concurrent investigation with Mr. Marshall (OISC Case#2018-0853). On December 4, 2018, I issued Mr. Marshall an **ACTION ORDER** which ordered him to, "*Stop advertising or making pesticide applications for hire in Indiana until your business is registered with OISC.*" The notice was sent electronically to tm1260@gmail.com. I received the electronic mail notification delivery receipt dated the same day.



7. On December 4, 2018, Mr. Marshall sent Agent Roth and me an email reply stating,  
*"Sorry about the comedy of errors on my part. In fairness, I've moved into a new home without bathroom heat or water, went to Israel for 3 weeks, changed bank accounts from personal to business and merely forgot to set up the auto pay and received no notice from Cincinnati Insurance that I missed a payment. I promised to send hard copies on Friday naively believing I could set up the office and send hard copies. I attach them now. Things will be back to normal for me soon, and I'm expanding my insurance to 4 states and have only one quote and would like one more then I'll forward. The Fossil Shell Flour from Permagard has a second label for pesticide, sorry for the confusion. I use both labels one to treat homes the pesticide label and the second fossil shell flour label as a free gift of detox powder to all my customers. Attached is the pesticide label. Your investigator says it's not an approved pesticide in Indiana even though it would be on every pest control truck in Indiana and sold in many locations like Home Depot and Lowes. So please check that out and let me know how to proceed because I'll use nothing else certainly not poisons. Or in the alternative let me know how I can get it certified because the EPA lists it as "Minimal Risk...Not Subject to Regulation". See attached EPA Doc. The investigator mentions a job done for "Orr" but I don't have any paperwork on that job and it was for Fleas which is a job I rarely do. I am a bedbug specialist. My Michigan license is restricted to its use only which by the way is arbitrary since I passed the test for poison in getting my license. I hope this helps and I'll get the insurance certificate asap. Thanks so much... Marshallaw"*

8. On December 6, 2018, I spoke to Mr. Marshall via telephone. Mr. Marshall stated he believes the product he was using was registered because you can "get it from any home depot." I advised Mr. Marshall he was not allowed to make any applications and/or advertisements (figures 1-10) for a pest control company in Indiana because he was not properly licensed. Mr. Marshall stated he would have "Indiana" removed from his website information.



Melissa D. Rosch  
Investigator

Date: April 1, 2020

**Disposition:** This case was forwarded to E.P.A. Criminal Investigation Division (CID) and Office of Pesticide Programs (OPP) for federal review.



George N. Saxton  
Compliance Officer

Case Closed: June 16, 2020

## CASE SUMMARY

Case #PS19-0053

**Complainant:** Dennis Orr  
148 West Oak Street  
Butler, Indiana 46721

**Respondent:** Timothy Marshall  
No More Bites Tonight  
63 Candelite Lane  
Pontiac, Michigan 48340  
248-402-3405

Unlicensed Applicator  
Unlicensed Business

1. On November 19, 2018, I visited the Facebook page for “No More Bites Tonight.” I saw a Facebook post from Marie Orr in Butler, Indiana dated September 19, 2018 which showed the following (figure 1):

*“I have had nothing but problems cleaning this up, I still have spiders, and fleas. i have ruined a shop vac, ruined a Dyson vacuum, and ruined a shark vacuum. this powder is horrible to clean up off the walls, floors and everything it is on. it makes a paste like where you have to wash it several times had a professional cleaner come into my house to clean it up, worse mistake ever having this powder in my house especially with my 4 month old, 2 year old, 9 year old, and 11 year old children along with my poordog. we have all gotten sick from me cleaning the powder up. please please do not get this powder in your house unless you really want to spent more money cleaning and getting sick. I have contacted my lawyer and we are filing papers”*

2. I messaged Marie Orr via Facebook messenger asking her to call me regarding her Facebook post on the “No More Bites Tonight” Facebook page. Marie Orr’s husband Dennis Orr called me on November 20, 2018 and stated the respondent Timothy Marshall had performed a pesticide application for hire at their residence 148 W. Oak St, Butler, Indiana on August 28, 2018. Mr. Orr stated Mr. Marshall had been at their residence for over five (5) hours applying what he believed to be diatomaceous earth (he did not have specific product information) and had damaged their couch and mattresses when he cut them open to inject the pesticide. Mr. Orr stated he did want to make a formal complaint with OISC.
3. On November 21, 2018, I met with Mr. and Mrs. Orr at 148 W. Oak Street, Butler, Indiana. Mrs. Orr stated she found Mr. Marshall and his pesticide business via the Facebook website (figure 24). Mr. Marshall quoted them a price of \$522.00 for the pesticide application including a one (1) year warranty because they had fleas in their house via text message (figure 2). Mr. Marshall also stated via the text message in figure 2 for Mrs. Orr to look up

the video titled “See Video Summary @nomorebitestonight.com & Treatment Procedure on ‘YouTube: Whole Home Treatment: What to Expect’” (figure 3). On August 28, 2018 Mr. Marshall arrived at the Orr’s residence around 4:00 pm and was in their house for over five (5) hours applying the pesticide, while they were told they could not be in the residence during the application. Mrs. Orr stated Mr. Marshall even ate some of the pesticide powder in front of her to demonstrate how safe the product was for her and her family. Mr. and Mrs. Orr returned to the residence to find a thick, white layer of powder over the entire interior of her house including in clothing dresser drawers (where Mr. Marshall removed the clothing then applied the pesticide inside the drawers), inside kitchen cabinets where food and dishes were stored, inside of their couch where Mr. Marshall cut out the bottom protective fabric layer, and inside of every mattress where Mr. Marshall cut the exterior mattress fabric and injected the powder inside the mattress itself (figures 4-20). Mrs. Orr stated they have three (3) twin mattresses, one (1) queen mattress, one (1) full mattress, and one (1) crib mattress which were cut open and injected with the pesticide powder.

\*Note: the YouTube account associated with the video in figure 3 is titled “‘No More Bites Tonight’ Bed Bug removal and Prevention.” (figure 23)

4. When Marie Orr returned home after the treatment, she sent Mr. Marshall the following text message (figure 21):

*Marie: “Hello I hate to bother you this late however I just got home, and I know you said to shake all the blankets out while outside what do I do for my couch? My bed with-out a sheet on it do I just put a sheet on it and sleep on it?”*

*Mr. Marshall: “Yes use the beds that is the safest place just put a fitted sheet to hold the powder and sleep on a second sheet the couch is ok but nowhere near as safe as the beds text any time I’ll respond I’m here to help”*

5. Mrs. Orr stated they have had their six (6) month old baby, Anna Orr, to the doctor’s office three (3) times since Mr. Marshall made the pesticide application for respiratory infections and inflamed adenoids. The initial visit was approximately two (2) weeks after Mr. Marshall made the pesticide application inside their residence. Mrs. Orr showed me the breathing machine they just purchased which is now required by the physician for the baby Anna.
6. Mr. Orr stated about three (3) weeks after Mr. Marshall made the pesticide application, he still had fleas in the house, so he did a “bug bomb” with Combat Bug Bombs, which killed the fleas. Mr. Orr did not have the specific product or EPA registration information available.
7. I took samples of the powder from the Orr’s residence and submitted them to the OISC Pesticide Residue Laboratory for chemical analysis.
8. Mr. Marshall produced, handled, transported, and distributed a pesticide product in a manner that may endanger or cause injury to humans by the following actions:
  - A. Mr. Marshall produced a pesticide product by using an unregistered pesticide product “Perma-Guard Fossil Shell Flour” food grade diatomaceous earth for a pesticide application for hire (product identified/self-disclosed in OISC Case#2018-0853).



- B. Mr. Marshall knowingly and intentionally transported and distributed an unregistered pesticide product from Michigan to Indiana to make an unlicensed pesticide application for hire.
- C. Mr. Marshall was operating in a careless and negligent manner which may endanger or cause injury to humans by the following:
  1. Mr. Marshall applied excessive amounts of the unregistered pesticide product powder in and around clothing, and furniture. This includes cutting open mattresses and couches and injecting the powder, where prolonged and repeated human exposure would typically occur (figures 4-20).
  2. Mr. Marshall was operating in a careless and negligent manner advising to *"leave the powder on the floor everywhere for weeks"* (figure 22) and not remove the diatomaceous earth powder. The Perma-Guard Fossil Shell Flour Safety Data Sheet below advises to *"avoid breathing dust"* and *"prolonged and repeated to excessive concentrations of this product's dust, or any other nuisance dust, can cause chronic pulmonary disease."*
- D. Mr. Marshall's pesticide application and his instructions create an environment where there is prolonged and repeated respiratory exposure to the diatomaceous earth powder without the necessary personal protective equipment. The Perma-Guard Fossil Shell Flour Safety Data Sheet shows the following statements regarding product handling and storage, exposure controls/personal protection, and toxicology:

7. HANDLING AND STORAGE		
Minimize dust generation and accumulation. Avoid breathing dust. Avoid contact with eyes. Seal broken bags immediately Continue to follow all SDS/Label warnings when handling empty containers.		
Fossil Shell Flour® SDS revised 06/16/2016 pg. 2		
8. EXPOSURE CONTROLS/PERSONAL PROTECTION		
<b>Goggles:</b> Goggles or Safety Glasses with Side Shields are recommended . <b>Gloves:</b> Not normally required. <b>Respirator:</b> <10X PEL. Use an N95 Quarter or half mask respirator: <50X PEL, use a full face respirator equipped the N95 filters, <200X PEL, use a powder air purifying respirator (positive pressure) with N95 filters, Type C supplied air respirator (Continuous flow mode). <b>Ventilation:</b> Use Sufficient Natural or Mechanical ventilation to keep dust level below PEL. <b>MSHA PEL</b> —6 mg/M3 total nuisance dust (uncalcined Diatomaceous Earth) <b>ACGIH TLV</b> – 10 mg/M3 Total Dust		
11. TOXICOLOGY INFORMATION		
<b>Summary:</b> Prolonged and repeated exposure to excessive concentrations of this product's dust, or any nuisance dust, can cause chronic pulmonary disease. Dust contact with eyes may cause temporary scratchiness or redness. This product has not been classified as a carcinogen by NTP or IARC.		

9. There appears to be a violation in this case based on the following:
  - Mr. Marshall made a pesticide application for hire at 148 West Oak Street, Butler, Indiana.
  - Mr. Marshall operated in a careless and negligent manner by advising the complainant to *"leave the powder on the floor everywhere for weeks."*
  - Mr. Marshall has produced, handled, transported, and distributed a pesticide product in a manner that may endanger or cause injury to humans. The Perma-Guard Fossil Shell

Flour Safety Data Sheet advises to “*avoid breathing dust*” and “*prolonged and repeated to excessive concentrations of this product’s dust, or any other nuisance dust, can cause chronic pulmonary disease.*”

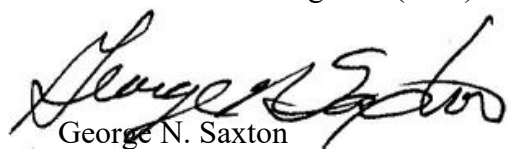
- Mr. Marshall is advertising for pesticide business and pesticide applications for hire in Indiana on the Facebook website (figure 24), YouTube website (figure 23), and main business website (figure 25).



Melissa D. Rosch  
Investigator

Date: June 10, 2020

**Disposition:** This case was forwarded to EPA’s Criminal Investigation Division (CID) and Office of Pesticide Programs (OPP) for federal review.



George N. Saxton  
Compliance Officer

Case Closed: June 16, 2020

## CASE SUMMARY

Case #PS19-0054

**Complainant:** Indiana Department of Environmental Management (IDEM)  
Mr. Charles Grady  
100 North Senate Avenue, IGCN, Suite 1101  
Indianapolis, Indiana 46204

**Respondent:** Joseph Yoder Unlicensed Fertilizer Distributor  
6324 E. State Road 124  
Bluffton, Indiana 46714

1. On November 21, 2018, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report an IDEM permitted confined feeding operation (CFO) is allegedly distributing manure without a fertilizer business license.
2. On November 26, 2018, I spoke to Mr. Joseph Yoder. Mr. Yoder stated he was unaware of the requirement of a fertilizer distribution license until his recent IDEM inspection. He stated he has sent in the application for a business license. I requested Mr. Yoder's distribution records for the previous two (2) years.
3. On November 26, 2018, Mr. Yoder faxed a copy of his records. Mr. Yoder's previous two (2) year records showed four (4) distributions to Tri-Hard Farms (certified fertilizer applicator) on November 2016, August 2017, October 2017, and September/October 2018.
4. On November 28, 2018, Joseph Yoder became a licensed Fertilizer Distributor.



Patricia Dunn  
Investigator

Date: November 5, 2019

**Disposition:** Joseph Yoder was cited for four (4) counts for violation of Section 44 of the Indiana Commercial Fertilizer Law, specifically 355 IAC 7-3-3, for distribution of fertilizer material without a business license. A civil penalty in the amount of \$1,000.00 (4 counts x \$250.00 per count) was assessed. However, the civil penalty was reduced to \$200.00. Consideration was given to the fact Joseph Yoder cooperated during the investigation; corrective action was taken; there was a good-faith effort to comply and no previous violations of similar nature were documented.



George N. Saxton  
Compliance Officer

Draft Date: November 14, 2019  
Case Closed: January 14, 2020

## CASE SUMMARY

Case #PS19-0206

**Complainant:** Arthur Burough  
7401 State Road 17  
Lucerne, Indiana 46950

**Respondent:** Anthony Herd  
Herd Agri Enterprises  
5105 North 200 West  
Logansport, Indiana 46947

**Private Applicator**

1. On May 28, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report on May 21, 2019, the neighboring farmer made a pesticide application to a farm field and the complainant now has what appears to be a pesticide exposure symptom to his trees.
2. On May 31, 2019, I met with the complainant Arthur Burough at his residence. Mr. Burough told me he watched Mr. Herd make a pesticide application on May 21<sup>st</sup> between 7:00pm and 9:00pm. He said the wind was blowing toward his (complainant) property at the time of the application. He spoke to the farmer Mr. Herd. Mr. Herd told the complainant he used 2, 4-D and Roundup. The complainant told me he and his wife could smell the pesticide in their house. Mr. Burough also explained their flowers and shrubs began to wilt a few days after the application. He also said the leaves on the trees were curling.(see Figure 1 below)



Figure 1



3. I checked the complainant's property for signs of pesticide exposure symptoms. The tree leaves exhibited some signs of growth regulator exposure symptoms. Some of the plants showed signs of wilting.(see photos below)



4. I obtained vegetation samples for submission to the Purdue Plant and Pesticide Diagnostic Lab (PPDDL). I also placed the following environmental samples in Mylar bags for submission to the OISC Residue Lab for analysis.

2831 control vegetation  
2832 composite vegetation 100 yards from target field  
2833 composite vegetation 89 yards from target field  
2834 composite vegetation 78 yards from target field  
2835 composite soil 50 yards into target field  
(see Figure 2)



Figure 2

5. I made contact with applicator Anthony (Tony) Herd. Mr. Herd confirmed he made an application to the field east of the complainant's house. He agreed to complete and return a Pesticide Investigation Inquiry (PII) for the investigation process.
6. I received the following information from PPDDL; *"The majority of the plants in sample shows small leaf necrotic spots. These symptoms are characteristic of contact PPO-inhibiting herbicides (flumioxazin, saflufenacil, sulfentrazone, etc.) but not systematic herbicides such as 2, 4-D or glyphosate. Only the oak and a couple of other plants show very light leaf malformations closest to the growing points that resemble 2, 4-D injury. There was no evidence of significant disease on the physical sample material."*

7. I received a completed PII from applicator Tony Herd. The PII contained the following information:
- Anthony Herd was the certified private applicator
  - Anthony Herd made a pesticide application of:  
**Scepter** (EPA #5481-613; active ingredient: imazaquin)  
**Zidua** (EPA #7969-338; active ingredient: pyroxasulfone)  
**Zidua Pro** (EPA #7969-365; active ingredient: pyroxasulfone, saflufenacil, imazethapyr)  
**Roundup Powermax** (EPA #524-549; active ingredient: glyphosate)  
**2, 4-D LV6** (EPA #1381-250; active ingredient: 2, 4-D)
  - The application was made May 20, 2019 (time of day not recorded. Mr. Herd thought it was 9:30 to 10:15am)
  - Mr. Herd did not record any wind information (He couldn't remember direction or speed)
  - The field size was approximately 89 acres
  - The application was a "burndown" application
  - Application equipment used was 4275 Miller Sprayer
  - Boom height was 30 inches
  - Ground speed was 13 miles per hour
8. After checking the PII information, I found applicator Herd recorded the application date as May 20, 2019. The complainant recorded the application date as May 21, 2019. I contacted Mr. Herd and Mr. Burough about the discrepancy. Mr. Burough was certain the application was May 21<sup>st</sup> because he photographed Mr. Herd's equipment in the field making the application. He then recorded it on his calendar. Mr. Burough said the photograph was time stamped. Mr. Burough sent the photograph to me. The photograph was recorded as "5/21/19" (see photos below). I contacted Mr. Herd. I told him what I learned from Mr. Burough. Mr. Herd said he must have written the wrong date. (see photos below)



9. I obtained weather data from the **National Climate Data Center (NCDC)** at [ncdc.noaa.gov](https://www.ncdc.noaa.gov). for May 21, 2019 from three different airports listed below:
- Logansport Municipal Airport located in Logansport (9 miles south of site) recorded the wind blowing at 20 miles per hour in a west-northwest direction toward the complainant's property at time of application.
  - Fulton County Airport located in Rochester (16 miles northeast of site) recorded the wind blowing at 18-21 miles per hour in a west-northwest direction toward the complainant's property at time of application
  - Purdue University Airport located in West Lafayette (44 miles southwest of site) recorded the wind blowing at 16-18 miles per hour in a west-northwest direction toward the complainant's property at time of application. (see Figure 3)



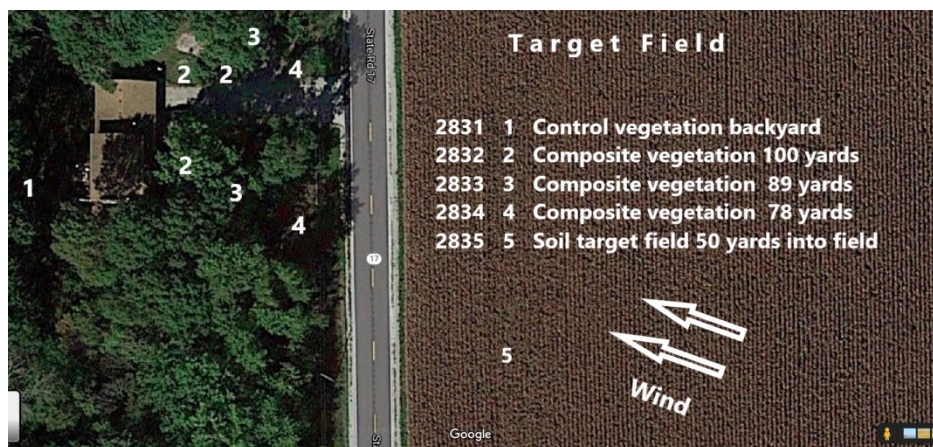


Figure 3

10. I checked the label information for **Shredder LV6**, **Roundup Powermax**, **Scepter**, **Zidua** and **Zidua Pro** for potential label violations. The label for **Roundup Powermax** reads in part, “Apply this product only when the potential for drift to adjacent sensitive areas (e.g., residential areas, bodies of water, known habitat for threatened or endangered species, non-target crops) is minimal (e.g., when wind is blowing away from the sensitive areas)”.

Based on available information (on-site observations, PPPDL information, PII information, triangulated weather data, label language), Mr. Herd was in violation of the **Roundup Powermax** label when he applied it when the wind was blowing toward the complainant’s property. Due to obvious label violations, the residue samples were not analyzed.

Kevin W. Gibson  
Investigator

Date: February 10, 2020

**Disposition:** Anthony Herd and Herd Agri Enterprises were cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift management. A civil penalty in the amount of \$100.00 was assessed for this violation. In addition, the Private Applicator permit issued to Mr. Herd was suspended from April 1, 2020 through September 30, 2020. Consideration was given to the fact this was his sixth violation of similar nature within the past five (5) years. See case numbers 2017/1095, 2017/1086, 2017/1041, 2017/1104 and 2017/1075.

Anthony Herd was cited for violation of section 65(8) of the Indiana Pesticide Use and Application Law for making a false or fraudulent record, invoice or report. A civil penalty in the amount of \$100.00 was assessed for this violation.

George N. Saxton  
Compliance Officer

Draft Date: February 11, 2020  
Case Closed: March 19, 2020

## CASE SUMMARY

Case #PS19-0220

**Complainant:** John & Amanda Boener  
18889 9th Road  
Plymouth, IN 46563

**Respondent:** Russell Guse  
Bluebird Ag  
7735 S. US Hwy 35  
Knox, IN 46534  
219-863-4242

**Licensed Applicator**

1. On June 4, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report agricultural drift to his bees from an aerial application made to a neighboring alfalfa field.
2. On June 7, 2019, I met with the complainant Amanda Boener at her residence. Ms. Boener told me a pesticide application was made by air on Friday May 31 between 5:30pm and 6:00pm to a field within ¼ mile southwest of the complainant's property. What concerned her about the application was the affect it had on her bee hives. She said she checked her bee hive after the application was made that night. She explained many of the bees were dying and some were unable to walk or fly. Other bees seemed confused when they would miss the landing area to the hive. She believed the pesticide application drifted to the hive and caused the bees to die. (See satellite image below)



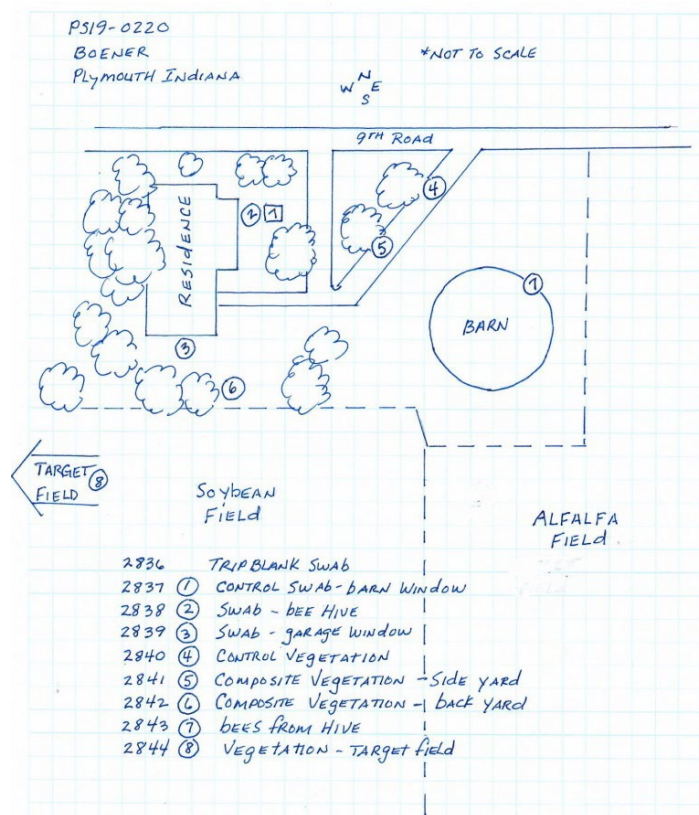
3. I checked the area surrounding the beehive on the complainant's property. I did not observe any pesticide exposure symptoms. Photographs were not taken and vegetation samples were not submitted to Purdue Plant and Pest Diagnostic Lab (PPDDL) for analysis.



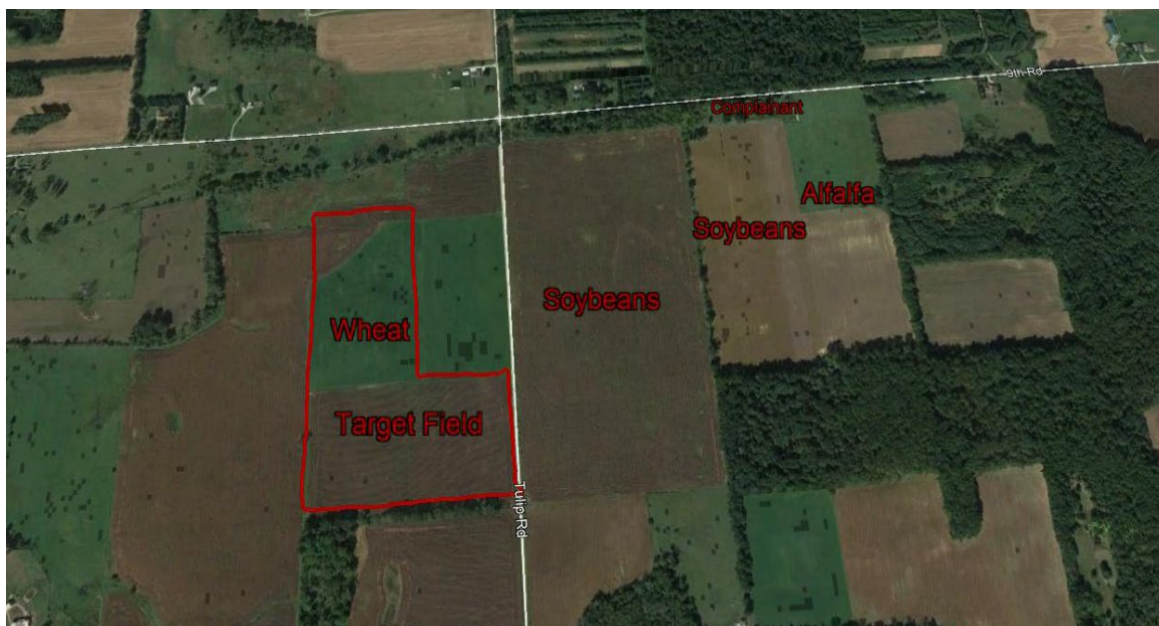
4. I obtained the following swab and environmental samples for submission to the OISC Residue Lab for analysis:

- |      |                                   |      |                                |
|------|-----------------------------------|------|--------------------------------|
| 2836 | trip blank swab                   | 2837 | control swab barn window       |
| 2838 | swab bee hive                     | 2839 | swab garage window             |
| 2840 | control vegetation                | 2841 | composite vegetation side yard |
| 2842 | composite vegetation back yard    | 2843 | bees from hive                 |
| 2844 | composite vegetation target field |      |                                |

(see diagram below)



(see image below)



5. I learned Bluebird Ag LLC located in Knox, Indiana made an aerial pesticide application to the field southwest of the complainant's property. I made contact with Natalie of Bluebird Ag. She confirmed a pesticide application was made to the field in question. She told me the applicator would complete and return a Pesticide Investigation Inquiry (PII) concerning the application.
6. I also learned from Joe Reinhold of Ancilla Beef and Grain (operating company for the fields) the fields south and west of the complainant's property were planted with alfalfa and Roundup soybeans. (Bluebird Ag did make a pesticide application of Province II on May 26 to the alfalfa field south of the complainant. However, the complainant did not report any adverse effects or problems with her bees after this application was made).
7. I received a completed PII from pesticide applicator Russell Guse of Bluebird Ag. The PII had the following information:
  - Applicator Russell Guse is a licensed applicator
  - Applicator Guse made the following application:
    - Province II (EPA #100-1295-55467; active ingredient: lambdacyhalothrin)
    - Miravis Ace (EPA #100-1645; active ingredient: propiconazole)
  - The application was made on May 31, 2019 between 4:23pm and 5:13pm.
  - The wind was recorded blowing at 7 miles per hour in an easterly direction parallel to the complainant's property using "Storm Weather" app on I-phone.
  - Equipment used was a Cessna C-188 airplane
  - Boom height at time of application was 8-10 feet
8. I obtained weather data from the **National Climate Data Center (NCDC)** at [ncdc.noaa.gov](https://www.ncdc.noaa.gov) for May 31 from three different airports listed below:
  - South Bend Airport located in South Bend (25 miles north of site) recorded the wind blowing at 9 miles per hour in an east to northeast direction toward the complainant's property at time of application
  - Warsaw Municipal Airport located in Warsaw (30 miles east of site) recorded the wind blowing at 8 miles per hour in an east to northeast direction toward the complainant's property at time of application
  - Valparaiso/Porter County Municipal Airport located in Valparaiso (32 miles west of site) reported the wind blowing at 11 miles per hour in an east to northeast direction toward the complainant's property at time of application.
9. I received the following information from the OISC Residue Lab:

Sample #	Sample Description	Matrix	Analyte	Amount of Analyte	LOQ
19-4-2836 8	Swab (Acetone); Trip Blank; None; Trip Blank;	Swab (Acetone)	Cyhalothrin	BDL ng/swab	10 ng/swab
			Propiconazole	BDL ng/swab	2 ng/swab
19-4-2837 5	Swab (Acetone); Control; Window; Barn window;	Swab (Acetone)	Cyhalothrin	BDL ng/swab	10 ng/swab
			Propiconazole	2.18 ng/swab * Result is Approximate	2 ng/swab

19-4-2838 1	Swab (Acetone); swab; Bee hive; Front Yard;	Swab (Acetone)	Cyhalothrin	BDL ng/swab	10 ng/swab
			Propiconazole	3.32 ng/swab * Result is Approximate	2 ng/swab
19-4-2839 9	Swab (Acetone); swab; Garage window; Back Yard;	Swab (Acetone)	Cyhalothrin	BDL ng/swab	10 ng/swab
			Propiconazole	16.4 ng/swab * Result is Approximate	2 ng/swab
19-4-2840 4	Vegetation; Composite; Tree leaves; Front Yard;	Vegetation	Cyhalothrin	18.8 ppb	3 ppb
			Propiconazole	37.1 ppb	0.7 ppb
19-4-2841 5	Vegetation; Composite; tree leaves; Side yard;	Vegetation	Cyhalothrin	50.0 ppb	3 ppb
			Propiconazole	112 ppb	0.7 ppb
19-4-2842 7	Vegetation; Composite; tree leaves; Back Yard;	Vegetation	Cyhalothrin	44.3 ppb	3 ppb
			Propiconazole	99.7 ppb	0.7 ppb
19-4-2843 6	Bees; Composite; Bees from bee hive; Front Yard;	Bees	Cyhalothrin	238 ppb	5 ppb
			Propiconazole	295 ppb	1 ppb
19-4-2844 3	Vegetation; Composite; wheat; Target Site;	Vegetation	Cyhalothrin	644 ppb * Result is Approximate	3 ppb
			Propiconazole	1090 ppb * Result is Approximate	0.7 ppb

I spoke to the OISC lab director. She told me the lab results indicated high levels of propiconazole (active ingredient for **Miravis Ace**) and cyhalothrin (active ingredient for **Province II**) in the sample of bees (sample 2843) and in the vegetation (sample numbers 2840, 2841, 2842). Both active ingredients are highly toxic to bees. The lab director told me bees would have been immediately affected upon contact. The information from the lab director coincides with the information provided by the complainant at the time of complaint.

10. I checked the labels for **Province II** and **Miravis Ace** for potential label violations. The label for **Province II** reads in part, “Only apply this product if the wind direction favors on-target deposition”. “This product is highly toxic to bees exposed to direct treatment or residues on blooming crops or weeds. Do not apply this product or allow it to drift to blooming crops or weeds if bees are visiting the treatment area.”

11. Based on available information (PII information, triangulated weather data and lab results), Mr. Russell Guse was in violation of the **Province II** label drift management.

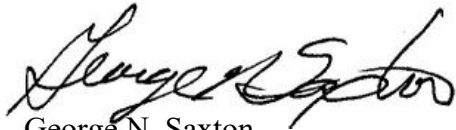


Kevin W. Gibson  
Investigator

Date: January 14, 2020

**Disposition:** Russell Guse and Bluebird Ag were cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift management and application when bees are present. A civil penalty in the amount of \$250.00 was assessed for this violation. Consideration was given to the fact this was his first violation of similar nature. Consideration was also given to the fact a restricted use pesticide was involved.

Russell Guse and Bluebird Ag was cited for violation of section 65(6) of the Indiana Pesticide Use and Application Law, specifically 357 IAC 1-12-2, for applying a pesticide in a manner that allows it to drift from the target site in sufficient quantity to cause harm to a non-target site.



George N. Saxton  
Compliance Officer

Draft Date: March 5, 2020  
Case Closed: May 21, 2020

## CASE SUMMARY


Case #PS19-0254

**Complainant:** Colin Estes  
2431 East 10th Street  
Anderson, Indiana 46012

**Respondent:** Peace of Mind Pest Control LLC  
Kenton Hughes  
2530 East 450 North  
Anderson, Indiana 46012  
317-513-3009

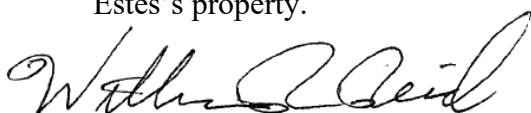
Certified Applicator

1. On June 20, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report that Kenton Hughes of Peace of Mind Pest Control treated his home for mold. When he was unable to complete the treatment, Mr. Hughes allegedly gave Mr. Estes some 'pesticide' in an unmarked container to finish the treatment without providing a label or application instructions.
2. On July 3, 2019, I met with Mr. Colin Estes at 2431 East 10th Street in Anderson, Indiana 46012. This was the address where the treatment for mold occurred by Peace of Mind Pest Control. During the investigation I gathered the formulation sample given to Mr. Colin Estes from Mr. Kenton Hughes of Peace of Mind Pest Control. The formulation sample was in a pump sprayer and was delivered to the Office of Indiana State Chemist Office Lab later that same day for analysis. A verbal recorded statement was given from Mr. Colin Estes about the complaint against Peace of Mind Pest Control and the unmarked container given by Mr. Kenton Hughes.
3. After the Investigation activity at Mr. Colin Estes's property I went to meet with Mr. Kenton Hughes of Peace of Mind Pest Control to gather evidence and a statement from Mr. Hughes. Mr. Hughes stated that he treated Mr. Estes's house for mold. Mr. Hughes confirmed that he gave Mr. Estes the unmarked container which contained Tim-Bor, active ingredient of Disodium Octaborate Tetrahydrate, EPA registration number 64405-8, as he recalls during the verbally recorded statement. Mr. Hughes stated that he mixed it for Mr. Estes and educated him on how to use the product. Mr. Hughes also stated that Mr. Estes was a Registered Technician (RT) at one time and was well versed in using this product.
4. The formulation lab results came back as follows.

OCM Collection #	101572	Case #	PS19-0254	Investigator	W. Reid
Sample #	Product Description			Sample Size	
19-3-11354	Use Dilution, suspected Tim-bor Pro			6L in Handheld Sprayer	
ACTIVE INGREDIENT				% GUARANTEE	% FOUND
Disodium Octaborate Tetrahydrate Tested as Boron, Elemental				NA UNK	N/A 1.90
LC-HRMS Screen with Orbitrap				UNK	Pending
Remarks:  *Boron was run in Fertilizer Lab using ICP-OES with in-house QC. QC Passes.					
Signature				Date	12/11/2019

Lab confirmed that the use dilution does contain Boron, which is a part of the Disodium Octaborate Tetrahydrate the product claims.

5. In conclusion, Mr. Kenton Hughes of Peace of Mind Pest Control gave Mr. Colin Estes an unlabeled pre-mixed container of Tim-Bor Pro with no label to finish a Mold treatment at Mr. Estes's property.



William R. Reid  
Investigator

Date: January 2, 2020

**Disposition:** Kenton Hughes was cited for violation of section 57(4) of the Indiana Pesticide Registration Law for distributing a pesticide product with incomplete or illegible label or in a container other than manufacturer's immediate, unbroken and approved or authorized container. A civil penalty in the amount of \$250.00 was assessed for this violation. However, the civil penalty was held in abeyance and not assessed provided Mr. Kenton Hughes commits no further violations of the Indiana Pesticide Registration Law or the Indiana Pesticide Use and Application Law for two (2) years from finalization of this investigation.



George N. Saxton  
Compliance Officer

Draft Date: February 19, 2020  
Case Closed: April 6, 2020



## CASE SUMMARY

Case #PS19-0341

**Complainant:** James K. Lockwood  
8501 Old Hwy 68  
Poseyville, Indiana 47633

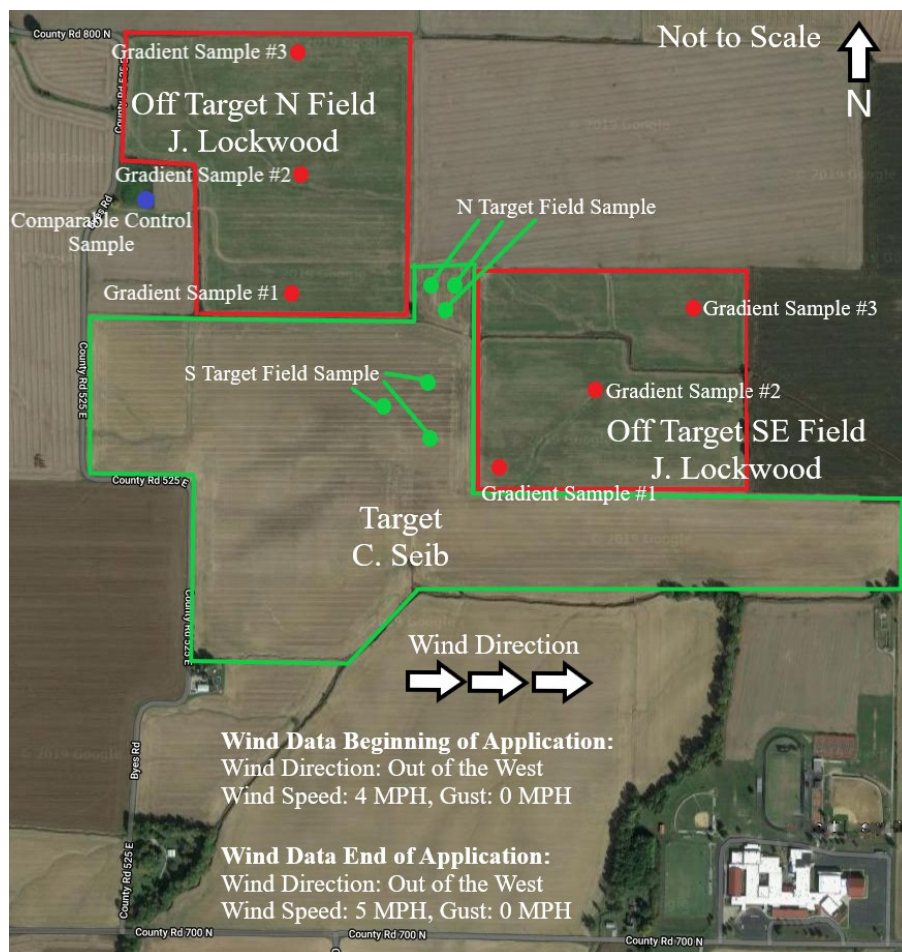
**Respondent:** Carl Seib  
6801 High School Road  
Poseyville, Indiana 47633

Private Applicator

1. On July 15, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report that he believes a neighboring farmer applied dicamba to a field that drifted onto his Liberty Link soybeans.
2. On July 17, 2019, I met with the complainant at his soybean fields located near the intersection of Byers Road and IN-68 in Posey County, Indiana. The complainant stated around 10 days prior he noticed two of his non-dicamba tolerant (non-DT) soybean fields showing symptom of what he believed to be dicamba injury. Both fields were located in the same area separated by a smaller field he did not own (See Fig. 5). The complainant stated he believed the soybean field to the south of both of his non-DT soybean field had a dicamba product applied to it.
3. During my on-site investigation I did the following:
  - a. Looked for, and found two potential sources of a growth regulator type herbicide application in the area, later identified after the on-site investigation as one single field. The target field is located to the south and west of the complainant's non-DT soybean fields (See Fig. 5).
  - b. Observed and photographed mostly uniform cupping of leaves and whitish/yellow leaf tips on non-DT soybean plants across both of the complainant's soybean fields (See Fig. 1 and 2). Symptoms were visible throughout the complainant's soybean fields. Symptoms were notably more severe on the south end of the complainant's north field and south and west ends of the complainant's southeast field. These symptoms are commonly associated with exposure to a growth-regulator type herbicide. Soybeans in the target field exhibited no symptoms.
  - c. Collected samples of injured soybean plants from both of the complainant's non-DT soybean fields for assessment by the Purdue Plant & Pest Diagnostic Laboratory (PPDDL)
  - d. Collected composite soil sample from the target fields. Collected composite vegetation samples from both of the complainant's non-DT soybean fields (See Fig. 5). The residue samples were submitted to the OISC Residue Laboratory for analysis.



- Fig. 1 is the complainant's non-DT soybeans with cupped leaves and whitish/yellowish leaf tips.
- Fig. 2 is the complainant's non-DT soybeans with cupped leaves and whitish/yellowish leaf tips.
- Fig. 3 is looking southeast from the complainants north non-DT soybean field towards the target field.
- Fig. 4 is looking south at the border between the complainants southeast non-DT soybean field and the target field.



- Fig. 5 is an aerial diagram including wind data, property lines, and where soil and vegetation samples were taken from.




4. On July 18, 2019, I contacted the field owner Mark Seib. I advised Mr. Seib I was a Pesticide Investigator for OISC and of the complaint I was investigating. Mr. Seib advised to send him an aerial map of the field so he could confirm it was his field. After receiving the aerial map of the field, Mr. Seib confirmed the field was his and private applicator Carl Seib made the application to the field. I advised Mr. Seib I would be sending him via email a Pesticide Investigation Inquiry to complete and return to me.
5. On July 22, 2019, I received a completed Pesticide Investigation Inquiry from Mr. Seib for the application which indicated the following:
  - a. Private Applicator: Carl Seib
  - b. Application Date and Time: June 29, 2019, 10:40am to 1:35pm
  - c. Pesticide Applied:  
Engenia, EPA Reg. #7969-345, Active = dicamba, 12.8oz/acre  
Roundup Powermax, EPA Reg. #524-549, Active = glyphosate, 28oz/acre
  - d. Adjuvants: FieldGoal, Deposition, Humectant
  - e. Target Field Location and Size: RW 118.39 & 2.99, 121.92 Acres
  - f. Pre- or Post- Emergent Application: Post
  - g. Wind Blowing from Which Direction: Start- W, End- W
  - h. Wind Speed at Boom Height: Start- 4mph, End- 5mph
  - i. Nozzle and Pressure: Teejet TTI 11004, 45psi
  - j. Boom Height: 20 inches
6. On August 2, 2019, the private applicator in this case Carl Seib contacted me in concern to an application containing a growth regulator type herbicide made to a cornfield to the west of the complainant's non-DT soybean field which he believed may have caused the injury to the complainant's non-DT soybeans. In regards to this other potential source of growth regulator type herbicide application located in the area reference case PS19-0438. Further, I asked Mr. Seib if he used the required 57-foot omnidirectional infield buffer required to protect federally listed threatened and endangered species. Mr. Seib advised he did not use the buffer in the application to the target field.
7. Weather history data was obtained at [www.wunderground.com](http://www.wunderground.com) from the closest official weather station to the application site. The location and weather data for June 29, 2019 follows:
  - Evansville Regional Airport (KEVV) located in Evansville, Indiana 17 miles to the southwest of the application site:

Date	Time	Temperature	Wind Direction	Wind Speed	Wind Gust
6/29/2019	10:54 AM	88 F	SSE	3 MPH	0 MPH
6/29/2019	11:54 AM	89 F	SW	6 MPH	0 MPH
6/29/2019	12:54 PM	90 F	SW	5 MPH	0 MPH
6/29/2019	1:54 PM	90 F	VAR	3 MPH	0 MPH

8. The wind data from the Evansville Regional Airport (KEVV) indicates the wind speed during the application was between 3 mph and 6 mph with no gusts constantly out of the south and varying between east and west.

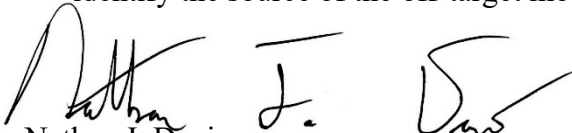
9. The PPPDL report stated: *The soybean plants in sample 19-993 (both fields) showed cupped leaves. The cupped leaves also had a whitish/yellowish leaf tip. These symptoms are characteristic of exposure to dicamba.*
10. The OISC Residue Laboratory analyzed the soil and vegetation samples collected for the active ingredients clopyralid, dicamba, and glyphosate and reported the following (During my on-site investigation the samples for the off target southeast field were labeled incorrectly as off target southwest field, therefore in the lab report they are labeled off target southwest, in this report and aerial diagram the field is referenced as off target southeast field):

OCM Collection #	103505	Case #	PS19-0341	Investigator				N. Davis	
Sample #	Sample Description	Matrix	Amount of Analyte (ppb)						
			5-OH Dicamba	Clopyralid	DCSA	Dicamba	AMPA	Glyphosate	
19-4-0776-0	Soil, composite, N target field composite soil, target site	Soil	BDL	BDL	12.5	0.379	306	49.2	
19-4-0777-3	Soil, composite, S target field composite soil, target site	Soil	BDL	BDL	22.4	1.69	506	152	
19-4-0778-7	Vegetation, grab/spot, off target N field, gradient 1 veg (beans), affected site	Veg	BDL	BQL	BQL	4.48	BDL	BDL	
19-4-0779-4	Vegetation, grab/spot, off target N field, gradient 2 veg (beans), affected site	Veg	BDL	BQL	BDL	2.36	BDL	BDL	
19-4-0780-4	Vegetation, grab/spot, off target N field, gradient 3 veg (beans), affected site	Veg	BDL	BQL	BQL	2.27	BDL	BDL	
19-4-0781-5	Vegetation, grab/spot, off target SW field, gradient 1 veg (beans), affected site	Veg	BDL	BQL	BQL	3.29	BDL	BDL	
19-4-0782-7	Vegetation, grab/spot, off target SW field, gradient 2 veg (beans), affected site	Veg	BDL	BQL	BQL	2.88	BDL	BDL	
19-4-0783-6	Vegetation, grab/spot, off target SW field, gradient 3 veg (beans), affected site	Veg	BDL	0.309*	BQL	2.71	BDL	BDL	
19-4-0784-3	Soil, control, comparable control soil, other/more	Soil	BDL	BDL	BQL	BDL	BDL	BDL	
19-4-0785-8	Vegetation, control, comparable control veg, other/more	Veg	2.64	4.75*	0.385	14.6	BDL	BDL	
PPM= Parts Per Million; PPB=Parts Per Billion; CONF=Confirmed; LOQ=Limit of Quantitation; BDL=Below detection Limits: this analyte was not detected using the standard analytical methods employed by OISC; BQL=Below quantification limits: this analyte was detected however the amount was lower than the quantification limit established using the standard analytical methods employed by OISC									
* Result reported as Minimum Detected due to low recovery.									
LOQ (ppb)		Soil	0.2	0.2	0.2	0.2	125	10	
LOQ (ppb)		Veg	2	0.2	0.2	0.2	125	25	
Signature					Date		12/09/19		

11. The OISC Residue Laboratory analysis detected dicamba and clopyralid in the off target composite vegetation samples. The tank mix for this application included the active ingredient dicamba. The active ingredient clopyralid detected in the off target composite vegetation samples is in reference to case PS19-0438.
12. According to the application records and confirmed by the wind data from the Evansville Regional Airport (KEVV), during the application the wind was out of the west and would have been blowing towards the complainants southeast non-DT soybean field. The label for

*Engenia*, EPA Reg. #7969-345, Active Ingredient = dicamba states: **“Do not apply when wind is blowing in the direction of a neighboring sensitive crop”**.

13. According to statement made by private applicator Carl Seib on August 2, 2019, he failed to use the required 57-foot omnidirectional infield buffer required to protect federally listed threatened and endangered species. The label for *Engenia*, EPA Reg. #7969-345, Active Ingredient = dicamba states: **“Prior to making an Engenia application in DT cotton and DT soybeans, an applicator must visit [www.epa.gov/espp/](http://www.epa.gov/espp/) to determine if there are any additional restrictions on Engenia use within the area to sprayed”**. According to [www.epa.gov/espp/](http://www.epa.gov/espp/) Posey County, Indiana has the following restriction: **“In combination with the 110 foot in-field wind-directional spray drift buffer, a 57 foot omnidirectional infield buffer is required to protect federally listed threatened and endangered species”**.
14. Based on the evidence collected in this investigation, it has been determined that Carl Seib failed to comply with the drift management restrictions on the label for the herbicide *Engenia*, EPA Reg. #7969-345, Active Ingredient = dicamba. It should also be noted that OISC was not able to determine whether the herbicide moved off-target as a result of drift, application into an inversion, or volatilization at some point after the application, and was not able to clearly identify the source of the off-target movement.

  
Nathan J. Davis  
Investigator

Date: December 20, 2019

**Disposition:** Carl Seib was cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift management. A civil penalty in the amount of \$100.00 was assessed for this violation. Consideration was given to the fact this was his first violation of similar nature. Consideration was also given to the fact a restricted use pesticide was involved.

  
George N. Saxton  
Compliance Officer

Draft Date: February 12, 2020  
Case Closed: March 18, 2020

## CASE SUMMARY

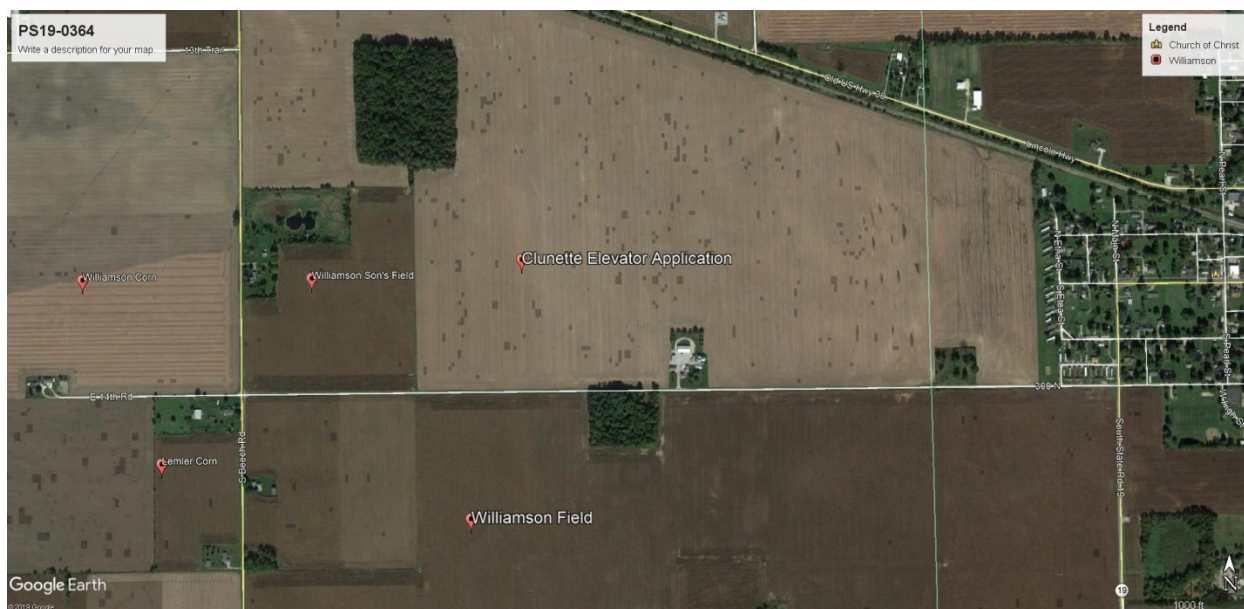
Case #PS19-0364

**Complainant:** Michael E. Williamson  
2366 North SR 19  
Etna Green, Indiana 46524

**Respondent:** Duane Metzger  
Clunette Elevator Co., Inc.  
4316 W. 600 N.  
Leesburg, Indiana 46538

**Licensed Applicator**

1. On July 19, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report that his non-DT beans appear to have been affected by dicamba sprayed to one of the neighboring fields.
2. On July 23, 2019, I met with the complainant Michael Williamson at his Liberty soybean field. Mr. Williamson told me he believed a dicamba pesticide application was made to the soybeans to the north of his field. He said he noticed what appeared to be exposure symptoms to his non-dicamba tolerant (DT) soybeans. When I asked about other fields in the area, Mr. Williamson told me the fields were cornfields. (see map below)

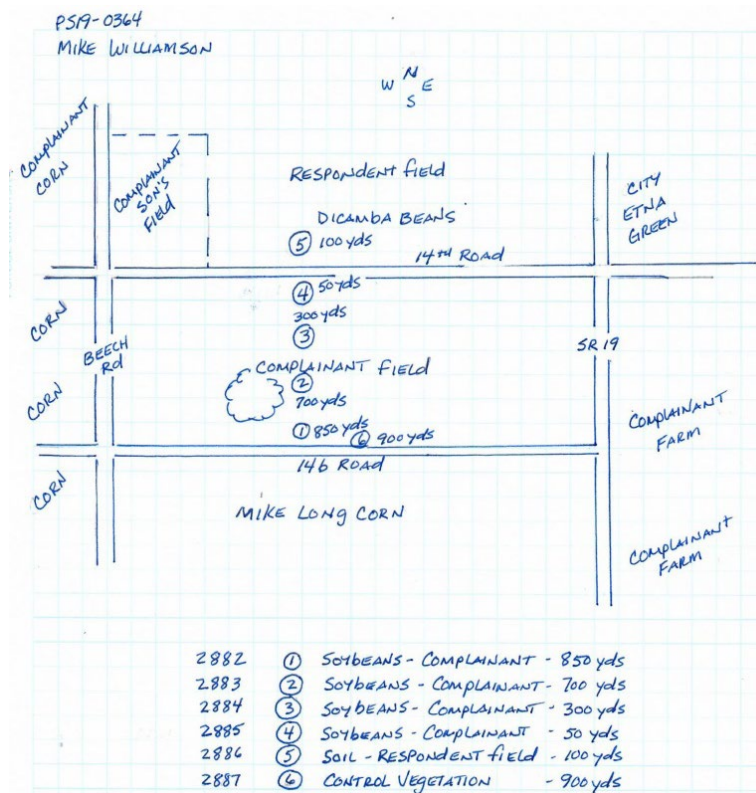


3. I checked Mr. Williamson's soybean field. I observed that the soybeans exhibited pesticide exposure symptoms of cupping and puckering. The symptoms appeared to be uniformly distributed across a large portion of his field. (see photos below)





4. I obtained soybean samples from the complainant's field for submission to the Purdue Plant and Pest Diagnostic Lab (PPDDL) for analysis.
5. I placed the following environmental samples in Mylar bags for submission to the OISC Residue Lab for analysis (see diagram below):



2882 soybeans- complainant field- 850 yds from respondent field  
2883 soybeans- complainant field- 700 yds from respondent field  
2884 soybeans- complainant field- 300 yds from respondent field  
2885 soybeans- complainant field- 50 yds from respondent field  
2886 soil- respondent field  
2887 control vegetation- 900 yds from respondent field

6. I learned Clunette Elevator made a pesticide application to the field north of the complainant's field. I also learned the fields adjacent to the complainant's non-DT soybeans were planted with corn. (see diagram above) I made contact Gabe Ayers with Clunette Elevator. Mr. Ayers confirmed Clunette Elevator made a pesticide application to the field north of the complainant. Mr. Ayers told me Duane Metzger made an application of dicamba with other pesticides in the tank mix. He told me Mr. Metzger would complete and return a Pesticide Investigation Inquiry (PII) regarding the application.
7. I received the following information from PPPDL: *"The soybeans in the physical sample had very little to no symptoms of exposure to dicamba. However, the plants shown in the photos displayed light cupping and whitish leaf tips that are characteristic of exposure to dicamba"*.
8. I received a completed PII from applicator Duane Metzger. The PII had the following information:
  - **Certified Applicator:** Duane Metzger
  - **Application Date and Time:** June 28, 2019 from 7:19am to 10:25am
  - **Pesticides Used:** Abundit Edge (EPA #524-549-352; active ingredient: glyphosate)  
Fexapan (EPA #352-913; active ingredient: dicamba)  
EverpreX (EPA #352-923; active ingredient: metolachlor)  
Fusilade DX (EPA #100-1070; active ingredient; fluazifop)
  - **Adjuvants:** AG16098
  - **Target Field:** 14<sup>th</sup> Road and Beech Road
  - **Pre/Post Application:** Post
  - **Wind Direction at Start Time:** S-SW **at End Time:** W-SW
  - **Wind Speed at Start Time:** 2 miles per hour **at End Time:** 5 miles per hour
  - **Method or Equipment:** Weather Station at Clunette Elevator
  - **Nozzles:** TTI 11004
  - **Boom Height:** 17 inches
  - **Downwind Buffer:** N/A
  - **Date DriftWatch Checked:** 6/28/19
  - **Date Registrant's Website Checked for Approval Tank Mixes:** 6/27/19
  - **Date and City Dicamba Training Received:** 3/20/19
9. I confirmed the weather data from the completed PII at **National Climate Data Center (NCDC)** at [ncdc.noaa.gov](https://www.ncdc.noaa.gov).
  - Warsaw Municipal Airport located in Warsaw, Indiana (11 miles east of site) recorded the wind blowing at 0 miles per hour at the start time of the application.

10. I checked the labels for **Fexapan, Abundit Edge, EverpreX and Fusilade DX** for potential label violations. The label for Fexapan reads in part, “**Wind Speed:** Do not apply when wind speeds are **less than 3 MPH or greater than 10 MPH**. Only apply when wind speed at boom height is between 3 and 10 mph.”
11. Based on available information (site observations, PPPDL report, PII information and weather data), Mr. Metzger was in violation of **Fexapan** label by applying it when “*winds were less than 3 miles per hour*” at the start of his application (by his own admission on PII wind at 2 miles per hour at start of application confirmed by weather data at [ncdc.noaa.gov](http://ncdc.noaa.gov).)
12. No residue samples were analyzed due to obvious label violation.



Kevin W. Gibson  
Investigator

Date: January 3, 2020

**Disposition:** Based on the evidence collected in this investigation, it has been determined that Clunette Elevator Co. Inc. and Duane Metzger was in violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to comply with the drift management restrictions on the label for the herbicide Fexapan. A civil penalty in the amount of \$250.00 was assessed for this violation. Consideration was given to the fact this was Mr. Metzger’s first violation of similar nature. Consideration was also given to the fact a restricted use pesticide was involved.

Clunette Elevator Co. Inc. and Duane Metzger were cited for violation of section 65(6) of the Indiana Pesticide Use and Application Law, specifically 357 IAC 1-12-2, for applying a pesticide in a manner that allows it to drift from the target site in sufficient quantity as to cause harm to a non-target site.

It should be noted that OISC was not able to determine whether the herbicide moved off-target as the result of drift, application into an inversion, or volatilization at some point after the application, and was not able to clearly identify the source of the off-target movement.



George N. Saxton  
Compliance Officer

Draft Date: February 19, 2020  
Case Closed: May 5, 2020

## CASE SUMMARY

Case #PS19-0374

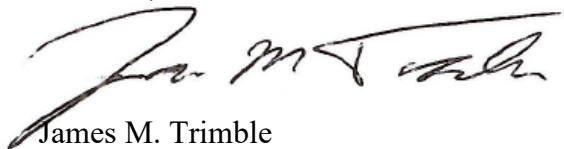
**Complainant:** Office of Indiana State Chemist (OISC)  
175 South University Street  
West Lafayette, IN 47907-2063

**Respondent:** Nutrien Ag Solutions, Inc. Restricted Use Dealer  
13934 S. County Rd. 700 E.  
Clarks Hill, IN 47930

1. On July 9, 2019, during my investigation of a potential drift case (see case #PS19-0320), I found that Scott Odle had been applying and purchasing Restricted Use Pesticides (RUP) without being certified through the Office of Indiana State Chemist (OISC). Mr. Odle's OISC Private Applicator certification was found to have expired on December 31, 2015. Mr. Odle advised he believed he had completed his recertification and was unaware he was unlawfully purchasing and applying the RUPs. Mr. Odle had informed me he had purchased the RUPs from Nutrien Ag Solutions Inc. (Nutrien), formerly Crop Production Services Inc., and Windy Ridge Ag LLC (see case #PS20-0043).
2. On July 11, 2019, I met with Nutrien Manager, Chad Smith, and Administrative Assistant, Terri Dixon, at 13934 S. C.R. 700 E., Clarks Hill, IN. Mr. Smith & Mrs. Dixon was informed of the above incident. Mrs. Dixon stated they had a Private Applicator certification on file for Mr. Odle with an expiration date of December 31, 2020. I observed the certification they had on file had Mr. Odle's old certification number that was no longer in use or valid. I advised Mrs. Dixon & Mr. Smith that Mr. Odle's OISC certification had expired on December 31, 2015 and he had not been certified since. Mrs. Dixon advised she believes they were notified by Mr. Odle that he was recertified but it had not been confirmed by Nutrien by receiving any copying his new certification.
3. While on-site, I performed a facility and records inspection, where I collected Nutrien's RUP sales records for the past 3 ½ years. After inspecting the above records, I found Mr. Odle was the only noncertified customer Nutrien had unlawfully sold an RUP to. I found that Nutrien had sold RUPs to Mr. Odle on a number of occasions, which are listed below. The sales below are listed in order of their invoice number as I was advised by Mrs. Dixon that their invoice dates are not indicative of when it was sold. It should be noted that on November 4, 2017, the Indiana Pesticide Review Board (IPRB) made dicamba-containing pesticide products restricted if they have 6.5% dicamba or more. Enforcement date for this decision is January 1, 2018.
  - a. Scott Odle, 3668 E. 1000 N., Linden, IN 47955, Private Applicator, expired 12/2015.
    - i. Invoice #33971738, 07/24/2017
      1. Tombstone (EPA Reg. #34704-978, active ingredient of Cyfluthrin)
    - ii. Invoice #37131806, 07/19/2018
      1. Gramaxone SL 2.0 (EPA Reg. #100-1431, active ingredient of Paraquat)



4. I concluded that Nutrien Ag Solutions Inc. had distributed two (2) Restricted Use Pesticides to Mr. Odle, a non-certified user.



James M. Trimble  
Investigator

Date: January 7, 2020

**Disposition:** Nutrien Ag Solutions Inc. was cited for two (2) counts of violation of section 65(6) of the Indiana Pesticide Use and Application Law, specifically 357 IAC 1-3-2, for distributing a restricted use pesticide product to a non-certified user. A civil penalty in the amount of \$500.00 (2 counts x \$250.00 per count) was assessed. By rule, this civil penalty may not be mitigated by the Office of Indiana State Chemist.



George N. Saxton  
Compliance Officer

Draft Date: February 19, 2020  
Case Closed: April 21, 2020

## CASE SUMMARY

Case #PS19-0404

**Complainant:** Brad Snider  
1805 Hickory Drive  
Vincennes, Indiana 47591

**Respondent:** Michael Parker  
Ed Air, Inc.  
2253 East Airport Road  
Oaktown, Indiana 47561

Certified Applicator

1. On July 30, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report that this past Saturday, he and his family were doing a yard sale when an aerial applicator flew over them and sprayed them. Complainant stated his wife's glasses are spotted from the spray. Allegedly some adults and children became ill as a result. Complainant stated he has photos and clothing he will surrender to OISC with the understanding the clothing will be destroyed in the laboratory process.
2. On July 31, 2019, I met with Mr. Snider at his residence. He stated on Saturday July 27, 2019, residents on Hickory Drive were having a garage sale. He stated there were multiple people outside of the residence at 1857 E. Hickory Drive. He stated at approximately 9:00 am, a "crop duster" airplane owned by Ed Air, Inc. of Oaktown, Indiana was spraying the cornfield on the Nowaskie farm located directly south of the residence at 1857 E. Hickory Drive. He stated the airplane made multiple passes spraying outside of the boundaries of the field, resulting in multiple people being "doused" with chemicals from his actions. He stated four children and three adults had adverse reactions, such as vomiting and headaches and sore throats. Mr. Snider provided me with a written statement containing this information. He stated he made contact with Ed Huddleston of Ed Air. He stated Mr. Huddleston was resistant to accepting responsibility for the spraying off target. He stated he advised Mr. Huddleston, that his wife was sprayed and Mr. Huddleston told him to have the people sprayed to shower and wash the clothing they were wearing. I asked Mr. Snider if he had the clothing from his wife or any other persons involved. He stated they had all been washed. I was unable to make contact with any of the other people allegedly involved.
3. I then made contact with the home owner and advised her I was investigating a complaint regarding the crop duster. I asked her if I could collect samples from her property. She advised me I could conduct any investigation methods necessary.
4. I then took photographs of the scene and collected swab and vegetation samples from the residence and the target field. All of the samples were labeled and submitted to the OISC Residue Lab. The following photographs show the location of the target field in relationship to the residence with the garage sale and the locations where samples were collected.



5. I made contact with Mr. Eddie Huddleston of Ed Air. He was aware of the complaint. He stated he had spoken with Mr. Snider and advised him a fungicide had been applied and anyone exposed should shower and wash their clothing. He stated he attempted to discuss the situation with Mr. Snider, but Mr. Snider was not very understanding. Mr. Huddleston advised me Mr. Michael Parker was the pilot/certified applicator who made the pesticide application to the target field in question. He stated Mr. Parker applied Trivapro Fungicide EPA Reg. #100-1613 with the active ingredients azoxystrobin, propiconazole and bensovindiflupyr. He provided me with the application report. The report confirmed the product applied and further indicated the winds were SW at the time of the application. I sent Mr. Parker a Pesticide Investigation Inquiry (PII) of which he received, completed and returned to me. The PII confirmed the previous information provided to me, except it did not have a wind direction documented. Only it was calm.
6. I received a report from the OISC residue lab. The report indicated the active ingredients azoxystrobin, benzovindiflupyr and propiconazole were all detected in the all of the samples collected from the residence, including samples collected from items on the north side of the house in the drive where the people were standing. The following is a copy of the OISC report.

OCM Collection #	109107	Investigator	BREWERR
Collection Date	07/31/2019		

Sample #	Sample Description	Matrix	Analyte	Amount of Analyte	LOQ
19-4-0139 3	Swab (trip blank); Trip blank; trip blank; trip blank;	Swab (trip blank)	Azoxystrobin	BDL ng/swab	1 ng/swab
			Benzovindiflupyr	BDL ng/swab	1 ng/swab
			Propiconazole	BDL ng/swab	1 ng/swab
19-4-0140 8	Swab (Acetone); Control; utility pole; North;	Swab (Acetone)	Azoxystrobin	42.3 ng/swab	1 ng/swab
			Benzovindiflupyr	5.95 ng/swab	1 ng/swab
			Propiconazole	21.0 ng/swab	1 ng/swab
19-4-0141 2	Swab (Acetone); Composite; south side of house; Back Yard;	Swab (Acetone)	Azoxystrobin	1340 ng/swab	1 ng/swab
			Benzovindiflupyr	261 ng/swab	1 ng/swab
			Propiconazole	1170 ng/swab	1 ng/swab
19-4-0142 0	Swab (Acetone); Composite; north side of house; Front Yard;	Swab (Acetone)	Azoxystrobin	428 ng/swab	1 ng/swab
			Benzovindiflupyr	81.1 ng/swab	1 ng/swab
			Propiconazole	381 ng/swab	1 ng/swab

OCM Collection #	109107	Investigator	BREWERR
Collection Date	07/31/2019		

Sample #	Sample Description	Matrix	Analyte	Amount of Analyte	LOQ
19-4-0143 1	Swab (Acetone); Composite; Black porch swing; Back Yard;	Swab (Acetone)	Azoxystrobin	2370 ng/swab	1 ng/swab
			Benzovindiflupyr	367 ng/swab	1 ng/swab
			Propiconazole	1610 ng/swab	1 ng/swab
19-4-0144 9	Swab (Acetone); Composite; concrete drive where complt. was	Swab (Acetone)	Azoxystrobin	245 ng/swab	1 ng/swab
			Benzovindiflupyr	128 ng/swab	1 ng/swab
			Propiconazole	422 ng/swab	1 ng/swab
19-4-0145 4	Swab (Acetone); Composite; basketball goal; Front Yard;	Swab (Acetone)	Azoxystrobin	164 ng/swab	1 ng/swab
			Benzovindiflupyr	137 ng/swab	1 ng/swab
			Propiconazole	1490 ng/swab	1 ng/swab
19-4-0146 5	Swab (Acetone); Composite; mailbox; Front Yard;	Swab (Acetone)	Azoxystrobin	1190 ng/swab	1 ng/swab
			Benzovindiflupyr	562 ng/swab	1 ng/swab
			Propiconazole	2880 ng/swab	1 ng/swab
19-4-0147 7	Swab (Acetone); Composite; fire plug; Front Yard;	Swab (Acetone)	Azoxystrobin	1800 ng/swab	1 ng/swab
			Benzovindiflupyr	220 ng/swab	1 ng/swab
			Propiconazole	759 ng/swab	1 ng/swab

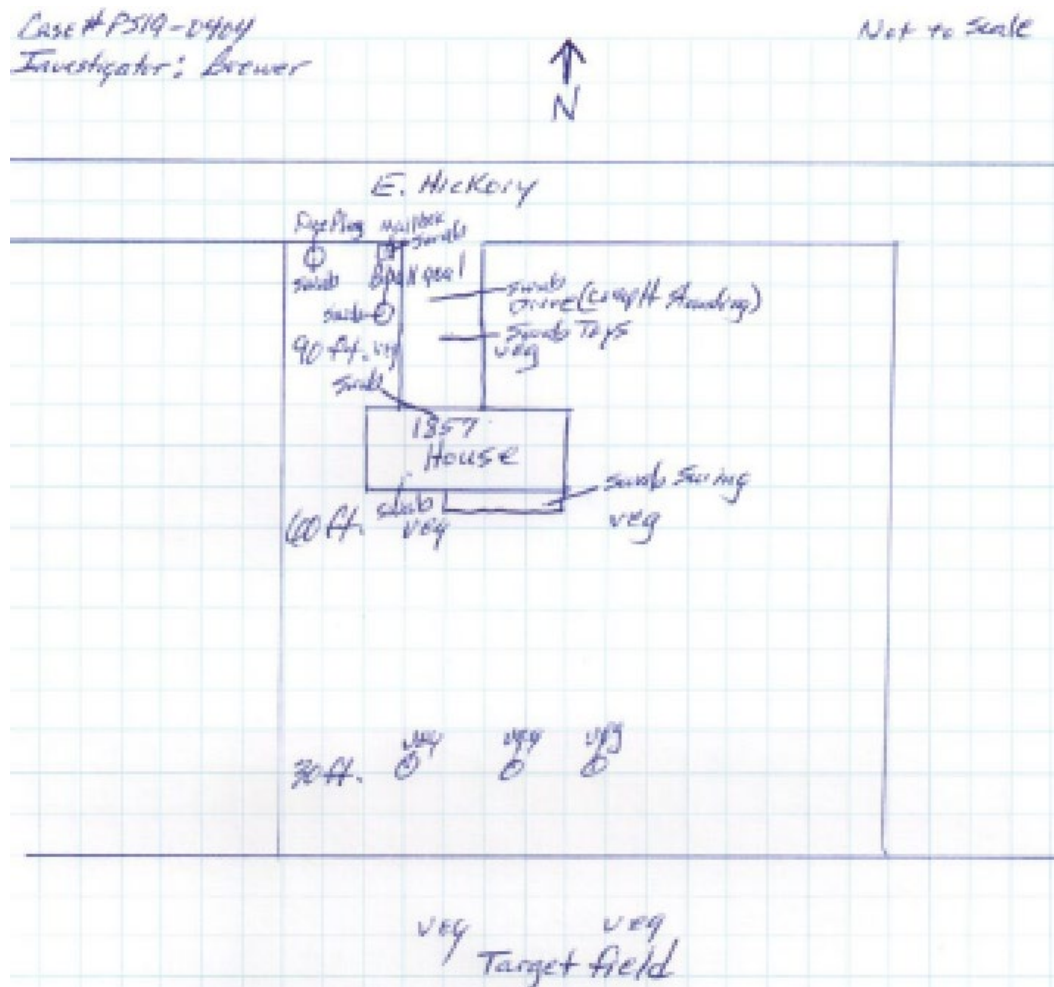


OCM Collection #	109107	Investigator	BREWERR
Collection Date	07/31/2019		

Sample #	Sample Description	Matrix	Analyte	Amount of Analyte	LOQ
19-4-0148 3	Swab (Acetone); Composite; toys in driveway; Front Yard;	Swab (Acetone)	Azoxystrobin	41000 ng/swab	1 ng/swab
			Benzovindiflupyr	12600 ng/swab	1 ng/swab
			Propiconazole	30700 ng/swab	1 ng/swab
19-4-0149 6	Vegetation; Composite; target corn field; Target Site;	Vegetation	Azoxystrobin	3690 ppb	1 ppb
			Benzovindiflupyr	2080 ppb	0.3 ppb
			Propiconazole	16900 ppb	1 ppb
19-4-0150 5	Vegetation; Composite; compit property 30 ft; Gradient 1;	Vegetation	Azoxystrobin	13600 ppb	1 ppb
			Benzovindiflupyr	6360 ppb	0.3 ppb
			Propiconazole	24700 ppb	1 ppb
19-4-0151 4	Vegetation; Composite; compit property 60 ft; Gradient 2;	Vegetation	Azoxystrobin	6460 ppb	1 ppb
			Benzovindiflupyr	2200 ppb	0.3 ppb
			Propiconazole	6220 ppb	1 ppb
19-4-0152 2	Vegetation; Composite; compit. property 90 ft; Gradient 3;	Vegetation	Azoxystrobin	2700 ppb	1 ppb
			Benzovindiflupyr	823 ppb	0.3 ppb
			Propiconazole	3660 ppb	1 ppb

- I researched the Weather Underground website for weather history. I triangulated with the three nearest reporting weather stations. Vincennes Intl station indicated the winds at the time and date of the pesticide application were SSW @ 10 mph. Vincennes Hannah's indicated the winds were SW @ 7 mph and Indiana Creek indicated the winds were WSW @ 4 mph.
- I researched the label for Trivapro Fungicide. The most recent updated label as of February 6, 2019 stated on page 5, "Do not apply this product in a way that will contact workers or other persons, either directly or through drift". "Avoid spray drift."

9. The following is a diagram of the scene, showing the location of the target field in relationship to the residence and of the sample collection locations.




10. The results of the OISC Residue Lab report, indicated all of the active ingredients in the product apply were detected in all of the samples collected from the residence. The Weather Underground report, indicated the winds at the time and date of the aerial pesticide application were SW, SSW and WSW, all of which would be blowing towards the residence. These factors would indicate the pesticide from the aerial application made by Mr. Parker, did drift off target and onto the property at 1857 E. Hickory Street.

*Robert D. Brewer*  
Robert D. Brewer  
Investigator

Date: January 30, 2020

**Disposition:** Michael Parker and Ed Air, Inc. were cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding to drift. A civil penalty in the amount of \$250.00 was assessed for this violation. Consideration was given to the fact this was Mr. Parker's first violation of similar nature. Consideration was also given to the fact there was potential for human harm.

  
George N. Saxton  
Compliance Officer

Draft Date: March 20, 2020  
Case Closed: May 21, 2020



## CASE SUMMARY

Case #PS19-0408

**Complainant:** Ottis Buroker  
1875 S. CR500 West  
Marion, IN 46953

**Respondent:** Colin Solms  
4491 W. CR 600 South  
Marion, IN 46953

Private Applicator

1. On July 26, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report a pesticide application of dicamba to a neighboring farm field drifted onto his Liberty Link soybeans.
2. On July 26, 2019, I spoke with Ottis "Ott" Buroker who reported he noticed leaf-cupping on non dicamba-tolerant (DT) soybean plants in his field on the east side of CR600 West in Grant County. Mr. Buroker indicated there were several neighboring fields planted to DT soybeans which he believed had been sprayed with dicamba. I explained that each potential source of dicamba would be treated as a separate complaint investigation. He indicated one possible source of off-target movement was a field which bordered his to the north. That field was reportedly farmed by Steve Berry.
3. On July 29, 2019, after completing an on-site investigation in the area, I met with Mr. Buroker at his farm. He explained that he found other fields in which his soybeans exhibited leaf-cupping and indicated he would likely be filing additional complaints. I informed Mr. Buroker that I would start by investigating the field in the original complaint the next day.
4. On July 30, 2019, during my on-site investigation, I did the following:
  - a) Identified several potential sources of dicamba adjacent to the Buroker soybean field. The target field in this case (Berry) abutted the Buroker field to the north.
  - b) Observed and photographed mostly-uniform, widespread cupping and puckering of leaves on non-DT soybeans across the western portion of the Buroker field. These symptoms are commonly associated with exposure to a growth-regulator type herbicide such as dicamba. The symptoms dissipated to the southeast within the Buroker field.
  - c) Collected soybean plant plants which exhibited symptoms from the Buroker field for assessment by the Plant & Pest Diagnostic Lab (PPDL) at Purdue.
  - d) Collected four gradient samples of soybeans across the Buroker field from north-to-south at 400-foot increments. Collected a soil sample from the target (Berry) field, several rows in from the north edge of the Buroker field. Those samples were submitted to the OISC Residue Lab for analysis. *It should be noted that the gradient samples collected from the Buroker field are representative samples and may be referenced in other investigations at the site.*

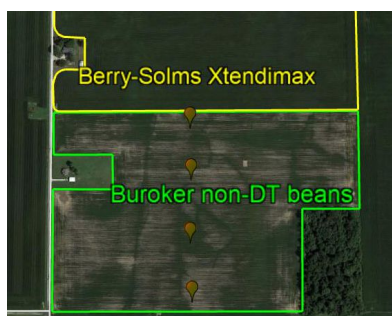


Fig.1 Aerial photo of fields



Fig.2 Abutting soybean fields



Fig.3 Cupped non-DT beans

5. On July 30, 2019, I spoke with Mr. Berry and informed him of the complaint. He confirmed his applicator sprayed the DT beans north of the Buroker field in early July with Xtendimax (dicamba). Mr. Berry indicated he would provide any application information I needed.
6. On August 2, 2019, I received a completed Pesticide Investigation Inquiry (PII) and application records from Mr. Berry which provided the following information:
  - a. Certified applicator: Collin Solms
  - b. Application date and time: July 8, 2019, from 9:20am – 10:10am
  - c. Pesticides: Roundup PowerMax (glyphosate), EPA Reg. #524-549  
Fusilade DX (fluazifop), EPA Reg. #100-1070  
Xtendimax (dicamba), EPA Reg. #524-617
  - d. Adjuvants: Design, Capsule
  - e. Target field: Astor
  - f. Pre or post application: Post
  - g. Wind speed/direction at start: 8mph from north-northeast (toward Buroker field)
  - h. Wind speed/direction at end: 6mph from north-northeast
  - i. Nozzles: Monsanto TTI06
  - j. Boom Height: 24"
  - k. Downwind Buffer: NA
  - l. Checked registrant's website before application: 07/01/19
  - m. Checked DriftWatch before application: NA
  - n. Dicamba mandatory training attended: 04/30/19
7. The PPDL report indicated, "*Soybeans show injury symptoms consistent with exposure to dicamba.*" It further stated, "*Septoria brown spot was present on lower leaves. No other significant disease or insect problem found.*"
8. Because there were several potential sources of dicamba near the Buroker field, determining the extent of exposure from any single source was not possible. However, the evidence at the site, the PPDL report and the wind information provided by Mr. Solms suggest dicamba from the application to the target field moved off-target to the adjacent non-DT soybeans. While it is difficult to determine whether dicamba moved off-target through direct particle drift, application into an inversion or volatility at some point after the application, Mr. Solms applied Xtendimax while winds were blowing toward the sensitive non-DT soybeans in the Buroker field. Because a violation was documented based on the information provided, this summary was prepared prior to the samples being analyzed by the OISC Residue Lab.

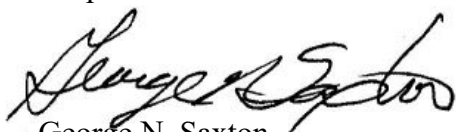
9. The XtendiMax label reads, in part, **“DO NOT APPLY this product when the wind is blowing toward adjacent non-dicamba tolerant sensitive crops; this includes NON-DICAMBA TOLERANT SOYBEAN AND COTTON.”**



Andrew R. Roth  
Investigator

Date: January 13, 2020

**Disposition:** Colin Solms was cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift management. A civil penalty in the amount of \$100.00 was assessed for this violation. Consideration was given to the fact this was his first violation of similar nature. Consideration was also given to the fact a restricted use pesticide was involved.



George N. Saxton  
Compliance Officer

Draft Date: March 5, 2020  
Case Closed: May 18, 2020

## CASE SUMMARY

Case #PS19-0425

**Complainant:** Ottis Buroker  
1875 S. CR500 West  
Marion, IN 46953

**Respondent:** Douglas Morrow  
5411 W. CR125 South  
Marion, IN 46953

Private Applicator

1. On August 1, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report an application of dicamba to a neighboring farm field drifted onto his Liberty Link soybeans.
2. On August 1, 2019, I again spoke with Ottis “Ott” Buroker about leaf-cupping on non dicamba-tolerant (DT) soybean plants in another one of his fields. We had been in contact over the previous several days regarding complaint investigations at a different site. Mr. Buroker reported the latest affected field was located at the northwest corner of CR600 West and N 00 S in Grant County.
3. On August 2, 2019, I met with Mr. Buroker at his farm before going to the affected field, a split field divided by a ditch and grass strip, on the north side of N 00 S. Mr. Buroker noted there were several neighboring fields which were potential sources of dicamba. One of those fields was farmed by Doug Morrow and had been planted to corn. I informed Mr. Buroker I would conduct the on-site investigation and sampling the following Monday.
4. On August 5, 2019, during my on-site investigation, I did the following:
  - a) Identified multiple potential sources of dicamba adjacent to the Buroker soybean field. The target field in this case (Morrow) was across the county road, south of the Buroker field (Fig.1).
  - b) Observed and photographed widespread cupping and puckering of leaves on non-DT soybeans across most of the southern portion of the Buroker field. Symptoms were more severe near the road and ran parallel to the adjacent target field. These symptoms are commonly associated with exposure to a growth-regulator type herbicide such as dicamba. Cupped soybeans were also visible in the field bordering the target field to the west; a separate complaint was filed with the OISC by that grower (Case PS19-0440).
  - c) Collected soybean plants which exhibited symptoms from the Buroker field for assessment by the Plant & Pest Diagnostic Lab (PPDL) at Purdue.
  - d) Collected four gradient samples from affected soybeans in the Buroker field, from south-to-north, at 300-foot increments. Collected soil and affected weeds from several rows into the target field, south of the county road. Those samples were submitted to the OISC Residue Lab for analysis. *The samples collected from the target field are representative samples and may be referenced in other investigations involving the site.*

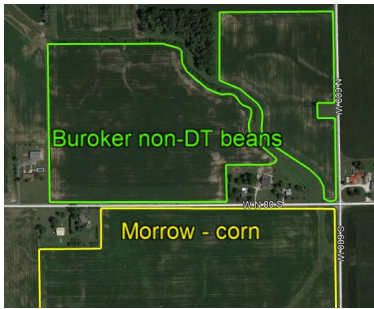


Fig.1 Aerial photo of fields



Fig.2 Cupping adjacent to corn field



Fig.3 Affected beans near road



Fig.4 Cupped non-DT beans



Fig.5 Affected soybeans, SE corner



Fig.6 Cupped & puckered leaves

5. I had been in contact with Mr. Morrow regarding other complaints over the previous week. Via email, I informed him of this additional complaint and sent him a Pesticide Investigation Inquiry (PII) for the application to his corn field. I did finally speak to Mr. Morrow on the phone and he indicated he did not think dicamba was applied to the corn field. He reported that he did not have the application records with him at the time, but stated there should not have been dicamba in the tank mix.
6. On August 14, 2019, I received a completed PII from Mr. Morrow for the application to the corn field. According to the information provided, he sprayed the cornfield from 11:05am-1:15pm on July 15, 2019, with a tank mix containing Bellum (EPA Reg. #83100-41-83979), active ingredient mesotrione, and Durango (EPA Reg. #62719-556), active ingredient glyphosate; neither is a growth-regulator type herbicide. Winds were reportedly from the west at 8mph during the application.
7. I checked wind data at the closest official weather station to the site, but the Marion Municipal Airport, 7 miles to the southeast, had no recordings for the date and time of the application. The Kokomo Regional Airport, 14 miles to the west, had two recordings during the time of the application; winds were recorded at 6mph and 8mph from the northwest, confirming Mr. Morrow's claim that winds were blowing away from the Buroker field.
8. The PPDL report indicated, "*Dicamba symptoms are present with this sample.*" It further stated, "*Soybean plant material show symptoms of leaf crinkling, cupping, and white leaf tips, which is associated with potential growth regulator exposure. Disease is not suspected to play a role.*"
9. The OISC Residue Lab analyzed the samples for dicamba and its breakdown products, DCSA and 5OH-dicamba. The dicamba parent compound was detected in all four soybean samples with higher levels in the samples closer to the Morrow field, thereby establishing a gradient pattern from the target corn field. DCSA was detected in all but the farthest sample from the target field. 5OH-dicamba was detected in all but the two samples farthest from the target field. All three dicamba analytes were detected at quantifiable levels in the weeds collected from the corn field. According

to the OISC Lab Director, the levels are consistent with those expected after direct application of a dicamba product. The lab results are summarized as follows:

Sample	Dicamba	DCSA	5OH-Dicamba
Non-DT beans 900ft	BQL	BDL	BDL
Non-DT beans 600ft	0.844 ppb	BQL	BDL
Non-DT beans 300ft	1.06 ppb	BQL	BQL
Non-DT beans, south end	3.91 ppb	BQL	0.49 ppb
Target field weeds	3300 ppb	28.2 ppb	38.0 ppb
Target field soil	Not analyzed	Not analyzed	Not analyzed

ppb=parts per billion

BDL=Below Detection Limits (analyte not detected)

BQL=Below Quantification Limits (analyte detected, but lower than quantification limit)

10. Although Mr. Morrow claimed he did not apply dicamba to the corn field, the physical evidence at the site and the lab reports support that dicamba was in the tank mix applied to the target field and that it moved off-target to the adjacent non-DT soybeans. While it is difficult to determine whether dicamba moved off-target through application into an inversion or volatility at some point after the application, direct particle drift is not suspected as winds were blowing away from the Buroker field during the reported time of application.

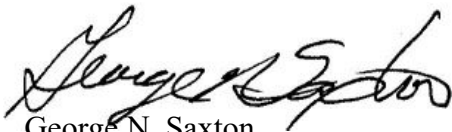


Andrew R. Roth  
Investigator

Date: January 17, 2020

**Disposition:** Douglas Morrow was cited for violation of section 65(8) of the Indiana Pesticide Use and Application Law for making a false or fraudulent record, invoice or report. A civil penalty in the amount of \$100.00 was assessed for this violation.

As of May 21, 2020, Douglas Morrow had not paid the \$100.00 civil penalty assessed for this violation. The case was closed and forwarded to Purdue Collections.



George N. Saxton  
Compliance Officer

Draft Date: March 5, 2020  
Case Closed: May 21, 2020



## CASE SUMMARY

Case #PS19-0440

**Complainant:** Jackie Wood  
558 N. CR600 West  
Swayzee, IN 46986

**Respondent:** Douglas Morrow  
5411 W. CR125 South  
Marion, IN 46953

Private Applicator

1. On August 2, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report he suspected a neighboring farmer applied dicamba to corn that adversely affected his soybeans.
2. On August 2, 2019, while conducting an on-site investigation in the area, I spoke with Jackie Wood on the phone. He reported he recently noticed cupping on non dicamba-tolerant (DT) Liberty Link soybeans in one of his fields. Mr. Wood indicated the soybeans were more severely cupped along the east side of his field, where it bordered a field reportedly farmed by Doug Morrow.
3. On August 5, 2019, I went to the field on the south side of N 00 S in Grant County. Mr. Wood's dad was at the site so we discussed the complaint and investigation. He described the layout of the fields; the soybean field, which contained grass strips, ran to the south from the county road, parallel to the west side of the corn field.
4. During my on-site investigation, I did the following:
  - a) Looked for but did not identify any other potential sources of dicamba adjacent to the Wood soybean field. The target field in this case (Morrow) abutted the Wood soybean field with only a fence line with grass and weeds separating the two (Fig.1). Application records for the two fields across the road to the north, a corn field and another affected non-DT soybean field, were checked during a separate investigation (Case PS19-0425).
  - b) Observed and photographed widespread cupping and puckering of leaves on non-DT soybeans along the eastern portion of the Wood field. Symptoms were more severe near the corn field but extended to the west and were visible out into the middle of the field in some areas. These symptoms are commonly associated with exposure to a growth-regulator type herbicide such as dicamba.
  - c) Collected soybean plants which exhibited symptoms from the Wood field for assessment by the Plant & Pest Diagnostic Lab (PPDL) at Purdue.
  - d) Collected four gradient samples from affected soybeans in the Wood field, from east-to-west, at 350-foot increments. Those samples were submitted to the OISC Residue Lab for analysis. *A soil sample and a vegetation sample (affected weeds) were collected from the Morrow cornfield during the investigation for Case PS19-0425; they serve as representative samples and will be referenced in this summary.*

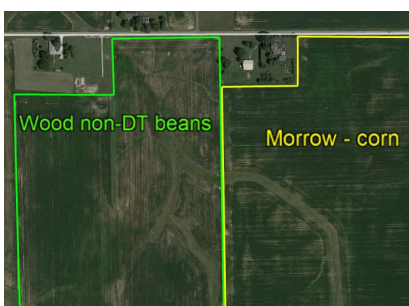


Fig.1 Aerial photo of fields



Fig.2 Affected beans near corn field



Fig.3 Cupped/puckered new growth



Fig.4 Cupped beans near corn



Fig.5 Cupped beans near grass strip



Fig.6 Cupped, stunted non-DT beans

5. I had been in contact with Mr. Morrow regarding other complaints over the previous week. Via email, I informed him of this additional complaint and sent him a Pesticide Investigation Inquiry (PII) for the application to his corn field. I did finally speak to Mr. Morrow on the phone and he indicated he did not think dicamba was applied to the corn field. He reported that he did not have the application records with him at the time, but stated there should not have been dicamba in the tank mix.
6. On August 14, 2019, I received a completed PII from Mr. Morrow for the application to the corn field. According to the information provided, he sprayed the cornfield from 11:05am-1:15pm on July 15, 2019, with a tank mix containing Bellum (EPA Reg. #83100-41-83979), active ingredient mesotrione, and Durango (EPA Reg. #62719-556), active ingredient glyphosate; neither is a growth-regulator type herbicide. Winds were reportedly from the west at 8mph during the application.
7. I checked wind data at the closest official weather station to the site, but the Marion Municipal Airport, 7 miles to the southeast, had no recordings for the date and time of the application. The Kokomo Regional Airport, 14 miles to the west, had two recordings during the time of the application; winds were recorded at 6mph and 8mph from the northwest, confirming Mr. Morrow's claim that winds were blowing away from the Wood field.
8. The PPDL report indicated, "*Dicamba symptoms are present with this sample.*" It further stated, "*Soybean plant material show symptoms of leaf crinkling, cupping, and white leaf tips, which is associated with potential growth regulator exposure. Disease is not suspected to play a role.*"
9. The OISC Residue Lab analyzed the samples for dicamba and its breakdown products, DCSA and 5OH-dicamba. The dicamba parent compound was detected in all four soybean samples with a higher level in the sample closest to the Morrow field, thereby establishing a gradient pattern from the target corn field. DCSA and 5OH-dicamba were detected in the soybean sample closest to the target field. All three dicamba analytes were detected at quantifiable levels in the weeds collected

from the cornfield. According to the OISC Lab Director, the levels are consistent with those expected after direct application of a dicamba product. The lab results are summarized as follows:

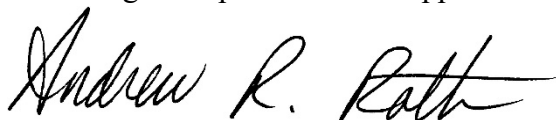
Sample	Dicamba	DCSA	5OH-Dicamba
Non-DT beans 1050ft	BQL	BDL	BDL
Non-DT beans 700ft	BQL	BDL	BDL
Non-DT beans 350ft	BQL	BDL	BDL
Non-DT beans, east side	7.63 ppb	BQL	BQL
Target field weeds	3300 ppb	28.2 ppb	38.0 ppb
Target field soil	Not analyzed	Not analyzed	Not analyzed

ppb=parts per billion

BDL=Below Detection Limits (analyte not detected)

BQL=Below Quantification Limits (analyte detected, but lower than quantification limit)

10. Although Mr. Morrow claimed he did not apply dicamba to the corn field, the physical evidence at the site and the lab reports support that dicamba was in the tank mix applied to the target field and that it moved off-target to the adjacent non-DT soybeans. While it is difficult to determine whether dicamba moved off-target through application into an inversion or volatility at some point after the application, direct particle drift is not suspected as winds were blowing away from the Wood field during the reported time of application.

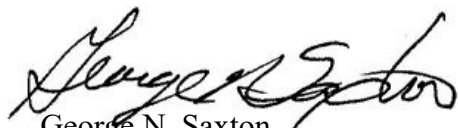


Andrew R. Roth  
Investigator

Date: January 17, 2020

**Disposition:** Douglas Morrow was cited for violation of section 65(8) of the Indiana Pesticide Use and Application Law for making a false or fraudulent record, invoice or report. A civil penalty in the amount of \$100.00 was assessed for this violation.

As of May 21, 2020, Douglas Morrow had not paid the \$100.00 civil penalty assessed for this violation. The case was closed and forwarded to Purdue Collections.



George N. Saxton  
Compliance Officer

Draft Date: March 5, 2020  
Case Closed: May 21, 2020

## CASE SUMMARY

Case #PS19-0443

**Complainant:** Ryan Cassidy  
7432 14th Road  
Argos, Indiana 46501

**Respondent:** Dungan Aerial Services, Inc.  
Colby Smith  
4290 N. County Road 450 W.  
Connersville, Indiana 47331  
765-679-5000

Certified Applicator

1. On August 5, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report on August 3, 2019 an aerial application to a neighboring farm field sprayed him and his property.
2. I spoke to the complainant Ryan Cassidy by telephone. He told me he was walking in his side yard when an airplane flew overhead. The plane was making a pesticide application to the field south of the complainant's property. He said he felt a mist from the plane's application. He also said it has occurred in the recent past.
3. On August 9, 2019, I met with the complainant's wife Ms. Cassidy. She told me her husband was walking on their property when an airplane flew overhead and sprayed him. At the request of the OISC intake officer, Ms. Cassidy placed her husband's clothing in a paper bag. She then gave the bag to me for chain of custody. (see satellite image below)





4. I checked the complainant's property and found no pesticide exposure symptoms. Therefore, I did not take photographs and I did not obtain vegetation samples for submission to the Purdue Plant and Pest Diagnostic Lab (PPDDL).
5. I placed the following samples in Mylar bags for submission to the OISC Residue Lab for analysis:

2896	swab trip blank	2897	control swab- vehicle window
2898	swab front window	2899	swab back window
2900	swab garage door	2901	vegetation side yard
2902	corn stalks- target field	2903	complainant shirt and location at application

(see image below)



6. I learned Dungan Aerial Services Inc. made a pesticide application to the field south of the complainant's property. I made contact with Dungan Aerial Services Inc. They agreed to complete and return a Pesticide Investigation Inquiry (PII) as part of the investigation process.
7. I received a completed PII from licensed applicator Colby Smith of Dungan Aerial Services Inc. The PII contained the following information:
  - Colby Smith made a pesticide application of:
    - Delaro** (EPA #264-1055; active ingredient: prothioconazole, trifloxystrobin)
    - Baythroid XL** (EPA #264-840; active ingredient: cyfluthrin)
  - The application was made August 3, 2019 between 1:50pm and 2:30pm.
  - The wind was recorded from the east blowing west at 4 miles per hour parallel to the complainant's property.
  - Weather information obtained from local weather station (unknown where)
  - Equipment used was an Air Tractor 802 with CP-IITT flat fan nozzles at 30-40 pressure

8. I obtained weather data from the **National Climate Data Center (NCDC)** at [ncdc.noaa.gov](https://www.ncdc.noaa.gov). I checked the three (3) separate sites listed below from [ncdc.noaa.gov](https://www.ncdc.noaa.gov):
- Fulton County Airport located in Rochester (13 miles south of site) recorded the wind blowing at 6-7 miles per hour in a west to northwest direction toward the complainant's property at time.
  - Warsaw Municipal Airport located in Warsaw (18 miles east of site) recorded the wind blowing at 6-8 miles per in a west to northwest direction toward the complainant's property at the beginning of the application and a west to southwest direction away from the complainant's property at the end of the application.
  - South Bend Airport located in South Bend (26 miles north of site) recorded the wind blowing at 8 miles per hour in a west to southwest direction away from the complainant's property at time of application.

9. I received the following information from OISC Residue Lab:

Sample #	Sample Description	Matrix	Analyte	Amount of Analyte	LOQ
19-4-2896 7	Swab (Acetone); Trip Blank; Swab; Affected Site;	Swab (Acetone)	Desthio Prothioconazole	BDL ng/swab	1 ng/swab
			Prothioconazole	BDL ng/swab	1 ng/swab
			Trifloxystrobin	BDL ng/swab	1 ng/swab
			Trifloxystrobin acid	BDL ng/swab	1 ng/swab
			Cyfluthrin	BDL ng/swab	20 ng/swab
19-4-2897 9	Swab (Acetone); Control; swab vehicle window; Affected Site;	Swab (Acetone)	Desthio Prothioconazole	2.18 ng/swab	1 ng/swab
			Prothioconazole	19.9 ng/swab * Minimum amount reported	1 ng/swab
			Trifloxystrobin	3.11 ng/swab * Minimum amount reported	1 ng/swab
			Trifloxystrobin acid	BDL ng/swab	1 ng/swab
			Cyfluthrin	BDL ng/swab	20 ng/swab
19-4-2898 0	Swab (Acetone); Grab/Spot; swab window front of house; Affec	Swab (Acetone)	Desthio Prothioconazole	5.09 ng/swab	1 ng/swab
			Prothioconazole	1.10 ng/swab * Minimum amount reported	1 ng/swab
			Trifloxystrobin	2.11 ng/swab * Minimum amount reported	1 ng/swab
			Trifloxystrobin acid	BDL ng/swab	1 ng/swab
			Cyfluthrin	BDL ng/swab	20 ng/swab



Sample #	Sample Description	Matrix	Analyte	Amount of Analyte	LOQ
19-4-2899 8	Swab (Acetone); Grab/Spot; swab window back of house; Affect	Swab (Acetone)	Desthio Prothioconazole	2.25 ng/swab	1 ng/swab
			Prothioconazole	2.06 ng/swab * Minimum amount reported	1 ng/swab
			Trifloxystrobin	BQL ng/swab * Minimum amount reported	1 ng/swab
			Trifloxystrobin acid	BDL ng/swab	1 ng/swab
			Cyfluthrin	BDL ng/swab	20 ng/swab
19-4-2900 9	Swab (Acetone); Grab/Spot; swab garage door; Affected Site;	Swab (Acetone)	Desthio Prothioconazole	1.06 ng/swab	1 ng/swab
			Prothioconazole	BDL ng/swab	1 ng/swab
			Trifloxystrobin	BDL ng/swab	1 ng/swab
			Trifloxystrobin acid	BDL ng/swab	1 ng/swab
			Cyfluthrin	BDL ng/swab	20 ng/swab
19-4-2901 3	Vegetation; Composite; vegetation located in side yard; Affe	Vegetation	Desthio Prothioconazole	3.70 ppb * Minimum amount reported	0.3 ppb
			Prothioconazole	7.89 ppb	0.7 ppb
			Trifloxystrobin	50.0 ppb	0.3 ppb
			Trifloxystrobin acid	4.22 ppb	0.3 ppb
			Cyfluthrin	BQL ppb	3 ppb
19-4-2902 1	Vegetation; Composite; corn stalks target field; Target Site	Vegetation	Desthio Prothioconazole	1.89 ppb * Minimum amount reported	0.3 ppb
			Prothioconazole	1.16 ppb	0.7 ppb
			Trifloxystrobin	25.3 ppb	0.3 ppb
			Trifloxystrobin acid	5.88 ppb	0.3 ppb
			Cyfluthrin	4.94 ppb	3 ppb
19-4-2903 2	Clothing; Grab/Spot; jeans, shorts and shirt (complainant pa	Clothing	Desthio Prothioconazole	960 ng/clothing	220 ng/clothing
			Prothioconazole	BDL ng/clothing	220 ng/clothing
			Trifloxystrobin	1210 ng/clothing * Minimum amount reported	220 ng/clothing
			Trifloxystrobin acid	BDL ng/clothing	220 ng/clothing
			Cyfluthrin	BDL ng/clothing	4,400 ng/clothing

10. The lab results indicated the active ingredients for **Delaro 325 SC** (prothioconazole, trifloxystrobin) were present in the vegetation where the complainant was standing at time of application and also in the complainant's clothing worn at time of application. The active ingredient for **Delaro 325 SC** was also found in low levels in the swab samples and the corn stalks from the target field. The active ingredient for **Baythroid** (cyfluthrin) was at levels below detectable limits. I spoke to the OISC lab director. She told me the levels of **Delaro 325 SC** found on the property and clothing were low-level amounts but consistent with drift.
11. I checked the labels for **Baythroid XL** and **Delaro 325 SC** for potential label violations.
12. The label for **Delaro 325 SC** reads in part, "*Do not apply this product in a way that will contact workers or other persons either directly or through drift*".
13. Based on review of available information (site observations, PII, weather data and residue analysis), Mr. Colby Smith was in violation when he failed to comply with the **Delaro 325 SC** label which read, "*Do not apply this product in a way that will contact workers or other persons either directly or by drift*".



Kevin W. Gibson  
Investigator

Date: January 22, 2020

**Disposition:** Colby Smith and Dungan Aerial Services Inc. were cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift to people. A civil penalty in the amount of \$1,000.00 was assessed for this violation. Consideration was given to the fact this was Colby Smith's third violation of similar nature. See case numbers 2016/1090 and 2016/1083.

In lieu of a license suspension, Dungan Aerial Services agreed to:

- a. Use a wider boom-width for fewer passes;
- b. Decrease swath width;
- c. Pull weather data from more than one source;
- d. Take more time to survey the area;
- e. Look for people, vehicles and other equipment near or in the treatment area.



George N. Saxton  
Compliance Officer

Draft Date: April 13, 2020  
Case Closed: May 18, 2020

## CASE SUMMARY

Case #PS19-0452

**Complainant:** Don Mathew  
1872 Harmony Springfield Road  
New Harmony, Indiana 47631

**Respondent:** Darrell Shemwell  
Posey County Co-Op  
151 Lockwood Street  
Poseyville, Indiana 47633  
812-307-226

Certified Applicator  
Licensed Business

1. On August 5, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report that an arborist advised him that a pesticide applied to a neighboring farm field has adversely affected his trees.
2. On August 21, 2019, I met with the complainant at his residence. The complainant walked me around his property and pointed out his concerns on his oak trees on the east and west side of his property. The complainant stated it was over a month since he first noticed the injury to his oak trees.
3. During my on-site investigation I did the following:
  - a. Looked for, and found two potential sources of herbicide application in the area. After the on-site investigation it was determined only one of those herbicide applications contained a growth regulator type herbicide. The target field that contained a growth regulator type herbicide is located to the west of the complainant's property (See Fig. 5).
  - b. Observed and photographed oak trees on the east and west side of the complainant's property with curled leaves (See Fig. 1,2,3, and 4). These symptoms are commonly associated with exposure to a growth-regulator type herbicide.
  - c. Collected samples of injured oak trees from the complainant's property for assessment by the Purdue Plant & Pest Diagnostic Laboratory (PPDDL)
  - d. Collected composite soil sample from the target fields. Collected composite soil and vegetation samples from the complainant's property (See Fig. 5). The residue samples were submitted to the OISC Residue Laboratory for analysis.



Fig. 1



Fig. 2



Fig. 3



Fig. 4

- Fig. 1 is an oak tree located on the east side of the complainant's property, showing curled leaves
- Fig. 2 is an oak tree located on the east side of the complainant's property, showing curled leaves
- Fig. 3 is an oak tree located on the west side of the complainant's property, showing curled leaves
- Fig. 4 is an oak tree located on the west side of the complainant's property, showing curled leaves



Fig. 5

- Fig. 5 is an aerial diagram including wind data, property lines, and where soil and vegetation samples were taken from.

4. On August 26, 2019, I contacted the Posey County Co-Op in Poseyville, Indiana and spoke to branch manager Darrell Shemwell. I advised Mr. Shemwell I was a Pesticide Investigator for OISC and of the complaint I was investigating. Mr. Shemwell advised Posey County Co-Op made a post emergent application to the field to the west of the complainant's property. I advised Mr. Shemwell I would be sending him via email a Pesticide Investigation Inquiry to complete and return to me.
5. On August 28, 2019, I received a completed Pesticide Investigation Inquiry from Mr. Shemwell for the application which indicated the following:
  - a. Certified Applicator: Darrell Shemwell
  - b. Application Date and Time: July 24, 2019, 10:05am to 12:25pm
  - c. Pesticide Applied:  
Engenia, EPA Reg. #7969-345, Active = dicamba, 12.8oz/acre  
Roundup PowerMax, EPA Reg. #524-549, Active = glyphosate, 44oz/acre
  - d. Adjuvants: Dyne-Amic, Oculus
  - e. Target Field Location and Size: West of New Harmony Rd and East of Old Beech Church, 40 Acres
  - f. Pre- or Post- Emergent Application: Post
  - g. Wind Blowing from Which Direction: Start- ENE, End- ENE
  - h. Wind Speed at Boom Height: Start- 2 to 3mph, End- 3 to 5mph
  - i. Nozzle and Pressure: Wilger UR 110-08, 25psi
  - j. Boom Height: 20 inches
6. Weather history data was obtained at [www.wunderground.com](http://www.wunderground.com) from the closest official weather station to the application site. The location and weather data for July 24, 2019 follows:
  - Evansville Regional Airport (KEVV) located in Evansville, Indiana 19 miles to the east of the application site:

Date	Time	Temperature	Wind Direction	Wind Speed	Wind Gust
7/24/2019	9:54 AM	77 F	NNE	12 MPH	22 MPH
7/24/2019	10:54 AM	79 F	N	13 MPH	23 MPH
7/24/2019	11:54 AM	80 F	N	14 MPH	25 MPH
7/24/2019	12:54 PM	81 F	NE	13 MPH	22 MPH

- Owensboro-Daviess County Regional Airport (KOWB) located in Owensboro, Kentucky 45 miles to the southeast of the application site:

Date	Time	Temperature	Wind Direction	Wind Speed	Wind Gust
7/24/2019	9:56 AM	76 F	NE	15 MPH	0 MPH
7/24/2019	10:56 AM	77 F	NNE	9 MPH	0 MPH
7/24/2019	11:56 AM	80 F	N	14 MPH	0 MPH
7/24/2019	12:56 PM	80 F	N	10 MPH	0 MPH



- Lawrenceville-Vincennes International Airport (KLWV) located in Lawrenceville, Illinois 69 miles to the north of the application site:

Date	Time	Temperature	Wind Direction	Wind Speed	Wind Gust
7/24/2019	9:53 AM	77 F	NNE	12 MPH	0 MPH
7/24/2019	10:53 AM	79 F	NNE	9 MPH	20 MPH
7/24/2019	11:53 AM	80 F	N	12 MPH	0 MPH
7/24/2019	12:53 PM	80 F	NNE	14 MPH	0 MPH

- The wind data from the Evansville Regional Airport (KEVV), Owensboro-Daviess County Regional Airport (KOWB), and Lawrenceville-Vincennes International Airport (KLWV) indicates the wind speed during the application was between 9 mph and 15 mph with gusts up to 25 mph out of the north and east.
- The PPPDL report stated: *The sample shows evidence of growth regulator herbicide injury. Some puckered areas on the leaves (spotting) is caused by Taphrina leaf blister. Some necrotic leaf spots due to Tubakia (fungus) leaf spot. Minor caterpillar feeding was also present.*
- The OISC Residue Laboratory analyzed the soil and vegetation samples collected for the active ingredients 2,4-D, dicamba, and glyphosate and reported the following:

OCM Collection #	112500	Investigator	DAVISN		
Collection Date	08/21/2019				
Sample #	Sample Description	Matrix	Analyte	Amount of Analyte	LOQ
19-4-0803 7	Soil; Composite; W. Target Field Composite Soil; Target Site	Soil	2,4-D	BQL ppb	2 ppb
19-4-0804 4	Vegetation; Composite; W. Target Field Composite Veg (Beans)	Vegetation	No Analysis Performed	Done	
19-4-0805 9	Soil; Composite; E. Target Field Composite Soil; Target Site	Soil	2,4-D	BQL ppb	2 ppb
19-4-0806 3	Vegetation; Composite; E. Target Field Composite Veg (Corn);	Vegetation	No Analysis Performed	Done	
19-4-0807 1	Soil; Composite; Off Target Composite Soil; Affected Site;	Soil	No Analysis Performed	Done	
19-4-0808 5	Vegetation; Composite; Off Target Composite Veg; Affected Si	Vegetation	2,4-D	48.4 ppb	0.2 ppb
			5OH-Dicamba	4.92 ppb	2 ppb
			DCSA	0.440 ppb	0.2 ppb
			Dicamba	3.97 ppb	0.2 ppb
			AMPA	BDL ppb	125 ppb
			Glyphosate	29.4 ppb	5 ppb
19-4-0809 2	Soil; Control; Comparative Control Soil; Affected Site;	Soil	No Analysis Performed	Done	

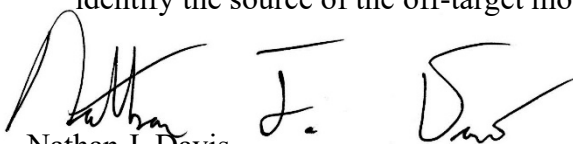


Sample #	Sample Description	Matrix	Analyte	Amount of Analyte	LOQ
19-4-0810 2	Vegetation; Control; Comparative Control Veg; Affected Site;	Vegetation	2,4-D	1.65 ppb	0.2 ppb
			5OH-Dicamba	BDL ppb	2 ppb
			DCSA	BQL ppb	0.2 ppb
			Dicamba	3.73 ppb	0.2 ppb
			AMPA	BDL ppb	125 ppb
			Glyphosate	45.7 ppb	5 ppb

10. The OISC Residue Laboratory analysis detected 2,4-D, dicamba and glyphosate in the off target composite vegetation samples. The tank mix for this application included the active ingredient dicamba and glyphosate. In regards to the 2,4-D detected in the off target composite vegetation sample, none of the applications made to either the east or west target fields included 2,4-D in the tank mix, further both the east and west target field composite soil samples analyses showed 2,4-D was below quantification limits. The source of the 2,4-D could not be identified.
11. On August 28, 2019, I contacted certified applicator Darrell Shemwell in regards to if he used the required 57-foot omnidirectional infield buffer required in Posey County, Indiana to protect federally listed threatened and endangered species. Mr. Shemwell advised he did not use the required 57-foot omnidirectional infield buffer.
12. The triangulated wind data from the Evansville Regional Airport (KEVV), Owensboro-Daviess County Regional Airport (KOWB), and Lawrenceville-Vincennes International Airport (KLWV) indicates the wind speed during the application was between 9 mph (legal application) and 15 mph with gusts up to 25 mph out of the north and east. The wind directions were all out of the north or east blowing away from the complainant's property. Since two locations showed winds 10 mph or below, the benefit of the doubt was given to the applicator, especially since wind direction is usually more reliably corroborated or refuted by various weather data sources than wind speed. Wind speed data can vary significantly based on location and height of weather station.
13. According to statement made by certified applicator Darrell Shemwell, on August 28, 2019 Mr. Shemwell failed to use the 57-foot omnidirectional infield buffer required to protect federally listed threatened and endangered species. The label for *Engenia*, EPA Reg. #7969-345, Active Ingredient = dicamba states: **"Prior to making an Engenia application in DT cotton and DT soybeans, an applicator must visit [www.epa.gov/espp/](http://www.epa.gov/espp/) to determine if there are any additional restrictions on Engenia use within the area to sprayed"**. According to [www.epa.gov/espp/](http://www.epa.gov/espp/), Posey County, Indiana has the following restriction: **"In combination with the 110 foot in-field wind-directional spray drift buffer, a 57 foot omnidirectional infield buffer is required to protect federally listed threatened and endangered species"**.
14. According the application records, Mr. Shemwell's tank mix included RoundUp PowerMax, EPA Reg. #524-549, Active Ingredient=Glyphosate at a rate of 44oz to the acre and the adjuvants Dyne-Amic and Oculus. The label for *Engenia*, EPA Reg. #7969-345, Active Ingredient = dicamba states: **"Do not tank mix any product with Engenia unless: You**

check the list of EPA approved products for use with Engenia at: [www.engeniatankmix.com](http://www.engeniatankmix.com) no more than 7 days before applying Engenia; and the intended product tank mix with Engenia is identified on that list of tested and approved products: and the intended product to be tank mix with Engenia is not prohibited on this label". According to [www.engeniatankmix.com](http://www.engeniatankmix.com) it states: "Glyphosate maximum use rate per acre per application is 1.125 lbs. of acid equivalent". Mr. Shemwell rate of 44oz/acre of RoundUp PowerMax, EPA Reg. #524-549, Active Ingredient=Glyphosate has the acid equivalent of 1.55 lbs. of glyphosate acid per acre and was therefore over the maximum use rate per acre per application. Further, Mr. Shemwell's tank mix included the adjuvants Dyne-Amic and Oculus. According to [www.engeniatankmix.com](http://www.engeniatankmix.com) the adjuvant Dyne-Amic requires a Drift Reduction Agent from the approved list, Oculus is not an approved Drift Reduction Agent and therefore Mr. Shemwell failed to use a required Drift Reduction Agent when Dyne-Amic is a tank mix partner.

15. Based on the evidence collected in this investigation, it has been determined that Mr. Shemwell failed to comply with the drift management restrictions on the label for the herbicide *Engenia*, EPA Reg. #7969-345, Active Ingredient = dicamba. It should also be noted that OISC was not able to determine whether the herbicide moved off-target as a result of drift, application into an inversion, or volatilization at some point after the application, and was not able to clearly identify the source of the off-target movement.



Nathan J. Davis  
Investigator

Date: January 16, 2020

**Disposition:** Darrell Shemwell and Posey County Co-Op were cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift management. A civil penalty in the amount of \$250.00 was assessed for this violation. Consideration was given to the fact this was Mr. Shemwell's first violation of similar nature. Consideration was also given to the fact a restricted use pesticide was involved.



George N. Saxton  
Compliance Officer

Draft Date: March 10, 2020  
Case Closed: May 18, 2020

## CASE SUMMARY

Case #PS19-0468

**Complainant:** John Gaul  
1182 E. State Road 4  
LaPorte, Indiana 46350

**Respondent:** Nathan Schrock  
Crosswind Aviation Services LLC  
11701 West 1800 South  
LaCrosse, Indiana 46348  
219-313-3900

**Licensed Applicator**

1. On August 7, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report last Thursday (August 1, 2019) a helicopter made a pesticide application to a field that drifted onto his property and made him and his wife ill.
2. On August 15, 2019, I met with the complainant John Gaul at his residence where the alleged drift took place. Mr. Gaul told me his neighbors told him of an aerial pesticide application made to the field west of his house. Mr. Gaul said he and his wife were not home at the time of the application. He later discovered the water was green in his backyard pool. He said he treated it with chlorine but later felt ill when he tried to swim in it. He also said his wife felt ill with symptoms of a sore throat and watery eyes. They equated it to the pesticide application. (see image below)

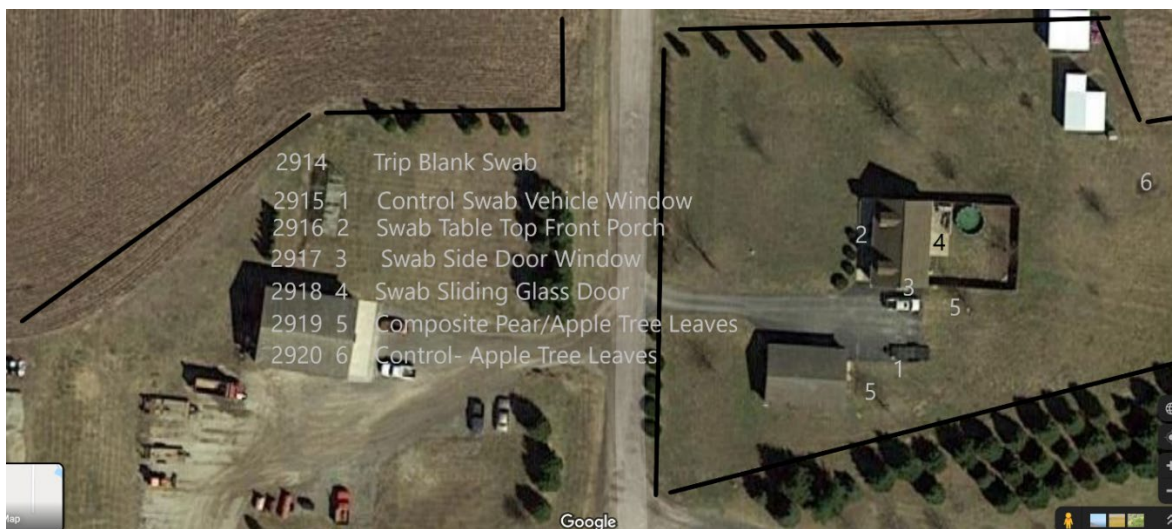


3. I checked the complainant's property and found no symptoms of pesticide/herbicide exposure. Therefore, I did not obtain vegetation samples for submission to the Purdue Plant and Pest Diagnostic Lab (PPDDL).

4. I obtained the following environmental samples for submission to the OISC Residue Lab for analysis:

- 2914 swab- trip blank
- 2915 swab- control vehicle window
- 2916 swab- table top front porch
- 2917 swab- side door window
- 2918 swab- rear sliding glass door
- 2919 composite pear/apple tree leaves
- 2920 control apple tree leaves

(see image below)



5. I learned the pesticide application to the field west of the complainant was made by Crosswind Aviation Services LLC located in LaCrosse, Indiana. I made contact with Crosswind Aviation. They confirmed they made an application to the field in question. Mr. Schrock agreed to complete and return a Pesticide Investigation Inquiry (PII) for the investigation process.

6. I received a completed PII from applicator Nathan Schrock. The PII had the following information:

- Licensed applicator was Nathan Schrock
- Application date and time was July 30, 2019 from 10:04am to 10:09am
- The pesticides used were:

**Lambda T-2** (EPA #100-1295-5905; active ingredient: cyhalothrin)

**Trivapro Fungicide** (EPA #100-1613; active ingredient: benzovindiflupyr, Azoxystrobin, propiconazole)

- Wind was recorded blowing in a southeast direction toward the corner of the complainant's property at time of application
- Method or equipment used to measure weather was "FlightPlanOnline.com" with "DarkSky.net"
- Target field was "Boyd"
- Application equipment used was a Simplex Mfg. model 4900 spray system with Tee-Jet 8005 flat fan nozzles and 25-29 psi
- The map included with the application records indicated the application was made to the field west of the complainant's property



7. On the PII, the applicator indicated the wind was blowing toward the corner of the complainant's property at the time of the application. (See image below). I was unable to confirm the applicator's weather data. Since the application was recorded at 10:04am to 10:09am, the weather stations did not record weather data at that specific time. I spoke to the applicator concerning his recorded weather data. Mr. Schrock told me he was confident with the weather information he received.



8. I received the following information from the OISC Residue Lab:

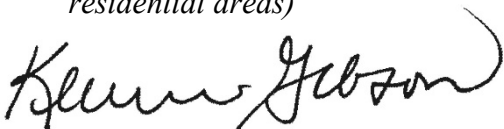
Sample #	Sample Description	Matrix	Analyte	Amount of Analyte	LOQ
19-4-2914 8	Swab (Acetone); Trip Blank; swab; Affected Site;	Swab (Acetone)	Azoxystrobin	BDL ng/swab	0.4 ng/swab
			Benzovindiflupyr	BDL ng/swab	0.2 ng/swab
			Propiconazole	BDL ng/swab	2 ng/swab
19-4-2915 3	Swab (Acetone); Control; swab vehicle window; Affected Site;	Swab (Acetone)	Azoxystrobin	8.54 ng/swab	0.4 ng/swab
			Benzovindiflupyr	1.49 ng/swab	0.2 ng/swab
			Propiconazole	6.33 ng/swab	2 ng/swab
19-4-2916 9	Swab (Acetone); Grab/Spot; table top front porch; Affected S	Swab (Acetone)	Azoxystrobin	0.572 ng/swab	0.4 ng/swab
			Benzovindiflupyr	BDL ng/swab	0.2 ng/swab
			Propiconazole	BDL ng/swab	2 ng/swab
19-4-2917 6	Swab (Acetone); Grab/Spot; side entry door glass; Affected S	Swab (Acetone)	Azoxystrobin	1.41 ng/swab	0.4 ng/swab
			Benzovindiflupyr	BDL ng/swab	0.2 ng/swab
			Propiconazole	BDL ng/swab	2 ng/swab



19-4-2918 2	Swab (Acetone); Grab/Spot; rear sliding glass door; Affected	Swab (Acetone)	ANALYSIS		
			Azoxystrobin	0.562 ng/swab	0.4 ng/swab
			Benzovindiflupyr	BDL ng/swab	0.2 ng/swab
19-4-2919 5	Vegetation; Composite; pear and maple tree leaves; Affected	Vegetation	Propiconazole	BDL ng/swab	2 ng/swab
19-4-2920 2	Vegetation; Control; apple tree leaves back yard; Affected S	Vegetation	Azoxystrobin	7.79 ppb	0.3 ppb
			Benzovindiflupyr	2.14 ppb	0.7 ppb
			Propiconazole	5.52 ppb	0.3 ppb
			Azoxystrobin	BDL ppb	0.3 ppb
			Benzovindiflupyr	1.20 ppb	0.7 ppb
			Propiconazole	1.08 ppb	0.3 ppb

After conversation with the OISC lab director, a decision was made analyze the environmental samples for **Trivapro Fungicide** (active ingredients: azoxystrobin, benzovindiflupyr, propiconazole) but not **Lambda T-2**. Lab analysis results indicated the active ingredients for **Trivapro Fungicide** were found in samples 2915, 2916, 2917 and 2919.

9. I checked the label for **Lambda T-2** and **Trivapro Fungicide** for potential label violations. The label for **Trivapro Fungicide** reads in part, *“Do not apply when conditions favor drift beyond the target area” “Do not apply this pesticide when the product may drift to non-target areas (i.e. residential areas, bodies of water, known habitat for threatened or endangered species, non-target crops)”*. *“AVOID SPRAY DRIFT”*
10. Based on available information (site observations, complainant information, PII information, weather data and residue lab results), Mr. Nathan Schrock was in violation of the **Trivapro Fungicide** label when he *sprayed it where the spray drift reached apple trees* (sample 19-4-2920); when he *applied it in conditions* (wind blowing toward the corner of the complainant’s property) *that favored drift beyond the target area*; and when the product drifted to non-target areas (i.e. residential areas)



Kevin W. Gibson  
Investigator

Date: January 17, 2020

**Disposition:** Nathan Schrock and Crosswind Aviation Services LLC were cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift. A civil penalty in the amount of \$500.00 was assessed for this violation. Consideration was given to the fact this was his third violation of similar nature within the past five (5) years. See case numbers 2017/1082 and 2017/1189.



George N. Saxton  
Compliance Officer

Draft Date: March 10, 2020  
Case Closed: May 21, 2020

## CASE SUMMARY

Case #PS19-0469

**Complainant:** Jeff Tolson  
3293 North 1220 West  
Flora, Indiana 46929

**Respondent:** Todd Kirkman  
Co-Alliance LLP  
27 W 250 S  
Bringinghurst, Indiana 46913

Certified Applicator

1. On August 8, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report that a neighboring farmer made a pesticide application to a nearby field and the pesticide drifted onto him. He stated he has a shirt he will surrender for analysis with the understanding the shirt will not be returned.
2. On August 8, 2019, I met with Mr. Tolson at his residence. He stated on August 2, 2019, he was mowing his lawn on his riding mower along the north side of his lawn by his garden. He stated Co-Alliance was making a pesticide application to the soybean field adjoining his property to the north at the same time. He stated, as the ground spray rig went by, he felt the mist from the application drift onto his person. He stated he did make contact with the applicator and advised him of the drift onto him. Mr. Tolson provided me the shirt he stated he was wearing at the time he stated he was drifted upon.
3. I then took photographs of the scene. I also collected swab and vegetation samples from Mr. Tolson's property and from the riding mower he was on, as well as a vegetation sample from the target field. All of the samples, including the shirt, were labeled and submitted to the OISC residue lab. No sample was collected for Purdue Plant and Pest Diagnostic Lab, due to no symptoms were clearly visible. I asked Mr. Tolson if he had applied any pesticides to his property and he stated he had applied some Roundup to his property. The following photographs show the location of the target soybean field in relationship to the Tolson property.



4. I made contact with Co-Alliance and learned Mr. Todd Kirkman had made the pesticide application to the target soybean field. I was advised he had made the application on August 2, 2019 between 4:05pm – 4:56pm and applied a tank mix of:
  - a. Roundup Power max EPA Reg. #524-549 with the active ingredient glyphosate;

- b. First Rate herbicide EPA Reg. #62719-275 with the active ingredient cloransulam-methyl; and
- c. Volunteer herbicide EPA Reg. #66330-353-55467 with the active ingredient clethodim.

I was provided a copy of the application record, which confirmed this information. I sent a Pesticide Investigation Inquiry (PII) to Mr. Kirkman of which he received, completed and returned to me. The PII confirmed the above-mentioned information as well as it stated the winds at the time of the application were NE at 4-6 mph and the temperature was 83 degrees F.

5. Mr. Kirkman sent a written statement, which stated, he began the application in the NW corner of the field. He sprayed along the north side of the Tolson's property heading east and layed off one row until he was past Mr. Tolson, who was on the lawn mower on the south side of the garden by the wood pile. He stated at no time did he see Mr. Tolson act like he was sprayed nor did he stop mowing to wash off or act like it was an issue. He stated Mr. Tolson stopped him at 4:42pm to tell him he had been sprayed. The written statement further stated the winds were NE at 4 mph at the start of the application.
6. I received a report from the OISC residue lab. The report indicated the active ingredient cloransulam-methyl was detected in small amounts in the swab and vegetation samples collected from the Tolson property. The report further indicated the same active ingredient was detected in the shirt provided by Mr. Tolson and the swab from the lawn mower he was riding and the vegetation collected where he stated he was at the time he felt the spray mist upon his person. The following is a copy of the OISC residue lab report.

OCM Collection #	110595	Investigator	BREWERR
Collection Date	08/08/2019		

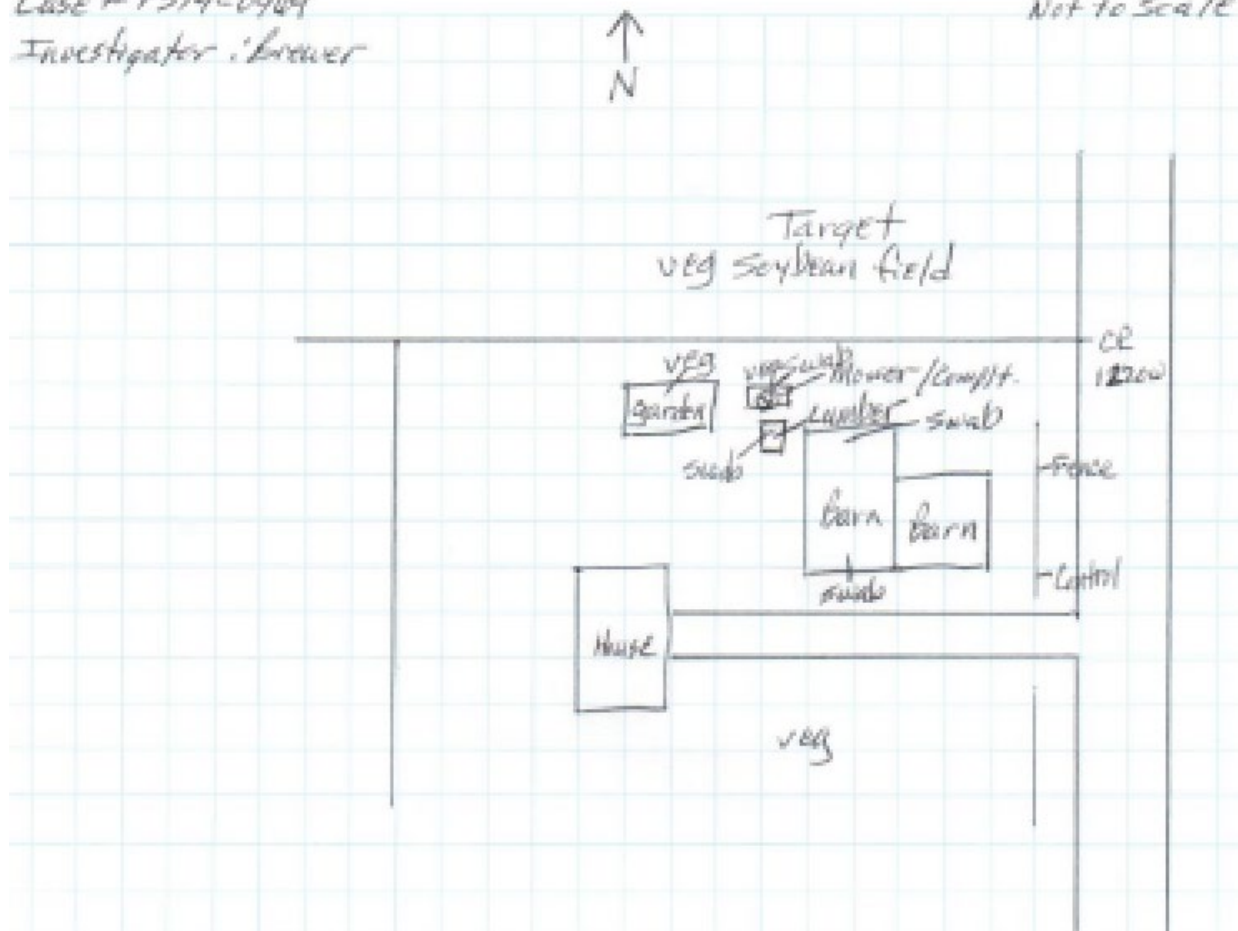
Sample #	Sample Description	Matrix	Analyte	Amount of Analyte	LOQ
19-4-0172 6	Swab (trip blank); Trip Blank; trip blank; trip blank;	Swab (trip blank)	Cloransulam-methyl	BDL ng/swab	0.2 ng/swab
19-4-0173 5	Swab (Acetone); Control; fence front of property; Front Yard	Swab (Acetone)	Cloransulam-methyl	0.585 ng/swab	0.2 ng/swab
19-4-0174 2	Swab (Acetone); Composite; lumber pile; Affected Site;	Swab (Acetone)	Cloransulam-methyl	2.01 ng/swab	0.2 ng/swab
19-4-0175 7	Swab (Acetone); Composite; lawn mower; Affected Site;	Swab (Acetone)	Cloransulam-methyl	0.704 ng/swab	0.2 ng/swab
19-4-0176 1	Swab (Acetone); Composite; north side of barn; North;	Swab (Acetone)	Cloransulam-methyl	0.488 ng/swab	0.2 ng/swab
19-4-0177 4	Swab (Acetone); Composite; south side of barn; South;	Swab (Acetone)	Cloransulam-methyl	BDL ng/swab	0.2 ng/swab
19-4-0178 8	Clothing; Composite; Shirt; complete shirt;	Clothing	Cloransulam-methyl	168 ng/clothing	40 ng/clothing

19-4-0179 0	Vegetation; Composite; target soybean field; Target Site;	Vegetation	<table><tr><td>AMPA</td><td>331 ppb</td><td>125 ppb</td></tr><tr><td>Glyphosate</td><td>18800 ppb * estimated amount</td><td>5 ppb</td></tr><tr><td>Cloransulam-methyl</td><td>48.2 ppb</td><td>0.7 ppb</td></tr></table>	AMPA	331 ppb	125 ppb	Glyphosate	18800 ppb * estimated amount	5 ppb	Cloransulam-methyl	48.2 ppb	0.7 ppb			
AMPA	331 ppb	125 ppb													
Glyphosate	18800 ppb * estimated amount	5 ppb													
Cloransulam-methyl	48.2 ppb	0.7 ppb													
19-4-0180 0	Vegetation; Composite; where cornlt was standing; Affected 5	Vegetation	<table><tr><td>AMPA</td><td>BDL ppb</td><td>125 ppb</td></tr><tr><td>Glyphosate</td><td>51.7 ppb</td><td>5 ppb</td></tr><tr><td>Cloransulam-methyl</td><td>1.37 ppb</td><td>0.7 ppb</td></tr></table>	AMPA	BDL ppb	125 ppb	Glyphosate	51.7 ppb	5 ppb	Cloransulam-methyl	1.37 ppb	0.7 ppb			
AMPA	BDL ppb	125 ppb													
Glyphosate	51.7 ppb	5 ppb													
Cloransulam-methyl	1.37 ppb	0.7 ppb													
Sample #	Sample Description	Matrix	<table><tr><td>Analyte</td><td>Amount of Analyte</td><td>LOQ</td></tr><tr><td>AMPA</td><td>BDL ppb</td><td>125 ppb</td></tr><tr><td>Glyphosate</td><td>47.9 ppb</td><td>5 ppb</td></tr><tr><td>Cloransulam-methyl</td><td>1.08 ppb</td><td>0.7 ppb</td></tr></table>	Analyte	Amount of Analyte	LOQ	AMPA	BDL ppb	125 ppb	Glyphosate	47.9 ppb	5 ppb	Cloransulam-methyl	1.08 ppb	0.7 ppb
Analyte	Amount of Analyte	LOQ													
AMPA	BDL ppb	125 ppb													
Glyphosate	47.9 ppb	5 ppb													
Cloransulam-methyl	1.08 ppb	0.7 ppb													
19-4-0181 6	Vegetation; Composite; compts garden; Garden;	Vegetation	<table><tr><td>AMPA</td><td>BDL ppb</td><td>125 ppb</td></tr><tr><td>Glyphosate</td><td>47.9 ppb</td><td>5 ppb</td></tr><tr><td>Cloransulam-methyl</td><td>1.08 ppb</td><td>0.7 ppb</td></tr></table>	AMPA	BDL ppb	125 ppb	Glyphosate	47.9 ppb	5 ppb	Cloransulam-methyl	1.08 ppb	0.7 ppb			
AMPA	BDL ppb	125 ppb													
Glyphosate	47.9 ppb	5 ppb													
Cloransulam-methyl	1.08 ppb	0.7 ppb													
19-4-0182 8	Vegetation; Composite; south side of property; South;	Vegetation	<table><tr><td>AMPA</td><td>BDL ppb</td><td>125 ppb</td></tr><tr><td>Glyphosate</td><td>322 ppb</td><td>5 ppb</td></tr><tr><td>Cloransulam-methyl</td><td>6.35 ppb</td><td>0.7 ppb</td></tr></table>	AMPA	BDL ppb	125 ppb	Glyphosate	322 ppb	5 ppb	Cloransulam-methyl	6.35 ppb	0.7 ppb			
AMPA	BDL ppb	125 ppb													
Glyphosate	322 ppb	5 ppb													
Cloransulam-methyl	6.35 ppb	0.7 ppb													

7. I researched the label for FirstRate herbicide. The label stated on page 8, *“Do not apply this product in a way that will contact workers or other persons, either directly or through drift”*.
8. The following is a diagram showing the location of the target soybean field in relationship to the complainant’s property and the sample collection locations.

Case # P319-0469  
Investigator: Brewer

Not to Scale



9. The OISC residue lab report indicated the active ingredient cloransulam-methyl was detected in the swab, vegetation and clothing samples collected from the Tolson property. The PII returned by Mr. Kirkman and his written statement, stated the winds were NE at the time of the application, which would be blowing towards the Tolson property. The factors would indicate the pesticide from the application made by Mr. Kirkman, did move off target and onto the Tolson property and Mr. Tolson.

*Robert D. Brewer*

Robert D. Brewer  
Investigator

Date: March 2, 2020

**Disposition:** Todd Kirkman and Co-Alliance LLP were cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift to people. A civil penalty in the amount of \$250.00 was assessed for this violation. Consideration was given to the fact this was Mr. Kirkman's first violation of similar nature. Consideration was also given to the fact there was potential for human harm.

*George N. Saxton*

George N. Saxton  
Compliance Officer

Draft Date: March 10, 2020  
Case Closed: May 18, 2020



## CASE SUMMARY

Case #PS19-0477


**Complainant:** Office of Indiana State Chemist (OISC)  
175 S. University Street  
West Lafayette, IN 47907  
765-494-1492

**Respondent:** BHC, Inc. EPA Establishment #106-IN-1  
Yangsheng Zhang Director R&D  
2920 Dr. Andrew Brown Ave.  
Indianapolis, IN 46205


1. On August 8, 2019, Agent Joe Becovitz, Agent Sarah Caffery and I performed a Producer Establishment Inspection (PEI) at BHC, Inc. in Indianapolis, Indiana. A Notice of Inspection was issued and state credentials were presented to Yangsheng Zhang, Director R&D. I explained that this was a for-cause inspection and that I would be inspecting repackaging agreements, inbound, production and distribution records, bin labels and any product that was packaged, labeled and ready for shipment. I explained that the reason the inspection was for-cause was that it was believed that unregistered pesticides were being produced at this location.
2. We spoke to Mr. Zhang about the potentially unregistered pesticide products and we were able to determine that the establishment had gone through a name change from Brulin & Company Inc. to BHC, Inc. It's believed that the name changed is what caused the product registration issue.
3. According to Mr. Zhang, BHC, Inc. manufactures and distributes industrial and institutional cleaning products. At the time of the inspection BHC, Inc. produced the following products:
  - a. CDQ, EPA Reg. #106-44
  - b. Green Bathroom Cleaner, EPA Reg. #10324-80-106
  - c. Unicide 128, EPA Reg. #106-72
  - d. Unicide 256, EPA Reg. #106-73
  - e. Unicide RTU, EPA Reg. #106-81
  - f. Uniquat Neutral Disinfectant. EPA Reg. #10324-108-106
  - g. Ultramax, EPA Reg. #106-UN-1
  - h. Brutab 6S, EPA Reg. #71847-6-106
  - i. Bru-Clean TBC, EPA Reg. #71847-2-106
  - j. Performex RTU, EPA Reg. #1839-220-106
  - k. Patco Quat Clean IV, EPA Reg. #10324-117-53992
  - l. Performex, EPA Reg. #6836-364-106
  - m. PQS Base, EPA Reg. #106-UN-2

4. While reviewing inbound, production, and distribution records for all products it was found that BHC, Inc. did not have production records for Brutab 6S, EPA Reg. #71847-6-106 and Bru-Clean TBC, EPA Reg. #71847-2-106. Records for all other products were found to be sufficient.
5. BHC, Inc. does import pesticide products. BHC, Inc. does not export and pesticide products.
6. At the time of the inspection only Unicide 128, Unicide 256, and Unicide RTU were packaged labeled and ready for shipment. I photographed the packaging and labels of these three products. I also sampled the three products. Individual sample numbers were assigned to each of the samples. They were placed in a clear evidence bag and sealed for transportation to the OISC formulation lab.
7. All documents that were collected were initialed and dated and listed on OISC Form 97, Receipt for Documents, which will be attached to this case.
8. Mr. Zhang signed the Receipt for Documents and the Pesticide Sample Collection Report and Affidavit. Mr. Zhang was provided a copy of the Notice of Inspection, Receipt for Documents, and the Pesticide Sample Collection Report and Affidavit.
9. No other deficiencies were discussed during the closing conference with Mr. Zhang. We then concluded the inspection.
10. On August 9, 2019, I delivered the formulation samples to the OISC formulation lab.
11. On February 10, 2020, I was notified by the OISC formulation lab of the formulation analysis results. The lab reports are shown below:


**OFFICE OF INDIANA STATE CHEMIST**  
*Pesticide Formulation Laboratory*  
 Lab Report

<b>OCM Collection #</b>	<b>110011</b>	<b>Case #</b>	<b>PS19-0477</b>	<b>Investigator</b>	<b>G. Creason</b>
<b>Sample #</b>	<b>Product Description</b>				<b>Sample Size</b>
19-3-0063 0	<b>Brulin Unicide 128 Disinfectant Cleaner</b>				1 x 1 qt
<b>ACTIVE INGREDIENT</b>				<b>% GUARANTEE</b>	<b>% FOUND</b>
DBAC (40% C12; 50% C14; 10% C16)				3.200	N/A
Octyl Decyl DAC				2.400	N/A
DDAC				1.617	N/A
Dioctyl DAC				1.200	N/A
Tested as Quaternary Nitrogen Equivalent				0.3428	0.3665
Remarks:					
<b>Signature</b>				<b>Date</b>	02/10/2020

OFFICE OF INDIANA STATE CHEMIST  
Pesticide Formulation Laboratory  
Lab Report

OCM Collection #	110011	Case #	PS19-0477	Investigator	G. Creason
Sample #	Product Description			Sample Size	
19-3-0064 8	Brulin Unicide 256 Disinfectant Cleaner			1 x 1 qt	
ACTIVE INGREDIENT			% GUARANTEE	% FOUND	
DBAC (40% C12; 50% C14; 10% C16)			6.40	N/A	
Octyl Decyl DAC			4.80	N/A	
DDAC			3.23	N/A	
Dioctyl DAC			2.40	N/A	
Tested as Quaternary Nitrogen Equivalent			0.685	0.710	
Remarks:					
Signature				Date	02/10/2020

OFFICE OF INDIANA STATE CHEMIST  
Pesticide Formulation Laboratory  
Lab Report

OCM Collection #	110011	Case #	PS19-0477	Investigator	G. Creason
Sample #	Product Description			Sample Size	
19-3-0065 3	Brulin Unicide RTU Disinfectant Cleaner			1 x 1 qt	
ACTIVE INGREDIENT			% GUARANTEE	% FOUND	
DBAC (40% C12; 50% C14; 10% C16)			0.0375	N/A	
Octyl Decyl DAC			0.0281	N/A	
DDAC			0.0189	N/A	
Dioctyl DAC			0.0141	N/A	
Tested as Quaternary Nitrogen Equivalent			0.00402	0.0042	
Remarks:					
Signature				Date	02/10/2020

12. All supporting documents and photographs have been electronically attached to this case in the OISC case management system.



Garret A. Creason  
Investigator

Date: February 25, 2020

1. On March 4, 2020, I completed the label review for the products identified within this report by Garret Creason. Below is my assessment of the labels per FIFRA and Indiana Law.

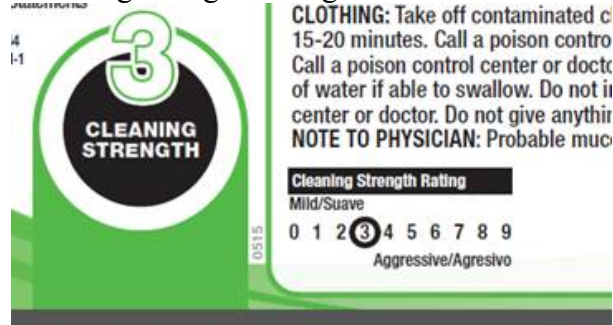
**a. CDQ, EPA Reg. #106-44 – Violation of 15-16-4-57(5)**

Through label review, CDQ is determined to be misbranded.

The master label does not include the following claims/statements:

“3 Cleaning Strength”

“cleaning strength Rating 1-10”



The product is a Category I level for toxicity, with the signal word of DANGER. The First Aid statement is required on the front of the label (40 CFR 156.68 and EPA’s Guidance for Pesticide Registrants on Location of the First Aid Statement per 40 CFR 156.68). If it has been approved by EPA for the First Aid Statement to be on the side or back panel, this statement must be set apart or distinguishable from other label text (in a box).

Signal Word must immediately precede the precautionary paragraph/statement for human hazards (40 CFR 156.70.b)

The Storage and Disposal section has multiple violations.

The Storage and Disposal section is required to be clearly set apart from the rest of the text on the labeling by use of boxes/blocks/bars (40 CFR 156.10(i)(2)(ix) and PR Notice 83-3)

The marketplace label does not match the master label. The marketplace label is missing the highlighted section and reduces the time to 10 seconds from 30 seconds

Master Label:

**CONTAINER DISPOSAL (5 gallon or greater)**

**NONREFILLABLE CONTAINER.** Do not reuse or refill this container. Clean container promptly after emptying. Triple rinse as follows: Empty the remaining contents into application equipment or a mix tank. Fill the container ¼ full with water. Replace and tighten closures. Tip container on its side and roll it back and forth, ensuring at least one complete revolution, for 30 seconds. Stand the container on its end and tip it back and forth several times. Turn the container over onto its other end and tip it back and forth several times. Empty the rinsate into application equipment or a mix tank or store rinsate for later use or disposal. Repeat this procedure two more times. Offer for recycling, if available.

Marketplace Label:

**CONTAINER DISPOSAL:**

**NONREFILLABLE CONTAINER.** Do not reuse or refill this container. Clean container promptly after emptying. Triple rinse as follows: Empty the remaining contents into application equipment or a mix tank and drain for 10 seconds after the flow begins to drip. Fill the container ¼ full with water and recap. Shake for 10 seconds. Pour rinsate into application

There is concern that the areas of the label have a font size that may be smaller than the minimum allowed (6 point). Registrant will need to confirm that all text is at a larger font size.

**b. Green Bathroom Cleaner, EPA Reg. #10324-80-106 - Violation of 15-16-4-57(5)**

Through label review, GREEN BATHROOM CLEANER is determined to be misbranded.

The product is a Category I level for toxicity, with the signal word of DANGER. The First Aid statement is required on the front of the label (40 CFR 156.68 and EPA's Guidance for Pesticide Registrants on Location of the First Aid Statement per 40 CFR 156.68). If it has been approved by EPA for the First Aid Statement to be on the side or back panel, this statement must be set apart or distinguishable from other label text (in a box).

For a distributor product, the company responsible must be prefaced with a statement such as: "packed for," "distributed by," or "manufactured by" (40 CFR 152.132(d)(2)) This statement is missing.

Distributor products can have only a limited number of elements that are different from the basic product's master label. Those elements include EPA Reg. Number (to include the third part), product name, and company responsible. The following are not included on the master label; therefore, these claim/statements cannot be included.

"2 cleaning strength"

"SCS2 super control system2"

The Storage and Disposal section is required to be clearly set apart from the rest of the text on the labeling by use of boxes/blocks/bars (40 CFR 156.10(i)(2)(ix) and PR Notice 83-3)

There is concern that the majority of the label is a font size that may be smaller than the minimum allowed (6 point). Registrant will need to confirm that all text is at a larger font size.

Please note, that there is a new accepted label on EPA with the date of 6/28/19. The expiration of the label version from 2/19/10 is 12/28/20.

**c. Unicide 128, EPA Reg. #106-72- Violation of 15-16-4-57(5)**

Through label review, UNICIDE 128 is determined to be misbranded.



The Storage and Disposal section is required to be clearly set apart from the rest of the text on the labeling by use of boxes/blocks/bars (40 CFR 156.10(i)(2)(ix) and PR Notice 83-3)

**d. Unicide 256, EPA Reg. #106-73 - Violation of 15-16-4-57(5)**

Through label review, UNICIDE 256 is determined to be misbranded.

The Storage and Disposal section is required to be clearly set apart from the rest of the text on the labeling by use of boxes/blocks/bars (40 CFR 156.10(i)(2)(ix) and PR Notice 83-3)

**e. Unicide RTU, EPA Reg. #106-81 - Violation of 15-16-4-57(1)**

UNICIDE RTU is not registered for use in the state of Indiana. The only product registered under EPA Reg. Number 160-81 is Maxima RTU.

**f. Uniquat Neutral Disinfectant. EPA Reg. #10324-108-106 - Violation of 15-16-4-57(5)**

Through label review, Uniquat Neutral Disinfectant is determined to be misbranded.

The Storage and Disposal section is required to be clearly set apart from the rest of the text on the labeling by use of boxes/blocks/bars (40 CFR 156.10(i)(2)(ix) and PR Notice 83-3)

For a distributor product, the company responsible must be prefaced with a statement such as: “packed for,” “distributed by,” or “manufactured by” (40 CFR 152.132(d)(2)) This statement is missing.

There is concern that the majority of the label is a font size that may be smaller than the minimum allowed (6 point). Registrant will need to confirm that all text is at a larger font size.

Please note, that there is a new accepted label on EPA with the date of 10/9/18. The expiration of the label version from 5/19/15 is 4/9/20.

**g. Ultramax, EPA Reg. #106-UN-1 - Violation of 15-16-4-57(1)**

Manufacturing Use Products require both federal and state registration. The product is currently both federally and state unregistered.

**h. Brutab 6S, EPA Reg. #71847-6-106 - Violation of 15-16-4-57(5)**

Through label review, Brutab 6S is determined to be misbranded.

Establishment provided the labeling for a sample product, not the full label/resale size product.

Distributor products can have only a limited number of elements that are different from the basic product’s master label. Those elements include EPA Reg. Number (to include the third part), product name, and company responsible. Master label does not include the language: “Sample – Not for Resale” or “Quarts”

There is concern that the majority of the label (including the insert) is a font size that may be smaller than the minimum allowed (6 point). Registrant will need to confirm that all text is at a larger font size.

This label version is no longer supported by the basic registrant (71847). Label version is from the accepted stamped label on 5/17/16. EPA has stamped accepted on labels for 4/12/17, 10/2/17, 4/30/18 and 12/27/18. The label version 5/17/16 expired 18 months after 4/12/17 at 10/12/18. Per the EPA letter: “In accordance with 40 CFR 152.130(c), you may distribute or sell this product under the previously approved labeling for 18 months from the date of this letter.”

Since this label version may no longer be distributed, a full label review was not performed.

- i. **Bru-Clean TBC, EPA Reg. #71847-2-106 - Violation of 15-16-4-57(5)**  
Through label review, Bru-Clean TBC is determined to be misbranded.

The Storage and Disposal and the First Aid section are required to be clearly set apart from the rest of the text on the labeling by use of boxes/blocks/bars and at the end of the “Directions for Use” section (40 CFR 156.10(i)(2)(ix) and PR Notice 83-3)

There is concern that the majority of the label (including the insert) is a font size that may be smaller than the minimum allowed (6 point). Registrant will need to confirm that all text is at a larger font size.

- j. **Performex RTU, EPA Reg. #1839-220-106 - Violation of 15-16-4-57(5)**  
Through label review, Performex RTU is determined to be misbranded.

The Storage and Disposal section is required to be clearly set apart from the rest of the text on the labeling by use of boxes/blocks/bars (40 CFR 156.10(i)(2)(ix) and PR Notice 83-3)

Distributor products can have only a limited number of elements that are different from the basic product’s master label. Those elements include EPA Reg. Number (to include the third part), product name, and company responsible. The following are not included on the master label; therefore, these claim/statements cannot be included.

- Master label does not include images of restrooms or examination rooms

This label version is no longer supported by the basic registrant (6836). Label version is from the notification stamped label on 5/11/15. EPA has stamped accepted on labels for 10/12/17, 6/12/18 and 7/2/19. The label version 5/11/15 expired 18 months after 10/12/17 at 4/12/19. Per the EPA letter: “In accordance with 40 CFR 152.130(c), you may distribute or sell this product under the previously approved labeling for 18 months from the date of this letter.”

Since this label version may no longer be distributed, a full label review was not performed.

There is concern that the majority of the label (including the insert) is a font size that may be smaller than the minimum allowed (6 point). Registrant will need to confirm that all text is at a larger font size

**k. Patco Quat Clean IV, EPA Reg. #10324-117-53992- Violation of 15-16-4-57(5)**

Through label review, Patco Quat Clean is determined to be misbranded.

Distributor products can have only a limited number of elements that are different from the basic product's master label. Those elements include EPA Reg. Number (to include the third part), product name, and company responsible. The following are not included on the master label; therefore, these claim/statements cannot be included.

“Patco FOOD SAFETY” is not included on the master label

The Storage and Disposal section is required to be clearly set apart from the rest of the text on the labeling by use of boxes/blocks/bars (40 CFR 156.10(i)(2)(ix) and PR Notice 83-3)

This label version is no longer supported by the basic registrant (10324). Label version is from the accepted label on 5/5/2015. EPA has stamped accepted on labels for 10/4/16, 5/17/17, 4/24/18 and 8/20/19. The label version 5/5/15 expired 18 months after 10/4/16 at 4/4/17. Per the EPA letter: “In accordance with 40 CFR 152.130(c), you may distribute or sell this product under the previously approved labeling for 18 months from the date of this letter.”

Since this label version may no longer be distributed, a full label review was not performed.

**l. Performex, EPA Reg. #6836-364-106- Violation of 15-16-4-57(5)**

Through label review, Performex is determined to be misbranded.

The Storage and Disposal section is required to be clearly set apart from the rest of the text on the labeling by use of boxes/blocks/bars (40 CFR 156.10(i)(2)(ix) and PR Notice 83-3)

The product is a Category I level for toxicity, with the signal word of DANGER. The First Aid statement is required on the front of the label (40 CFR 156.68 and EPA's Guidance for Pesticide Registrants on Location of the First Aid Statement per 40 CFR 156.68). If it has been approved by EPA for the First Aid Statement to be on the side or back panel, this statement must be set apart or distinguishable from other label text (in a box).

There is concern that the majority of the label (including the insert) is a font size that may be smaller than the minimum allowed (6 point). Registrant will need to confirm that all text is at a larger font size

This label version is no longer supported by the basic registrant (6836). Label version is from the accepted label on 7/24/16. EPA has stamped accepted on labels for 6/21/17. The label version 7/24/16 expired 18 months after 6/21/17 at 12/21/18.

Per the EPA letter: "In accordance with 40 CFR 152.130(c), you may distribute or sell this product under the previously approved labeling for 18 months from the date of this letter."

Since this label version may no longer be distributed, a full label review was not performed.

**m. PQS Base, EPA Reg. #106-UN-2 - Violation of 15-16-4-57(1)**

Manufacturing Use Products require both federal and state registration. The product is currently both federally and state unregistered.



Sarah K. Caffery  
Pesticide Product Registration Specialist

Date: March 4, 2020

**Disposition:** This case was forwarded to USEPA for federal review.



George N. Saxton  
Compliance Officer

Case Closed: April 13, 2020

## CASE SUMMARY

Case #PS19-0485

**Complainant:** Ted Oyler  
4180 N. CR500 West  
Marion, IN 46952

**Respondent:** Tad Hook  
The Andersons  
8086 E. CR900 South  
Galveston, IN 46932

Certified Applicator  
Licensed Business

1. On August 12, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report that a neighboring farmer apparently sprayed a field with dicamba which adversely affected his non dicamba-tolerant (DT) soybeans.
2. On August 12, 2019, I spoke with Ted Oyler who reported he recently drove by one of his fields and noticed the leaves across the top of the soybean plants were cupped. He indicated he believed the field directly across the road, which was farmed by Dan Newhouse, had been sprayed with a dicamba product as symptoms were visible on non-DT soybeans in other neighboring fields.
3. On August 12, 2019, I met Mr. Oyler at his farm to discuss the complaint. He reported the leaf-cupping was visible the entire length of his field from north to south. I told Mr. Oyler I would go to the field, which was on the east side of CR300 West in Grant County, the following day to conduct the on-site investigation.
4. On August 13, 2019, during my on-site investigation, I did the following:
  - a) Looked for, but did not find, any other potential sources of dicamba adjacent to the Oyler soybean field. The large target field was directly across CR300 West and ran the length of the Oyler field. There were no biological barriers between the fields with only the county road and ditches separating the crops.
  - b) Observed and photographed mostly-uniform, widespread cupping and puckering of leaves across the top of non-DT soybean plants in the western portion of the Oyler field. These symptoms are commonly associated with exposure to a growth-regulator type herbicide such as dicamba.
  - c) Collected soybean plants which exhibited symptoms from the Oyler field for assessment by the Plant & Pest Diagnostic Lab (PPDL) at Purdue.
  - d) Collected four gradient plant samples across the Oyler soybean field from west-to-east; one sample was collected from the west side of the field and subsequent samples were collected at 300-foot increments across the field, going to the east. Collected a vegetation sample (affected weeds) from the east side of the target field. Those samples were submitted to the OISC Residue Lab for analysis.



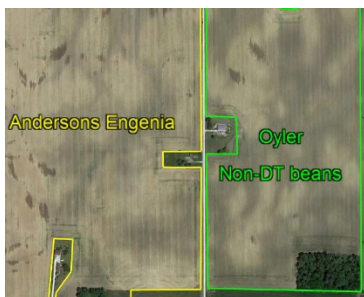


Fig.1 Aerial photo of fields



Fig.2 Leaf-cupping near road



Fig.3 Cupped non-DT beans

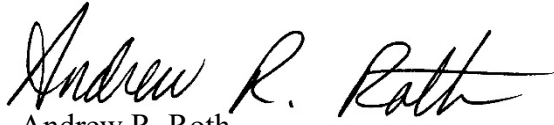
5. On August 13, 2019, I went to the farm of Mr. Newhouse and informed him of the complaint. He confirmed he was farming the DT soybean field in question, but indicated the field was sprayed commercially by The Andersons.
6. On August 14, 2019, I contacted Lee Franklin, manager at The Andersons, and informed him of the complaint. He confirmed one of his applicators sprayed the field adjacent to the Oyler field with Engenia in July. Mr. Franklin stated that, in an attempt to avoid having issues with off-target movement, they waited several days until winds were from the east before making the application. I sent Mr. Franklin a Pesticide Investigation Inquiry (PII) for the application. It was completed and returned with application records which indicated the following:
  - a. Certified Applicator: Tad Hook
  - b. Application date and time: July 22, 2019, from 936am – 220pm
  - c. Pesticides: Engenia (dicamba), EPA Reg. #7969-345
  - d. Adjuvants: Vapor Gard + DRA, Locktite
  - e. Target field: Chapel
  - f. Pre or post application: Post
  - g. Wind speed/direction at start: 10mph from northwest (toward Oyler field)
  - h. Wind speed/direction at end: 10mph from north (away from Oyler field)
  - i. Nozzles: TeeJet TTI 110005
  - j. Boom Height: 24"
  - k. Downwind Buffer: Zero in-field buffer
  - l. Checked registrant's website before application: 7/17/19
  - m. Checked DriftWatch before application: 7/17/19
  - n. Dicamba mandatory training attended: 1/8/19

I asked for clarification regarding the buffer and wind direction information reported during the investigation. It was explained to me that winds were from the northeast at The Andersons facility the day of the application. When Mr. Hook got to the field, winds were reportedly more from the north-northwest. With the field being almost 600 acres, Mr. Hook felt if he started on the opposite (west) side of the field, the wind may be in his favor and not blowing toward the Oyler field by the time he finished on the east side of the field. That reportedly happened and was reflected as such in the wind information reported on the PII.

7. The PPDL report stated, "*Soybeans show injury symptoms consistent with exposure to dicamba.*" It further indicated, "*There was no evidence of significant disease found.*"
8. The OISC Residue Lab analyzed the samples for dicamba and its breakdown products, DCSA and 5-OH dicamba. The dicamba parent compound was detected in all four non-DT soybean samples with higher concentrations in the samples closest to the target field. The breakdown

product DCSA was also detected in the three samples collected closest to the target field. All three analytes were detected in the weeds collected from the target field.

9. The evidence at the site, the lab reports and the wind direction at the start of the application, as reported by Mr. Hook, suggest dicamba from the application to the target field moved off-target to the Oyler soybeans. While it is difficult to determine whether the off-target movement occurred due to application into an inversion or volatility at some point after the application, Engenia was being applied to at least a portion of the target field while winds were blowing toward the sensitive non-DT soybeans in the Oyler field.
10. The Engenia label reads, in part, **“DO NOT apply when wind is blowing in the direction of neighboring sensitive crops or residential areas.”**

  
Andrew R. Roth  
Investigator

Date: December 20, 2019

**Disposition:** Tad Hook and The Andersons were cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift management. A civil penalty in the amount of \$500.00 was assessed for this violation. Consideration was given to the fact this was Tad Hook's second violation of similar nature (see case number 2018/0745). Consideration was also given to the fact a restricted use pesticide was involved.

  
George N. Saxton  
Compliance Officer

Draft Date: February 12, 2020  
Case Closed: April 21, 2020

## CASE SUMMARY

Case #PS19-0506

**Complainant:** R. Troy Burnside  
1312 West 650 South  
Vallonia, Indiana 47281

Stan Burnside - Brother and contact for this investigation

**Respondent:** Premier Ag  
Jason Vaughn  
P.O. Box 304  
Seymour, Indiana 47274

Licensed Business  
Certified Applicator

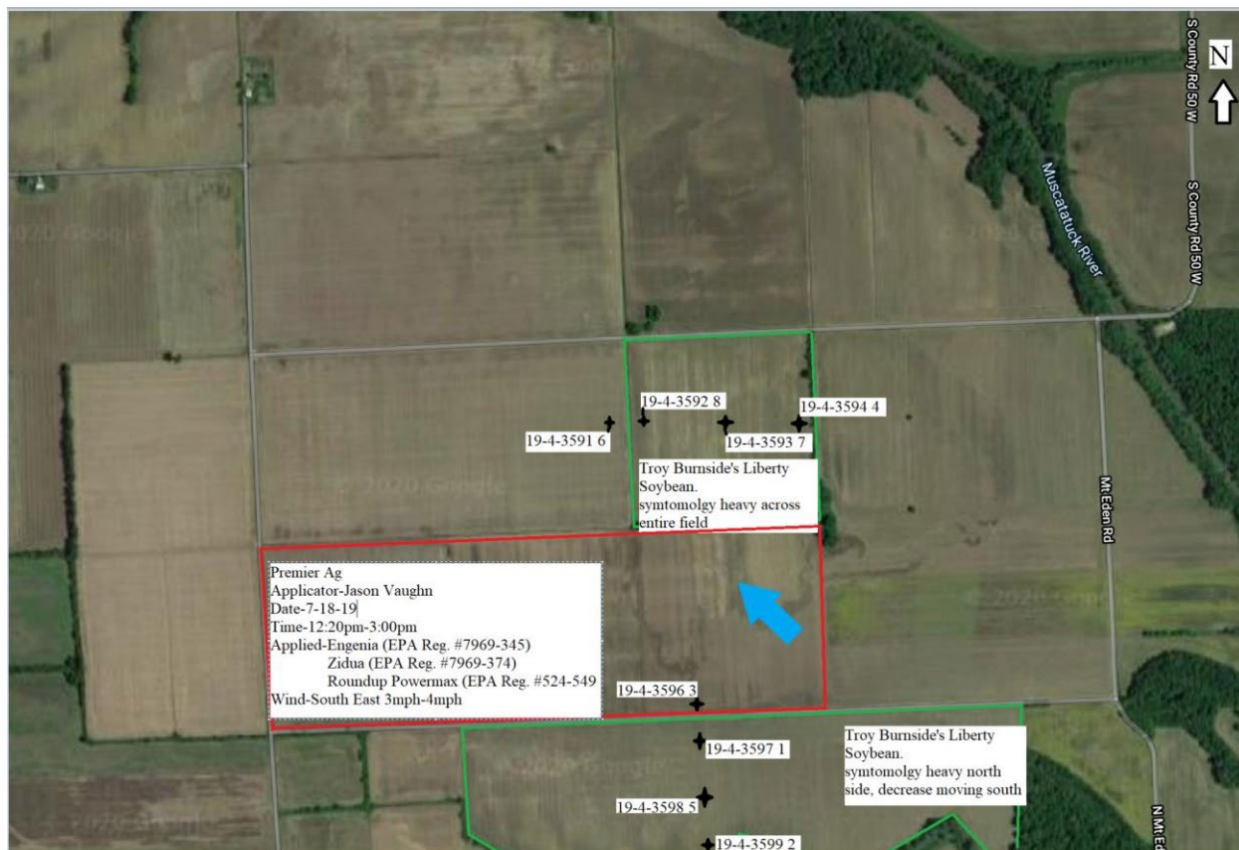
1. On August 14, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report that it appears a neighboring farmer applied dicamba to a field that adversely affected the complainant's Liberty beans.
2. On August 15, 2019, I spoke with Stan Burnside, brother of complainant Troy Burnside. Stan Burnside stated Premier Ag made a dicamba application adjacent to Troy Burnside's Liberty soybean field causing exposure symptoms to the 90-acre field. The field is located at Spurgeon School road and Mt. Eden road in Vallonia, Indiana. Stan Burnside stated he spoke with the farmer about the incident.
3. On August 21, 2019, I went to the locations of two (2) Liberty soybean fields in Vallonia, Indiana, alleged to have been drifted on with dicamba by Premier Ag Co-Op. See Site Diagram. Field #1 is located on the south side of Mt. Eden road off Hattabaugh road in Vallonia, Indiana. Field #2 is located on the south of Spurgeon School road in Vallonia, Indiana. Field #1 is surrounded on all four sides with soybeans other than Liberty soybeans. Field #1 shows signs of dicamba exposure throughout the entire field. Liberty soybean leaves are stunted and cupped. See figure 1. Field #2 has non-Liberty soybean fields on (3) sides, except the east side. Symptoms consistent with dicamba exposure are heavier on the north side closes to Spurgeon School Road. Symptoms include stunted, cupped leaves. See figure #2.



Figure 1 - Field #1



Figure #2



Site Diagram

4. On August 22, 2019, I received a completed Pesticide Investigation Inquiry (PII) form from Jason Vaughn, applicator for Premier Ag. Mr. Vaughn listed on the PII he made an application on July 18, 2019, using:
  - a. Engenia (EPA Reg. #7969-345, active ingredient dicamba);
  - b. Zidua (EPA Reg. #7969-374, active ingredient pyroxasulfone); and
  - c. Roundup PowerMax (EPA Reg. #524-549, active ingredient glyphosate).
 Wind direction was listed as out of the South east blowing toward Mr. Burnside's Liberty soybeans.
5. On August 22, 2019, Purdue's Plant and Pest Diagnostic Lab (PPDL) reported the following visual observations of soybean samples collected.

### **Diagnosis and Recommendations**

<b>Host/Habitat</b>	Soybean (Glycine max)
<b>List of Diagnosis/ID(s)</b>	
Suspected for Herbicide injury; Exposure (Abiotic disorder)	

### **Final Report**

August 26, 2019

The sample show symptoms associated with growth regulator exposure. No significant disease was observed.

John Bonkowski  
Bill Johnson

6. On September 5, 2019, I received an email from Luke Schnitker, Premier Ag, Account Manager, stating after seeing Mr. Burnside's field, he believed tank contamination on Mr. Burnside's part was the culprit.
7. On September 20, 2019, I spoke with Stan Burnside by telephone. Stan Burnside stated he and his brother Troy only use Liberty soybeans. Mr. Stan Burnside stated he has not used any dicamba in any sprayer this season.
8. On December 6, 2019, OISC's Residue Lab reported the detection of dicamba in samples taken from both of Mr. Burnside's fields. See attached results.

<b>OCM Collection #</b>	112482	<b>Investigator</b>	KELLEYJ		
<b>Collection Date</b>	08/21/2019				
Sample #	Sample Description	Matrix	Analyte	Amount of Analyte	LOQ
19-4-3590 0	Soil; Composite; SSTF#1-soil sample from target field; Target	Soil	No Analysis Performed	Done	
19-4-3591 6	Vegetation; Composite; VTF#1-vegetation from target field; T	Vegetation	5OH-Dicamba	37.7 ppb	2 ppb
			DCSA	37.1 ppb	0.2 ppb
			Dicamba	261 ppb * Minimum Detected	0.2 ppb
			AMPA	BDL ppb	125 ppb
			Glyphosate	1480 ppb	25 ppb
19-4-3592 8	Vegetation; Composite; V1#1-vegetation 5yds from target field	Vegetation	5OH-Dicamba	BDL ppb	2 ppb
			DCSA	BQL ppb	0.2 ppb
			Dicamba	BDL ppb	0.2 ppb
			AMPA	BDL ppb	125 ppb
			Glyphosate	BDL ppb	25 ppb
19-4-3593 7	Vegetation; Composite; V2#1-vegetation 225yds from target field	Vegetation	5OH-Dicamba	BDL ppb	2 ppb
			DCSA	0.284 ppb	0.2 ppb
			Dicamba	3.34 ppb	0.2 ppb
			AMPA	BDL ppb	125 ppb
			Glyphosate	BDL ppb	25 ppb

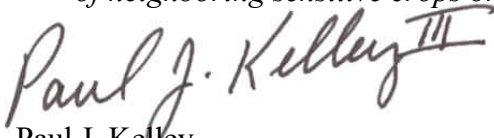


Sample #	Sample Description	Matrix	Analyte	Amount of Analyte	LOQ
19-4-3594 4	Vegetation; Composite; V3#1-vegetation 450yds from target fi	Vegetation	5OH-Dicamba	BDL ppb	2 ppb
			DCSA	BQL ppb	0.2 ppb
			Dicamba	1.16 ppb	0.2 ppb
			AMPA	BDL ppb	125 ppb
			Glyphosate	BDL ppb	25 ppb
19-4-3595 9	Soil; Composite; SSTF#2-soil sample from target field; Targe	Soil	No Analysis Performed	Done	
19-4-3596 3	Vegetation; Composite; VTF#2=vegetation from target field; T	Vegetation	5OH-Dicamba	1680 ppb * Minimum Detectec	2 ppb
			DCSA	87.8 ppb * Minimum Detected	0.2 ppb
			Dicamba	2280 ppb * Minimum Detected	0.2 ppb
			AMPA	BDL ppb	125 ppb
			Glyphosate	9470 ppb	25 ppb
19-4-3597 1	Vegetation; Composite; V1#2=vegetation 5yds from target fiel	Vegetation	5OH-Dicamba	BDL ppb	2 ppb
			DCSA	BQL ppb	0.2 ppb
			Dicamba	0.911 ppb	0.2 ppb
			AMPA	BDL ppb	125 ppb
			Glyphosate	BDL ppb	25 ppb
19-4-3598 5	Vegetation; Composite; V2#2-vegetation 175yds from target fi	Vegetation	5OH-Dicamba	BDL ppb	2 ppb
			DCSA	BDL ppb	0.2 ppb
			Dicamba	BDL ppb	0.2 ppb
			AMPA	BDL ppb	125 ppb
			Glyphosate	BDL ppb	25 ppb

Sample #	Sample Description	Matrix
19-4-3599 2	Vegetation; Composite; V3#2-vegetation 350yds from target fi	Vegetation

Analyte	Amount of Analyte	LOQ
5OH-Dicamba	BDL ppb	2 ppb
DCSA	BDL ppb	0.2 ppb
Dicamba	BQL ppb	0.2 ppb
AMPA	BDL ppb	125 ppb
Glyphosate	BDL ppb	25 ppb

9. Label language for Engenia states in part, *“DO NOT apply when wind is blowing in the direction of neighboring sensitive crops or residential areas”*.



Paul J. Kelley  
Investigator

Date: January 17, 2020

**Disposition:** Jason Vaughn and Premier Ag were cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift management. A civil penalty in the amount of \$250.00 was assessed for this violation. Consideration was given to the fact this was Mr. Vaughn’s first violation of similar nature. Consideration was also given to the fact a restricted use pesticide was involved.

Based on the evidence collected in this investigation, it has been determined that Mr. Vaughn failed to comply with the drift management restrictions on the label for the herbicide Engenia. It should also be noted that OISC was not able to determine whether the herbicide moved off-target as the result of drift, application into an inversion, or volatilization at some point after the application, and was not able to clearly identify the source of the off-target movement.



George N. Saxton  
Compliance Officer

Draft Date: March 10, 2020  
Case Closed: May 21, 2020

## CASE SUMMARY

Case #PS19-0512

**Complainant:** Kim Phelps  
438 North 400 East  
Valparaiso, IN 46383

**Respondent:** Nathan Schrock  
Crosswind Aviation Services, LLC  
11701 West 1800 South  
La Crosse, IN 46348

Certified Applicator

1. On August 14, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report that the pesticide from an aerial pesticide application to the field north of her residence, drifted onto her property and her as she was on the back porch. She stated her eyes and throat were burning.
2. On August 19, 2019, I met with Mrs. Phelps at her residence. She stated the afternoon of August 9, 2019, a helicopter sprayed the corn field north of her residence. She stated she was outside on her back porch with her dog and her eyes and throat began burning. She then took her dog inside the house with her. She stated her husband noticed a strong odor coming in through the open windows, so they had to close the windows. I obtained a written statement from Mrs. Phelps.
3. We then walked outside and she showed me where she was on the back porch. She then walked me out to the back yard and over to the corn field adjoining her property to the north. I took photographs of the scene, showing the location of the target corn field in relationship to the Phelps's property. I then collected swab and vegetation samples from the Phelps's property. All of the samples were labeled and submitted to the OISC Residue Lab. I asked Mrs. Phelps if she had the clothing she was wearing at the time of the application. She stated she had washed her clothing since the application. The following are photographs of the scene.





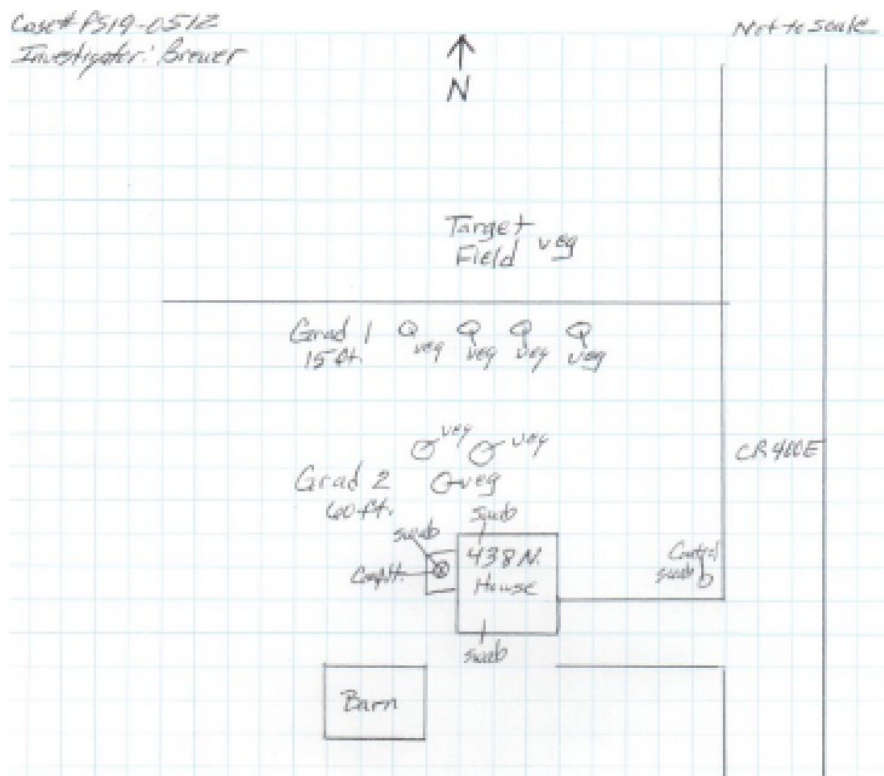
4. I learned Mr. Nathan Schrock was the aerial application who made the pesticide application to the target corn field. I made contact with Mr. Schrock and advised him of the complaint. I asked if he had made the aerial application to the target field. He stated he did make an aerial pesticide application to the target corn field on August 9, 2019 between the hours of 4:27 pm-4:40 pm. He stated he applied A-Frame Plus fungicide EPA Reg. #100-1324 with the active ingredients azoxystrobin and propiconazole and Silencer insecticide EPA Reg. #66222-104 with the active ingredient lambda-cyhalothrin. He was very concerned and stated he would contact Mrs. Phelps to see if there was anything he could do.
5. I received a copy of the aerial application report from Mr. Schrock. The report indicated the same information regarding the products applied, as Mr. Schrock had advised me. The report further indicated the winds at the time of the application were 19 degree (NNE) @ 7 mph and the temperature was 77 degrees F. I sent Mr. Schrock a Pesticide Investigation Inquiry (PII) of which he received, completed and returned to me. The PII indicated the same products applied as the aerial application report. The weather on the PII was different than stated on the application report. The PII indicated the winds at the time of the application were 180 degree (South) @ 7 mph and the temperature was 78 degrees F.
6. I researched the Weather Underground website for the weather conditions at the nearest three weather reporting stations on the date and time of the aerial application. The weather reporting stations at KINVALPA105, KINVALPA66 and Porter County Regional indicated the winds at the time of the application were NNW, NNE between 5 – 7.6 mph.
7. I received a report from the OISC Residue Lab. The report indicated the active ingredients azoxystrobin and propiconazole both found in A-Frame Plus fungicide, were detected in the swab and vegetation samples collected from the Phelps property. The following is a copy of the OISC Residue Lab report.

OCM Collection #	112435	Investigator	BREWERR
Collection Date	08/19/2019		

Sample #	Sample Description	Matrix	Analyte	Amount of Analyte	LOQ
19-4-0208 9	Swab (trip blank); Trip Blank; trip blank; trip blank;	Swab (trip blank)	Azoxystrobin	BDL ng/swab	0.4 ng/swab
			Propiconazole	BDL ng/swab	0.4 ng/swab
19-4-0209 1	Swab (Acetone); Control; front of compts property; East;	Swab (Acetone)	Azoxystrobin	2.82 ng/swab	0.4 ng/swab
			Propiconazole	BDL ng/swab	0.4 ng/swab
19-4-0210 1	Swab (Acetone); Composite; where complt was sitting; Affect	Swab (Acetone)	Azoxystrobin	1490 ng/swab * Minimum amount detected	0.4 ng/swab
			Propiconazole	1010 ng/swab * Minimum amount detected	0.4 ng/swab
19-4-0211 7	Swab (Acetone); Composite; north side of house; Affected Sit	Swab (Acetone)	Azoxystrobin	128 ng/swab	0.4 ng/swab
			Propiconazole	108 ng/swab	0.4 ng/swab
19-4-0212 9	Swab (Acetone); Composite; south side of house; Affected Sit	Swab (Acetone)	Azoxystrobin	38.8 ng/swab	0.4 ng/swab
			Propiconazole	21.1 ng/swab	0.4 ng/swab
19-4-0213 8	Vegetation; Composite; target field; Target Site;	Vegetation	Azoxystrobin	129 ppb	0.3 ppb
			Propiconazole	65.6 ppb	0.3 ppb
Sample #	Sample Description	Matrix	Analyte	Amount of Analyte	LOQ
19-4-0214 0	Vegetation; Composite; complt. property; Gradient 1;	Vegetation	Azoxystrobin	5170 ppb	0.3 ppb
			Propiconazole	3130 ppb	0.3 ppb
19-4-0215 5	Vegetation; Composite; complt. property; Gradient 2;	Vegetation	Azoxystrobin	1790 ppb	0.3 ppb
			Propiconazole	910 ppb	0.3 ppb



8. I reviewed the label for A-Frame Plus fungicide. The most recent label update as of June 14, 2018 stated on page 5, "Do not apply this product in a way that will contact workers or other persons, either directly or through drift".
9. The following is a diagram of the scene, showing the location of the target corn field in relationship to the complainant's property and the sample collection locations.



10. The OISC Residue Lab report indicated the active ingredients in the pesticide applied by Mr. Schrock, was detected in the swab and vegetation samples collected from the complainant's property. The initial application report and the Weather Underground report indicated the winds were blowing from the target field towards the complainant's property. These factors would indicate, the pesticides applied by Mr. Schrock did move off target and onto the complainant's property.

*Robert D. Brewer*

Robert D. Brewer  
Investigator

Date: February 14, 2020

**Disposition:** Nathan Schrock and Crosswind Aviation Services, LLC were cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift management. A civil penalty in the amount of \$500.00 was assessed for this violation. Consideration was given to the fact this was Mr. Schrock's second violation of similar nature and there was potential for human harm. See case number 2017/1189.

*George N. Saxton*

George N. Saxton  
Compliance Officer

Draft Date: April 13, 2020  
Case Closed: June 16, 2020

## CASE SUMMARY

Case #PS19-0526

**Complainant:** Mark Rogel  
12356 S. County Rd. 225 E.  
Clay City, Indiana 47841

**Respondent:** Edward L. Huddleston  
Ed Air, Inc.  
2253 East Green Airport Road  
Oaktown, Indiana 47561  
812-745-2213

Certified Applicator  
Licensed Business

1. On August 16, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report that today, an aerial applicator flew over his house drifting onto his property; children's playground equipment and bicycles.
2. On August 26, 2019, I met with the complainant at his residence. The complainant stated on August 16, 2019 his wife witnessed an airplane fly back and forth over their property four times and as the plane flew over their residence, his wife witnessed mist coming down onto their property from the airplane. The complainant took pictures of droplet marks on car windows, his air conditioning unit, swing set slide, sidewalk lights, and other items that were present in his yard at the time of the airplane flying over (See Fig. 1, 2, 3, and 4).
3. During my on-site investigation I did the following:
  - a. Looked for, and found two potential sources of pesticide application in the area. After the on-site investigation it was determined only one of the target fields had an aerial pesticide application made to it. The target field that had an aerial application made to it is to the east of the complainant's property across a county road (See Fig. 6)
  - b. Collected composite vegetation sample from the target fields. Collected a composite vegetation sample and swab samples from the complainant's property (See Fig. 6). The residue samples were submitted to the OISC Residue Laboratory for analysis.



Fig. 1



Fig. 2



Fig. 3



Fig. 4

- Fig. 1 is a picture provided by the complainant of droplet marks on the complainant's sidewalk lights located on the east side of the house.
- Fig. 2 is a picture provided by the complainant of droplet marks on the complainant's air conditioning unit located on the west side of the property.
- Fig. 3 is a picture provided by the complainant of droplet marks on the back window of the complainant's car parked in the driveway at the time of application.
- Fig. 4 is a picture provided by the complainant of droplet marks on the slide of the complainant's swing set



Fig. 5

- Fig. 5 is the aerial application as applied map supplied with the aerial application record, showing the pesticide application was made directly over the complainant's property.

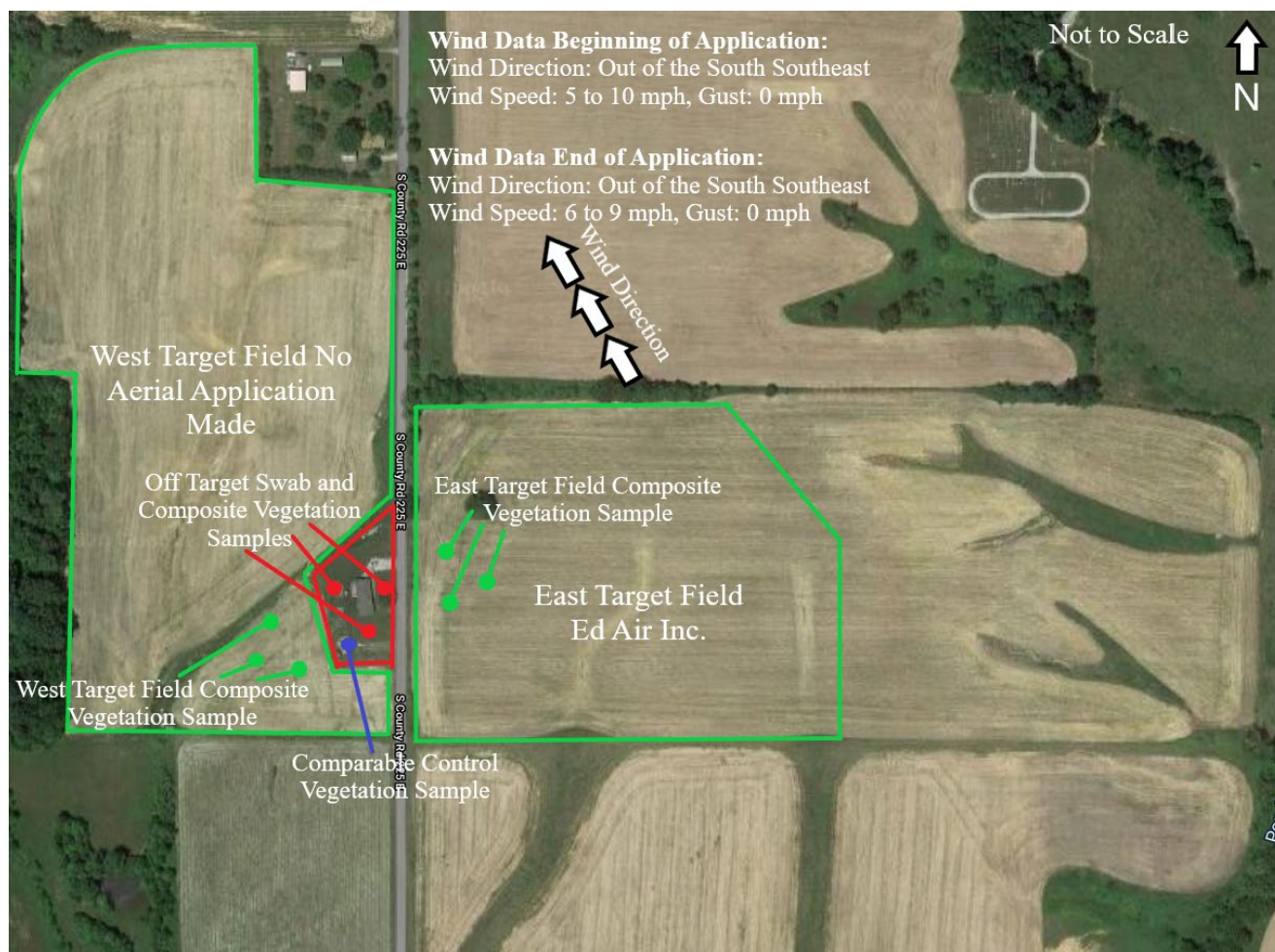


Fig. 6

- Fig. 6 is an aerial diagram including wind data, property lines, and where swab and vegetation samples were taken from.
4. On August 28, 2019, I contacted Ed Air, Inc. located in Oaktown, Indiana. I spoke to Nancy McKinley. I advised Ms. McKinley I was a Pesticide Investigator for OISC and of the complaint I was investigating. Ms. McKinley advised Ed Air Inc. made an aerial application to the field to the east of the complainant's property. I advised Ms. McKinley I would be sending her via email a Pesticide Investigation Inquiry to complete and return to me.
  5. On August 28, 2019, I received a completed Pesticide Investigation Inquiry from Ms. McKinley for the application which indicated the following:
    - a. Certified Applicator: Edward L. Huddleston
    - b. Application Date and Time: August 16, 2019, 9:30am to 10:15am
    - c. Pesticide Applied:  
Topguard EQ, EPA Reg. #279-3596, Active = azoxystrobin, flutriafol  
13.48oz/acre
    - d. Adjuvants: None
    - e. Target Field Location and Size: Duncan, 13 acres
    - f. Pre- or Post- Emergent Application: Post
    - g. Wind Blowing from Which Direction: Start- 155, End- Blank



- h. Wind Speed at Boom Height: Start- 4mph, End- Blank
- i. Nozzle and Pressure: CP, Flat Fan, 30psi
- j. Boom Height: 8-10 Feet

6. Weather history data was obtained at [www.wunderground.com](http://www.wunderground.com) from the closest official weather station to the application site. The location and weather data for August 16, 2019 follows:

- Terre Haute Regional Airport (KHUF) located in Terre Haute, Indiana 21 miles to the northwest of the application site:

Date	Time	Temperature	Wind Direction	Wind Speed	Wind Gust
8/16/2019	8:53 AM	72 F	SSE	5 MPH	0 MPH
8/16/2019	9:53 AM	74 F	SSE	6 MPH	0 MPH

- Lawrenceville-Vincennes International Airport (KLWV) located in Lawrenceville, Illinois 42 miles to the southwest of the application site:

Date	Time	Temperature	Wind Direction	Wind Speed	Wind Gust
8/16/2019	8:53 AM	73 F	S	6 MPH	0 MPH
8/16/2019	9:53 AM	75 F	S	10 MPH	0 MPH

- Indianapolis International Airport (KIND) located in Indianapolis, Indiana 54 miles to the northeast of the application site:

Date	Time	Temperature	Wind Direction	Wind Speed	Wind Gust
8/16/2019	8:54 AM	73 F	SSE	10 MPH	0 MPH
8/16/2019	9:54 AM	75 F	SSW	9 MPH	0 MPH

7. The wind data from the Terre Haute Regional Airport (KHUF), Lawrenceville-Vincennes International Airport (KLWV) and Indianapolis International Airport (KIND) indicates the wind speed during the application was between 5 mph and 10 mph with no gust, constantly out of the south varying between east and west.
8. The OISC Residue Laboratory analyzed the swab and vegetation samples collected for the active ingredients azoxystrobin and flutriafol and reported the following.



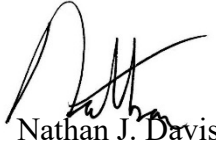


OCM Collection #	113173	Investigator	DAVISN		
Collection Date	08/26/2019				
Sample #	Sample Description	Matrix	Analyte	Amount of Analyte	LOQ
19-4-0819 4	Swab (Acetone); Trip Blank; Trip Blank Swab; Affected Site;	Swab (Acetone)	Azoxystrobin	BDL ng/swab	0.4 ng/swab
			Flutriafol	BDL ng/swab	0.2 ng/swab
19-4-0820 7	Swab (Acetone); Control; Control Swab Vinyl Siding; Affected	Swab (Acetone)	Azoxystrobin	31.6 ng/swab	0.4 ng/swab
			Flutriafol	6.76 ng/swab	0.2 ng/swab
19-4-0821 1	Swab (Acetone); Grab/Spot; A1 Swab Swingset; Affected Site;	Swab (Acetone)	Azoxystrobin	6.08 ng/swab	0.4 ng/swab
			Flutriafol	18.5 ng/swab	0.2 ng/swab
19-4-0822 4	Swab (Acetone); Grab/Spot; A2 Swab W. Side Window; Affected	Swab (Acetone)	Azoxystrobin	10.4 ng/swab	0.4 ng/swab
			Flutriafol	2.78 ng/swab	0.2 ng/swab
19-4-0823 0	Swab (Acetone); Grab/Spot; A3 Swab E. Side Window; Affected	Swab (Acetone)	Azoxystrobin	24.9 ng/swab	0.4 ng/swab
			Flutriafol	31.2 ng/swab	0.2 ng/swab
19-4-0824 8	Vegetation; Composite; E. Target Field Composite Veg (Corn);	Vegetation	Pending	Done	
			Pending	Done	
19-4-0825 3	Vegetation; Composite; W. Target Field Composite Veg (Beans)	Vegetation	Pending	Done	
			Pending	Done	

OCM Collection #	113173	Investigator	DAVISN		
Collection Date	08/26/2019				
Sample #	Sample Description	Matrix	Analyte	Amount of Analyte	LOQ
19-4-0826 9	Vegetation; Composite; Off Target Composite Veg; Affected Si	Vegetation	Azoxystrobin	270 ppb	0.3 ppb
			Flutriafol	400 ppb	1 ppb
19-4-0827 6	Vegetation; Control; Comparative Control Veg; Affected Site;	Vegetation	Azoxystrobin	199 ppb	0.3 ppb
			Flutriafol	205 ppb	1 ppb

9. The OISC Residue Laboratory analysis detected the active ingredients azoxystrobin and flutriafol in all of the swab samples and the off target composite vegetation sample. The tank mix for this application included the active ingredient azoxystrobin and flutriafol.

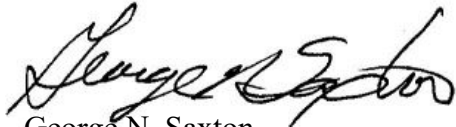
10. The amount of active ingredients detected in the OISC Residue Laboratory analysis of the off target swab and vegetation samples, the aerial application as applied map showing the pesticide application was made directly over the complainant's property, indicate the pesticide moved from the target application site in sufficient quantity and onto the complainant's property including the complainant's residence, swing set, and other items present in the yard.



Nathan J. Davis  
Investigator

Date: January 23, 2020

**Disposition:** Edward L. Huddleston and Ed Air, Inc. were cited for violation of section 65(5) of the Indiana Pesticide Use and Application Law for operating in a careless and/or negligent manner. A civil penalty in the amount of \$1,000.00 was assessed for this violation. Consideration was given to the fact this was his third violation of similar nature. See case numbers 2017/1103 and 2018/0797.



George N. Saxton  
Compliance Officer

Draft Date: March 20, 2020  
Case Closed: May 21, 2020

## CASE SUMMARY

Case #PS19-0527

**Complainant:** Larry Eugene French  
5447 W. CR 400 S.  
Kewanna, Indiana 46939

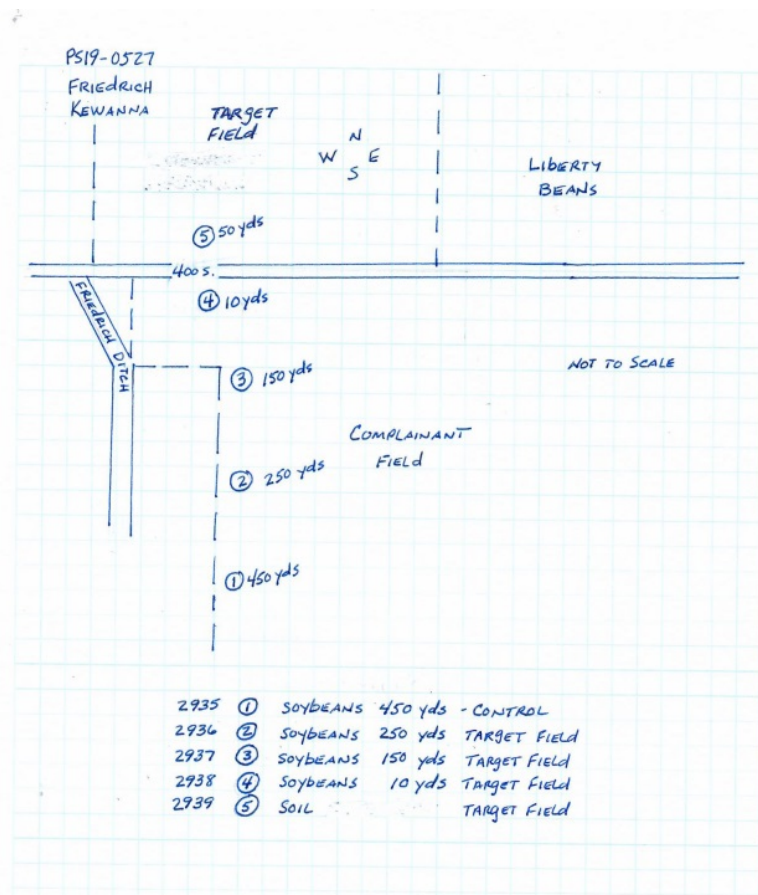
**Respondent:** CFS (KOVA)  
Jesse Spurgeon  
302 North 300 West  
Winamac, Indiana 46996

**Licensed Applicator**

1. On August 16, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report a neighboring farmer applied dicamba that has adversely affected his beans.
2. On September 4, 2019, I met with the complainant Larry Friedrich. He told me he believed a pesticide application of dicamba was made to the farm field north of the complainant's field. He said the other farm fields around him were non-dicamba soybeans. I checked his soybean field for signs of pesticide exposure symptoms. I observed leaf cupping and strapping. Symptoms appeared to be uniformly distributed across the field. (See photos below). I obtained samples for submission to the Purdue Plant and Pest Diagnostic Lab (PPDDL) for analysis.



3. I placed the following environmental samples in Mylar bags for submission to the OISC Residue Lab for analysis: (See diagram below)
  - 2935 soybeans (control) 450 yards from target field
  - 2936 soybeans 250 yards from target field
  - 2937 soybeans 150 yards from target field
  - 2938 soybeans 10 yards from target field
  - 2939 soil target field



4. I learned Jesse Spurgeon of CFS located in Winamac, Indiana made the pesticide application to the farm field north of the complainant's field. Mr. Spurgeon agreed to complete and return a Pesticide Investigation Inquiry (PII) to OISC for processing.
5. I received the following information from PPPDL: *"The soybeans showed leaf cupping and whitish leaf tips. These symptoms are characteristic of exposure to synthetic auxins such as dicamba. There was no significant disease observed."*
6. I received a completed PII from applicator Jesse Spurgeon. The PII had the following information:
  - Mr. Spurgeon made a pesticide application of **Engenia** (EPA #7969-345; active ingredient: dicamba), approved tank mix pesticide **Warrant** (EPA #524-591; active ingredient: acetochlor) and approved adjuvant Kabak Ultra on July 24, 2019 between 11:45am and 2:10pm.
  - Wind was recorded at 6-8 miles per hour in a northerly direction away from the complainant's field.
  - Application made with approved DR 110-10 nozzles and a boom height of 20-24 inches
  - There was no indication he checked DriftWatch for sensitive crops/sites.
  - There was no indication the site was surveyed prior to application
  - Equipment ground speed at time of application was 12-13 miles per hour
  - There was no information regarding downwind buffer
  - There was no information regarding application rate or total volume used

7. The weather data I obtained from the **National Climate Data Center (NCDC)** at [ncdc.noaa.gov](https://www.ncdc.noaa.gov) conflicted the weather information provided by applicator Jesse Spurgeon. I checked the three (3) separate sites listed below from [ncdc.noaa.gov](https://www.ncdc.noaa.gov):
- Porter County Municipal Airport located in Valparaiso (48 miles northwest of site) recorded the wind blowing at 10 miles per hour in a southwest direction toward the complainant's field.
  - Grissom Air Force Base located in Peru (26 miles southeast from site) recorded the wind blowing at 6-13 miles per hour in a southeast direction toward the complainant's field.
  - Fulton County Airport located in Rochester (7 miles northeast of site) recorded the wind blowing at 3-9 miles per hour in a southeast to southwest direction toward the complainant's field.
  - I spoke to applicator Jesse Spurgeon. He told me he was certain the wind was blowing away from the complainant's field at the time of his application. He said he even checked the weather station at South Bend and it agreed with him. I advised him I checked weather stations closer to the site than South Bend. All stations recorded the wind blowing toward the complainant's field. Mr. Spurgeon told me he had no other explanation. (Following my conversation with Mr. Spurgeon, I checked the weather data for South Bend Airport. (see below)).
  - South Bend Airport located in South Bend (47 miles north of site) recorded the wind blowing at 8-10 miles per hour in a southwest direction toward the complainant's field
8. I checked the labels for **Engenia** and **Warrant**. The label for **Engenia** reads in part, "***DO NOT apply when wind is blowing in the direction of neighboring sensitive crops. Sensitive crops include non-DT soybeans.***"
9. The label for **Warrant** reads in part, "*Apply this product only when the potential for drift to adjacent sensitive areas (e.g., residential areas, bodies of water, known habitat for threatened or endangered species, non-target crops) is minimal (e.g., when wind is blowing away from the sensitive areas.)*"
10. Based on available information (site observations, PPPDL report, PII information and weather data (wind information from three different triangulated airports)) Mr. Jesse Spurgeon was in violation of the **Engenia** label by *applying it when the wind was blowing in the direction of sensitive crops such as non-DT soybeans*. Mr. Spurgeon was also in violation of the **Engenia** label when he failed to *check an applicable crop registry and document that he surveyed the neighboring fields for any sensitive areas or sensitive crops prior to application*. He was also in violation of the **Warrant** label by failing to *apply it when the potential for drift to adjacent areas (non-target crops) was minimal (wind blowing away from the sensitive areas)*. **No residue samples were analyzed due to obvious label violations.**



Kevin W. Gibson  
Investigator

Date: December 17, 2019



**Disposition:** Jesse Spurgeon and CFS (KOVA) were cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift management. A civil penalty in the amount of \$250.00 was assessed for this violation. Consideration was given to the fact this was Mr. Spurgeon's first violation of similar nature. Consideration was also given to the fact a restricted use pesticide was involved.

  
George N. Saxton  
Compliance Officer

Draft Date: February 12, 2020  
Case Closed: May 5, 2020

## CASE SUMMARY

Case #PS19-0532

**Complainant:** Jeff Greenwell  
1800 Harmony Springfield Road  
New Harmony, Indiana 47631

**Respondent:** Darrell Shemwell                      Certified Applicator  
Posey County Co-Op                      Licensed Business  
151 Lockwood Street  
Poseyville, Indiana 47633  
812-307-226

1. On August 5, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report that an arborist advised him that a pesticide applied to a neighboring farm field has adversely affected his trees.
2. On August 21, 2019, I met with the complainant at his residence. The complainant walked me around his property and pointed out his concerns on an oak tree located in the center of his property. The complainant stated he believed he first observed the injury in May.
3. During my on-site investigation I did the following:
  - a. Looked for, and found two potential sources of herbicide application in the area. After the on-site investigation it was determined only one of those herbicide applications contained a growth regulator type herbicide. The target field that contained a growth regulator type herbicide is located to the west of the complainant's property (See Fig. 5).
  - b. Observed and photographed an oak tree in the center of the complainant's property with curled leaves (See Fig. 1,2,3, and 4). These symptoms are commonly associated with exposure to a growth-regulator type herbicide.
  - c. Collected samples of injured oak tree from the complainant's property for assessment by the Purdue Plant & Pest Diagnostic Laboratory (PPDDL)
  - d. Collected composite soil sample from the target fields. Collected composite soil and vegetation samples from the complainant's property (See Fig. 5). The residue samples were submitted to the OISC Residue Laboratory for analysis.



Fig. 1



Fig. 2



Fig. 3



Fig. 4

- Fig. 1 is an overview of an oak tree located in the center of the complainant's property.
- Fig. 2 is an oak tree located in the center of the complainant's property, showing curled leaves
- Fig. 3 is an oak tree located in the center of the complainant's property, showing curled leaves
- Fig. 4 is an oak tree located in the center of the complainant's property, showing curled leaves



Fig. 5

- Fig. 5 is an aerial diagram including wind data, property lines, and where soil and vegetation samples were taken from.
4. On August 26, 2019, I contacted the Posey County Co-Op in Poseyville, Indiana and spoke to branch manager Darrell Shemwell. I advised Mr. Shemwell I was a Pesticide Investigator for OISC and of the complaint I was investigating. Mr. Shemwell advised Posey County Co-Op made a post emergent application to the field to the west of the complainant's property. I advised Mr. Shemwell I would be sending him via email a Pesticide Investigation Inquiry to complete and return to me.
  5. On August 28, 2019, I received a completed Pesticide Investigation Inquiry from Mr. Shemwell for the application which indicated the following:
    - a. Certified Applicator: Darrell Shemwell
    - b. Application Date and Time: July 24, 2019, 10:05am to 12:25pm
    - c. Pesticide Applied:
      - Engenia, EPA Reg. #7969-345, Active = dicamba, 12.8oz/acre
      - Roundup PowerMax, EPA Reg. #524-549, Active = glyphosate, 44oz/acre
    - d. Adjuvants: Dyne-Amic, Oculus
    - e. Target Field Location and Size: West of New Harmony Rd and East of Old Beech Church, 40 Acres
    - f. Pre- or Post- Emergent Application: Post



- g. Wind Blowing from Which Direction: Start- ENE, End- ENE
- h. Wind Speed at Boom Height: Start- 2 to 3mph, End- 3 to 5mph
- i. Nozzle and Pressure: Wilger UR 110-08, 25psi
- j. Boom Height: 20 inches

6. Weather history data was obtained at [www.wunderground.com](http://www.wunderground.com) from the closest official weather station to the application site. The location and weather data for July 24, 2019 follows:

- Evansville Regional Airport (KEVV) located in Evansville, Indiana 19 miles to the east of the application site:

Date	Time	Temperature	Wind Direction	Wind Speed	Wind Gust
7/24/2019	9:54 AM	77 F	NNE	12 MPH	22 MPH
7/24/2019	10:54 AM	79 F	N	13 MPH	23 MPH
7/24/2019	11:54 AM	80 F	N	14 MPH	25 MPH
7/24/2019	12:54 PM	81 F	NE	13 MPH	22 MPH

- Owensboro-Daviess County Regional Airport (KOWB) located in Owensboro, Kentucky 45 miles to the southeast of the application site:

Date	Time	Temperature	Wind Direction	Wind Speed	Wind Gust
7/24/2019	9:56 AM	76 F	NE	15 MPH	0 MPH
7/24/2019	10:56 AM	77 F	NNE	9 MPH	0 MPH
7/24/2019	11:56 AM	80 F	N	14 MPH	0 MPH
7/24/2019	12:56 PM	80 F	N	10 MPH	0 MPH

- Lawrenceville-Vincennes International Airport (KLWV) located in Lawrenceville, Illinois 69 miles to the north of the application site:

Date	Time	Temperature	Wind Direction	Wind Speed	Wind Gust
7/24/2019	9:53 AM	77 F	NNE	12 MPH	0 MPH
7/24/2019	10:53 AM	79 F	NNE	9 MPH	20 MPH
7/24/2019	11:53 AM	80 F	N	12 MPH	0 MPH
7/24/2019	12:53 PM	80 F	NNE	14 MPH	0 MPH

7. The wind data from the Evansville Regional Airport (KEVV), Owensboro-Daviess County Regional Airport (KOWB), and Lawrenceville-Vincennes International Airport (KLWV) indicates the wind speed during the application was between 9 mph and 15 mph with gusts up to 25 mph out of the north and east.
8. The PPPDL report stated: *The sample shows evidence of growth regulator herbicide injury. The large necrotic spots and blotches are due to Tubakia leaf spot. The tiny black spots are mostly caused by spot anthracnose (Elsinoe). Some insect damage was also present.*



9. The OISC Residue Laboratory analyzed the soil and vegetation samples collected for the active ingredients 2,4-D, dicamba, and glyphosate and reported the following:

OCM Collection #	112506	Investigator	DAVISN
Collection Date	08/21/2019		

Sample #	Sample Description	Matrix	Analyte	Amount of Analyte	LOQ
19-4-0811 8	Soil; Composite; W. Target Field Composite Soil; Target Site	Soil	2,4-D	BQL ppb	2 ppb
19-4-0812 5	Vegetation; Composite; W. Target Field Composite Veg (Beans)	Vegetation	No Analysis Performed	Done	
19-4-0813 9	Soil; Composite; E. Target Field Composite Soil; Target Site	Soil	2,4-D	BQL ppb	2 ppb
19-4-0814 1	Vegetation; Composite; E. Target Field Composite Veg (Corn);	Vegetation	No Analysis Performed	Done	
19-4-0815 6	Soil; Composite; Off Target Composite Soil; Affected Site;	Soil	No Analysis Performed	Done	
19-4-0816 0	Vegetation; Composite; Off Target Composite Veg; Affected Si	Vegetation	2,4-D	171 ppb	0.2 ppb
			5OH-Dicamba	14.0 ppb * Estimated	0.4 ppb
			DCSA	BDL ppb	0.2 ppb
			Dicamba	1.55 ppb	0.2 ppb
			AMPA	BDL ppb	125 ppb
			Glyphosate	94.8 ppb	25 ppb
19-4-0817 3	Soil; Control; Comparative Control Soil; Affected Site;	Soil	No Analysis Performed	Done	

OCM Collection #	112506	Investigator	DAVISN
Collection Date	08/21/2019		

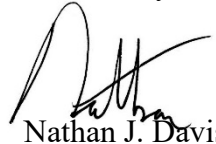
Sample #	Sample Description	Matrix	Analyte	Amount of Analyte	LOQ
19-4-0818 7	Vegetation; Control; Comparative Control Veg; Affected Site;	Vegetation	2,4-D	1.19 ppb	0.2 ppb
			5OH-Dicamba	1.87 ppb * Estimated	0.4 ppb
			DCSA	0.430 ppb	0.2 ppb
			Dicamba	0.948 ppb	0.2 ppb
			AMPA	319 ppb	125 ppb
			Glyphosate	247 ppb	25 ppb

10. The OISC Residue Laboratory analysis detected 2,4-D, dicamba and glyphosate in the off target composite vegetation samples. The tank mix for this application included the active

ingredient dicamba and glyphosate. In regards to the 2,4-D detected in the off target composite vegetation sample, none of the applications made to either the east or west target fields included 2,4-D in the tank mix, further both the east and west target field composite soil samples analyses showed 2,4-D was below quantification limits. The source of the 2,4-D could not be identified.


11. On August 28, 2019 I contacted certified applicator Darrell Shemwell in regards to if he used the required 57-foot omnidirectional infield buffer required in Posey County, Indiana to protect federally listed threatened and endangered species. Mr. Shemwell advised he did not use the required 57-foot omnidirectional infield buffer.
12. The triangulated wind data from the Evansville Regional Airport (KEVV), Owensboro-Daviess County Regional Airport (KOWB), and Lawrenceville-Vincennes International Airport (KLWV) indicates the wind speed during the application was between 9 mph (legal application) and 15 mph with gusts up to 25 mph out of the north and east. The wind directions were all out of the north or east blowing away from the complainant's property. Since two locations showed winds 10 mph or below, the benefit of the doubt was given to the applicator, especially since wind direction is usually more reliably corroborated or refuted by various weather data sources than wind speed. Wind speed data can vary significantly based on location and height of weather station.
13. According to statement made by certified applicator Darrell Shemwell on August 28, 2019 Mr. Shemwell failed to use the 57-foot omnidirectional infield buffer required to protect federally listed threatened and endangered species. The label for *Engenia*, EPA Reg. #7969-345, *Active Ingredient = dicamba* states: **"Prior to making an Engenia application in DT cotton and DT soybeans, an applicator must visit [www.epa.gov/espp/](http://www.epa.gov/espp/) to determine if there are any additional restrictions on Engenia use within the area to sprayed"**. According to [www.epa.gov/espp/](http://www.epa.gov/espp/), Posey County, Indiana has the following restriction: **"In combination with the 110 foot in-field wind-directional spray drift buffer, a 57 foot omnidirectional infield buffer is required to protect federally listed threatened and endangered species"**.
14. According to the application records Mr. Shemwell's tank mix included RoundUp PowerMax, EPA Reg. #524-549, Active Ingredient=Glyphosate at a rate of 44oz to the acre and the adjuvants Dyne-Amic and Oculus. The label for *Engenia*, EPA Reg. #7969-345, *Active Ingredient = dicamba* states: **"Do not tank mix any product with Engenia unless: You check the list of EPA approved products for use with Engenia at [www.engeniatankmix.com](http://www.engeniatankmix.com) no more than 7 days before applying Engenia; and the intended product tank mix with Engenia is identified on that list of tested and approved products: and the intended product to be tank mix with Engenia is not prohibited on this label"**. According to [www.engeniatankmix.com](http://www.engeniatankmix.com) it states: **"Glyphosate maximum use rate per acre per application is 1.125 lbs. of acid equivalent"**. Mr. Shemwell rate of 44oz/acre of RoundUp PowerMax, EPA Reg. #524-549, Active Ingredient=Glyphosate has the acid equivalent of 1.55 lbs. of glyphosate acid per acre and was therefore over the maximum use rate per acre per application. Further, Mr. Shemwell's tank mix included the adjuvants Dyne-Amic and Oculus. According to [www.engeniatankmix.com](http://www.engeniatankmix.com) the adjuvant Dyne-Amic requires a Drift Reduction Agent from the approved list, Oculus is not an approved Drift Reduction Agent and therefore Mr. Shemwell failed to use a required Drift Reduction Agent when Dyne-Amic is a tank mix partner.

15. Based on the evidence collected in this investigation, it has been determined that Mr. Shemwell failed to comply with the drift management restrictions on the label for the herbicide *Engenia*, EPA Reg. #7969-345, Active Ingredient = dicamba. It should also be noted that OISC was not able to determine whether the herbicide moved off-target as a result of drift, application into an inversion, or volatilization at some point after the application, and was not able to clearly identify the source of the off-target movement.

  
Nathan J. Davis  
Investigator

Date: January 16, 2020

**Disposition:** Darrell Shemwell and Posey County Co-Op were cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift management. Consideration was given to the fact this was Mr. Shemwell's first violation of similar nature. Consideration was also given to the fact a restricted use pesticide was involved. A civil penalty in the amount of \$250.00 had already been assessed for this application in case number PS19-0452.

  
George N. Saxton  
Compliance Officer

Draft Date: March 18, 2020  
Case Closed: May 21, 2020

## CASE SUMMARY

Case #PS19-0573

**Complainant:** Sherry Thomas  
202 S. 10th Street  
Clinton, IN 47842

**Respondent:** No More Bites Tonight  
63 Candlelite Lane  
Pontiac, MI 48340  
248-402-3405

1. On August 27, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report an improper bedbug treatment.
2. On September 4, 2019, I met with Sherry Thomas at her residence in Clinton, Indiana. Mrs. Thomas stated she hired No More Bites Tonight to treat her house for bed bugs. Mrs. Thomas stated she found the company on the internet. Mrs. Thomas stated Tim Marshall made the application to her house. Mrs. Thomas stated Mr. Marshall used a blower type piece of equipment to blow a white powder all over the inside of the residence. Mrs. Thomas stated Mr. Marshall mixed some of the white powder in water and drank it to show her how "safe" the product was. Mrs. Thomas stated Mr. Marshall gave her a bag of the white powder and a squirt bottle to administer the product herself. See figures 1. Furthermore, Mrs. Thomas stated Mr. Marshall gave her a small bottle of a brown liquid that would remove itching. Mrs. Thomas stated she paid cash for the application and could not find the original receipt.



Figure 1-Bag of white powder with applicator

3. On September 4, 2019, I observed white powder and white powder residue inside Mrs. Thomas's residence. See figures 2-7. Location of white powder and white residue appeared to cover most living areas in the residence. I collected a sample of the white powder and a swab from the base board in the living room. Furthermore, I collected the bag of white powder and squirt bottle and small container with brown liquid. Samples were taken to OISC's Residue Lab for analysis.



Figure 2-Powder along baseboard



Figure 3-Powder above window frame

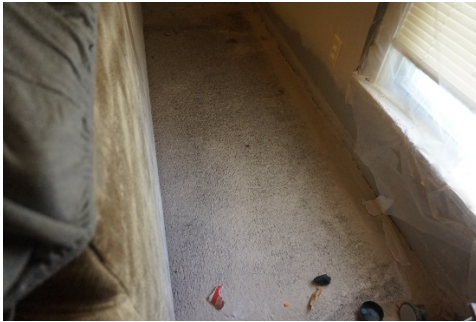


Figure 4-Powder behind and under couch



Figure 5-Powder in and on cabinets

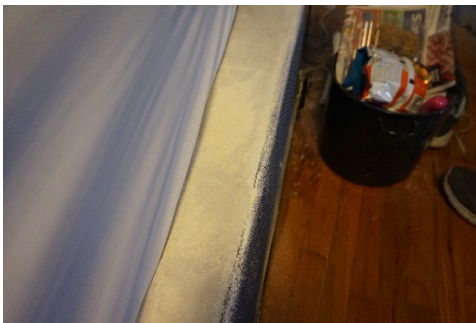


Figure 6-Powder between mattress



Figure 7-Powder on floor

4. On September 18, 2019, I met with Sherry Thomas to get an affidavit of her account of her dealings with Tim Marshall. Mrs. Thomas stated she found Mr. Marshall's services on Facebook. Mrs. Thomas stated Mr. Marshall showed up to her house in a white vehicle, all white clothing, and a long white beard.
5. OISC's database indicated Mr. Marshal was cited in 2018 (Case Summary 2018/0853) for the following;

***Disposition:*** Timothy Marshall was cited for violation of section 65(1) of the Indiana Pesticide Use and Application Law for making a false or fraudulent claim either verbally or through any media misrepresenting the effect of a pesticide product or a method to be used. A civil penalty in the amount of \$250.00 was assessed for this violation.

*Timothy Marshall was cited for violation of section 65(3) of the Indiana Pesticide Use and Application Law for using a known ineffective or improper pesticide product or known ineffective amount of pesticide. A civil penalty in the amount of \$250.00 was assessed for this violation.*



*Timothy Marshall was cited for eighteen (18) counts of violation of section 65(9) of the Indiana Pesticide Use and Application Law for applying pesticides for hire without having an Indiana pesticide business license. A civil penalty in the amount of \$4,500.00 (18 counts x \$250.00 per count) was assessed.*

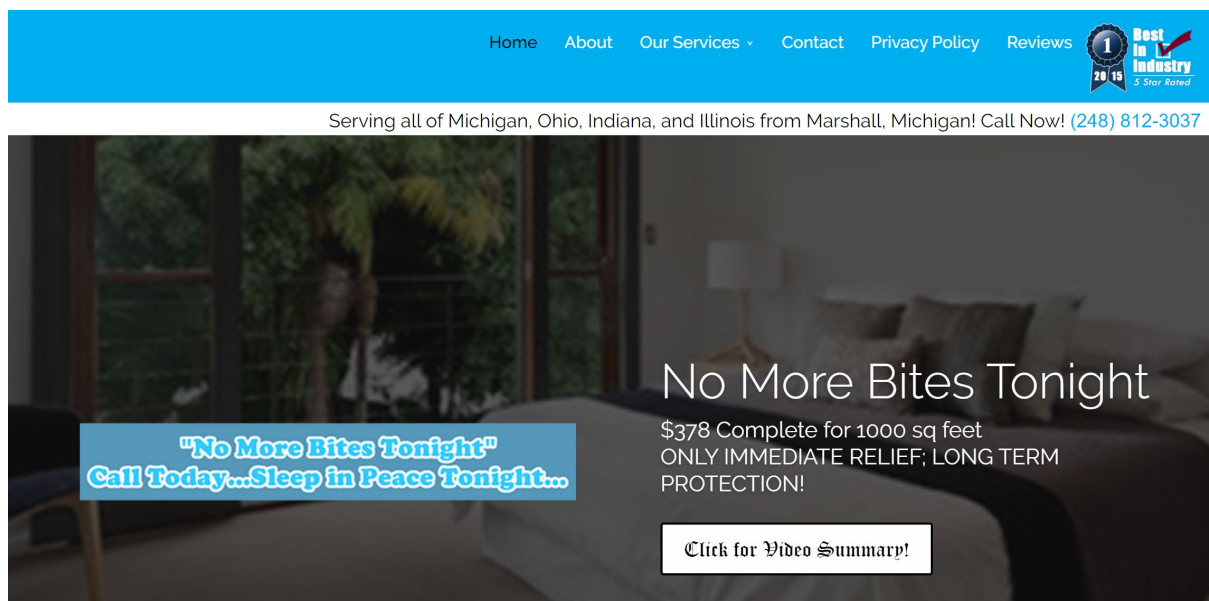
*As of March 22, 2019, Timothy Marshall / No More Bites Tonight had not paid the \$5,000.00 civil penalty assessed. A second letter was sent as a reminder the civil penalty is still owed to OISC.*

*As of May 3, 2019, Timothy Marshall / No More Bites Tonight had not paid the \$5,000.00 civil penalty assessed. The case was forwarded to the Indiana Attorney General for collection.*

6. On August 30, 2019, I spoke with Agent Melissa Rosch, Pesticide Investigator with the Office of Indiana State Chemist. Agent Rosch indicated she was working two (2) additional cases (Case numbers PS19-0047 and PS19-0053) regarding Tim Marshall of a similar nature. Agent Rosch stated she was in contact with Mr. Marshall through Facebook. Agent Rosch stated she issued Mr. Marshall and Action Order. (See attached Exhibit A)
7. On August 30, 2019, I accessed “No More Bites Tonight” webpage at:

[www.nomorebitestonight.com/](http://www.nomorebitestonight.com/)

The webpage homepage indicated Mr. Marshall services Ohio, Indiana, and Illinois from his Michigan locations.



Homepage for “No More Bites Tonight”

8. An excerpt from the webpage states Mr. Marshall’s product and product pricing for his bedbug product;

*“There is good news however, you can quickly get rid of them today and protect your home for the future with No More Bites Tonight's "Wall to Wall BedBug Killing and Protection Service". Not only is the treatment not poison but extremely healthy for the home helping to eliminate dust mites and germs, molds odors and other nasty microbes. So schedule your "Wall to Wall Killing and Protection Service" Today and Sleep in Peace Tonight... And into the far distant future, enjoying your "Peace of Mind"!!!*

*Serving the Try-State Area from Marshall, Michigan!*

*For bed bug infestations you don't have to throw anything away just provide us with a fitted sheet to leave permanently on each bed (place a second sheet to lie on so you can wash it) to hold in our treatment. This guarantees the longevity of our service. We do the jobs the big boys can't handle. We don't try to "Find" the bugs or "Lure" the bugs we use the "Dummy" method and come in with overwhelming force dusting all hiding places for bugs. "Call Today and Sleep in Peace Tonight" with "No More Bites Tonight".*

*\$378.00 Complete for 1000 Sq.Ft. and \$72.00 each additional 500 Sq.Ft. \$378.00 will usually cover an apartment which doesn't have a basement or an attic. Then a small home is usually 1500 Sq.Ft. \$378.00 + \$72 or 450.00 and a regular size home is generally about 2000 Sq.Ft. Or \$378.00 + 72.00 x 2 or 522.00 So if you call and describe your home I'll tell you how much it costs. I usually try to charge the least possible and will help you in any way I can."*

9. On August 30, 2019, I reviewed "No More Bites Tonight" and Tim Marshall's Facebook page. The Facebook page showed a picture of Mr. Marshall and the Product logo I observed on the product Mr. Marshall left with Mrs. Thomas. See figures 8-10.

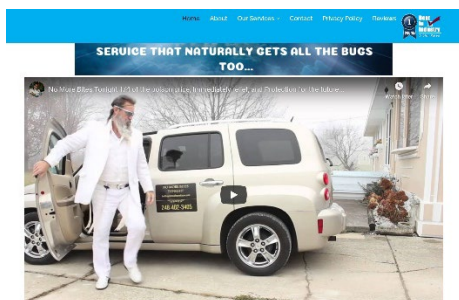


Fig. 8-Mr. Marshall

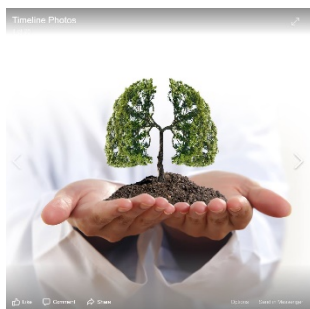


Fig. 9-Logo on Facebook



Fig. 10-Product from Mrs. Thomas

10. A review of OISC's Data base indicates Mr. Marshall and No More Bites Tonight are not licensed to apply pesticides for-hire in Indiana. Furthermore, the product Mr. Marshall is advertising and applying for-hire is not a USEPA Registered pesticide.

*Paul J. Kelley III*

Paul J. Kelley  
Investigator

Date: January 28, 2020

**Disposition:** This case was referred to the U.S. E.P.A. Criminal Investigation Division (CID) for federal investigation.

*George N. Saxton*

George N. Saxton  
Compliance Officer

Case Closed: May 28, 2020

Office of  
Indiana State Chemist and Seed Commissioner  
Purdue University  
175 S. University Street  
West Lafayette, Indiana 47907-2063  
800-893-6637  
[www.oisc.purdue.edu](http://www.oisc.purdue.edu)

### ACTION ORDER

Subject to I.C. 15-16-4-77 and I.C. 15-16-5-70, any person who knowingly violates the terms or provisions of this ORDER commits a Class C misdemeanor, punishable by a fine of up to \$500.00 and sixty (60) days in jail. In accordance with I.C. 15-16-4-64.5 and I.C. 15-16-5-67, a person aggrieved by this ORDER may obtain a review by the Indiana Pesticide Review Board, if the person files a written petition with the Board not later than thirty (30) days after issuance of this ORDER at [scottde@purdue.edu](mailto:scottde@purdue.edu).

Issued to: Tim Marshall "No More Bites Tonight"

Address: 63 Candlelite Lane Pontiac MI 48340/

E-Mail: tm1260@gmail.com Phone (248) 4023405

☐ Subject to I.C. 15-16-4-73, you are hereby ordered to remove the below listed non-compliant products from sale and hold them at your location until released in writing by the state chemist.

Quantity	Product Brand Name	EPA Registration #	Registrant

☒ Subject to I.C. 15-16-5-65(6), you are hereby ordered to:  
Stop Advertising or making pesticide Applications for hire in Indiana  
Until your Business is registered/licensed with OISC.

Details regarding the non-compliant issue(s) referenced above and any additional guidance on what steps to take to bring the issue(s) into compliance can be found on the reverse side of this ORDER, at [www.oisc.purdue.edu/pesticide/order](http://www.oisc.purdue.edu/pesticide/order), by contacting [saxtong@purdue.edu](mailto:saxtong@purdue.edu), or by calling (800) 893-6637 Mon-Fri, 8:00-5:00.

Melissa Rosch  
State Chemist Agent (PRINT)

[Signature] 12-4-18  
Agent Signature Date

Sent via email to  
above address

Recipient (PRINT)

Recipient Signature

Date

Case #

Exhibit A - Agent Rosch's Action Order

## CASE SUMMARY

Case #PS19-0605

**Complainant:** Office of Indiana State Chemist (OISC)  
175 S. University Street  
West Lafayette, IN 47907  
765-494-1492

**Respondent:** Hawkins, Inc.  
Keith Uccello  
4601 South Delaware Drive  
Muncie, IN 47302

EPA Est. #7870-IN-1  
Branch Manager

1. On September 9, 2019, I performed a routine Producer Establishment Inspection (PEI) at Hawkins Inc. in Muncie, IN. A Notice of Inspection was issued and state credentials were presented to Keith Uccello, Branch Manager. I explained that this was a routine not-for-cause inspection and that I would be inspecting repackaging agreements, inbound, production and distribution records, bin labels and any product that was packaged, labeled and ready for shipment.
2. According to Mr. Uccello, Hawkins Inc. produces and distributes Municipal and Industrial water treatment chemistries. Currently AZONE 15, EPA Reg. #7870-5, is the only pesticide product that Hawkins Inc. produces at this location. AZONE 15 is currently registered Federally and with the State of Indiana.
3. Inbound records and distribution records were examined and found to be sufficient. Mr. Uccello stated that no production records were kept for AZONE 15. He stated that the product is delivered by tanker truck, placed into a holding tank at the Hawkins Inc. facility, and then placed into 330 gallon totes for delivery. Hawkins Inc. does not provide a batch ID. Mr. Uccello informed me that they would track products by date it was shipped.
4. Hawkins Inc. does not import or export any pesticide products.
5. AZONE15 is only packaged in 330 Gallon totes. Due to the large size of the packaging no formulation samples were collected. Mr. Uccello did provide a bin label for AZONE 15. While I was reviewing the label that Mr. Uccello provided me, I observed that the EPA Establishment Number was incorrect. The EPA Est. number on the label was 278-OH-002. The correct EPA Establishment Number for Hawkins Inc. at this location is 7870-IN-1. I also observed that there was no number written on the label for Net. Contents. I asked Mr. Uccello if they write the Net Contents in after the container is filled and he said it was left blank since the containers hold 330 gallons and they are always filled completely full. I informed him that the Net Contents needed to be written on the labeled product.
6. I issued an Action Order to Hawkins Inc. instructing them to stop distribution of AZONE 15, EPA Reg. #7870-5, until the correct EPA Establishment Number is on the label.

7. I collected the following documents:
  - a. Document 1- A bin label for AZONE 15, EPA Reg# 7870-5.
  - b. Document 2- A copy of one inbound record for Sodium Hypochlorite Solution 12.5%.
  - c. Document 3- A copy of 15 distribution records for AZONE 15. (CBI)
8. I initialed and dated each of the documents.
9. Mr. Uccello signed the Receipt for Documents. Mr. Uccello was provided a copy of the Notice of Inspection, Receipt for Documents, and the Action Order.
10. No other deficiencies were discussed during the closing conference with Mr. Uccello. We then concluded the inspection.
11. On September 9, 2019, Mr. Uccello sent an email to me containing the corrected label for AZONE 15. The corrected label had 7870-IN-1 written in for the EPA Establishment Number. Also, 330 gallons was written in on the NET Contents.
12. All supporting documents not deemed Confidential Business Information will be electronically attached to this case.

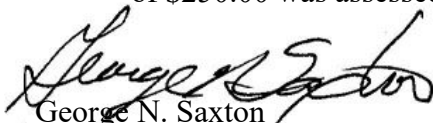


Garret A. Creason  
Investigator

Date: September 16, 2019

**Disposition:**

- A. A label review was requested on September 17, 2019.
- B. On November 8, 2019, the label review was completed and revealed that as determined during the initial review, label had incorrect EPA Est. Number. Additional concerns:
  - a. The label is misbranded;
    - i. Storage and Disposal section is required to be "clearly set apart (as blocked or in a box) from the rest of the "Directions for Use" (See §156.10(i)(2)(ix) and PR Notice 83-3)
    - ii. NSF Certification: The master label indicates no certification to NSF, in order to place this certification on the label it must appear on the master label.
    - iii. The following statement is not on the master label: "AZONE 15 is registered for other uses. Contact HAWKINS INC for additional approved uses and directions". A pesticide product must be used in accordance with the labeling available with the product. Additional uses must be provided (in a booklet or pull-off label).
- C. Hawkins Inc. was cited for violation of section 57(5) of the Indiana Pesticide Registration Law for distributing a pesticide product that was misbranded. A civil penalty in the amount of \$250.00 was assessed for this violation.



George N. Saxton  
Compliance Officer

Draft Date: February 12, 2020  
Case Closed: May 5, 2020



## CASE SUMMARY

Case #PS19-0626

**Complainant:** R. Troy Burnside  
1312 West 650 South  
Vallonia, Indiana 47281

Stan Burnside - Brother and contact for this investigation

**Respondent:** Brian Wischmeier  
3685 E CR 550 S  
Brownstown, IN 47220

Private Applicator

1. On August 14, 2019, the complainant contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report that it appears a neighboring farmer applied dicamba to a field that adversely affected the complainant's Liberty beans.
2. On August 15, 2019, I spoke with Stan Burnside, brother of complainant Troy Burnside. Stan Burnside stated Premier Ag made a dicamba application adjacent to Troy Burnside's Liberty soybean field causing exposure symptoms to the 90-acre field. The field is located at Spurgeon School Road and Mt. Eden Road in Vallonia, Indiana. Stan Burnside stated he spoke with the farm about the incident.
3. On August 21, 2019, I went to the locations of two (2) Liberty soybean fields in Vallonia, Indiana, alleged to have been drifted on with dicamba. See Site Diagram. Field #1 is located on the south side of Mt. Eden Road off Hattabaugh Road in Vallonia, Indiana. Field #2 is located on the south of Spurgeon School Road in Vallonia, Indiana. Field #1 is surrounded on all four sides with soybeans other than Liberty soybeans. Field #1 shows sign of dicamba exposure throughout the entire field. Liberty soybean leaves are stunted and cupped. See figure #1. Field #2 has non-Liberty soybean fields on (3) sides, except the east side. Symptoms consistent with dicamba exposure are heavier on the north side closes to Spurgeon School Road. Symptoms include stunted, cupped leaves. See figure #2.



Site Diagram



Figure 1 - Field #1



Figure #2

4. On August 22, 2019, I received a completed Pesticide Investigation Inquiry (PII) form from Brian Wischmeier. Mr. Wischmeier listed on the PII he made an application on July 23, 2019, using:
  - a. Engenia (EPA Reg. #7969-345, active ingredient dicamba);
  - b. Zidua (EPA Reg. #7969-374, active ingredient pyroxasulfone); and
  - c. Roundup PowerMax (EPA Reg. #524-549, active ingredient glyphosate).

Wind direction was listed as out of the north blowing toward Mr. Burnside's Liberty soybeans. Furthermore, Mr. Burnside's second field was approximately a half mile from the application field.

5. On August 22, 2019, Purdue's Plant and Pest Diagnostic Lab (PPDL) reported the following visual observations of soybean samples collected.

## **Diagnosis and Recommendations**

<b>Host/Habitat</b>	Soybean (Glycine max)
<b>List of Diagnosis/ID(s)</b>	
Suspected for Herbicide injury; Exposure (Abiotic disorder)	

## **Final Report**

August 26, 2019

The sample show symptoms associated with growth regulator exposure. No significant disease was observed.

John Bonkowski  
Bill Johnson

6. On December 6, 2019, OISC's Residue Lab reported the detection of dicamba in samples taken from both of Mr. Burnside's fields. See attached results.

<b>OCM Collection #</b>	112482	<b>Investigator</b>	KELLEYJ		
<b>Collection Date</b>	08/21/2019				
<b>Sample #</b>	<b>Sample Description</b>	<b>Matrix</b>	<b>Analyte</b>	<b>Amount of Analyte</b>	<b>LOQ</b>
19-4-3590 0	Soil; Composite; SSTF#1-soil sample from target field; Targe	Soil	No Analysis Performed	Done	
19-4-3591 6	Vegetation; Composite; VTF#1-vegetation from target field; T	Vegetation	5OH-Dicamba	37.7 ppb	2 ppb
			DCSA	37.1 ppb	0.2 ppb
			Dicamba	261 ppb * Minimum Detected	0.2 ppb
			AMPA	BDL ppb	125 ppb
			Glyphosate	1480 ppb	25 ppb
19-4-3592 8	Vegetation; Composite; V1#1-vegetation 5yds from target fiel	Vegetation	5OH-Dicamba	BDL ppb	2 ppb
			DCSA	BQL ppb	0.2 ppb
			Dicamba	BDL ppb	0.2 ppb
			AMPA	BDL ppb	125 ppb
			Glyphosate	BDL ppb	25 ppb

19-4-3593 7 Vegetation; Composite;  
V2#1-vegetation 225yds  
from target fi Vegetation

5OH-Dicamba	BDL ppb	2 ppb
DCSA	0.284 ppb	0.2 ppb
Dicamba	3.34 ppb	0.2 ppb
AMPA	BDL ppb	125 ppb
Glyphosate	BDL ppb	25 ppb

**Sample #**      **Sample Description**      **Matrix**

19-4-3594 4 Vegetation; Composite;  
V3#1-vegetation 450yds  
from target fi Vegetation

Analyte	Amount of Analyte	LOQ
5OH-Dicamba	BDL ppb	2 ppb
DCSA	BQL ppb	0.2 ppb
Dicamba	1.16 ppb	0.2 ppb
AMPA	BDL ppb	125 ppb
Glyphosate	BDL ppb	25 ppb

19-4-3595 9 Soil; Composite;  
SSTF#2-soil sample from  
target field; Targe Soil

No Analysis Performed	Done	
-----------------------	------	--

19-4-3596 3 Vegetation; Composite;  
VTF#2=vegetation from  
target field; T Vegetation

5OH-Dicamba	1680 ppb * Minimum Detectec	2 ppb
DCSA	87.8 ppb * Minimum Detected	0.2 ppb
Dicamba	2280 ppb * Minimum Detected	0.2 ppb
AMPA	BDL ppb	125 ppb
Glyphosate	9470 ppb	25 ppb

19-4-3597 1 Vegetation; Composite;  
V1#2=vegetation 5yds  
from target fiel Vegetation

5OH-Dicamba	BDL ppb	2 ppb
DCSA	BQL ppb	0.2 ppb
Dicamba	0.911 ppb	0.2 ppb
AMPA	BDL ppb	125 ppb
Glyphosate	BDL ppb	25 ppb

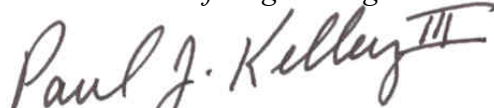
Sample #	Sample Description	Matrix
19-4-3598 5	Vegetation; Composite; V2#2-vegetation 175yds from target fi	Vegetation

Analyte	Amount of Analyte	LOQ
5OH-Dicamba	BDL ppb	2 ppb
DCSA	BDL ppb	0.2 ppb
Dicamba	BDL ppb	0.2 ppb
AMPA	BDL ppb	125 ppb
Glyphosate	BDL ppb	25 ppb

19-4-3599 2	Vegetation; Composite; V3#2-vegetation 350yds from target fi	Vegetation
-------------	--	------------

5OH-Dicamba	BDL ppb	2 ppb
DCSA	BDL ppb	0.2 ppb
Dicamba	BQL ppb	0.2 ppb
AMPA	BDL ppb	125 ppb
Glyphosate	BDL ppb	25 ppb

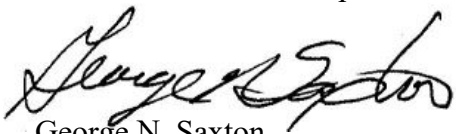
7. Label language for Engenia states in part, *“DO NOT apply when wind is blowing in the direction of neighboring sensitive crops or residential areas”*.



Paul J. Kelley  
Investigator

Date: January 17, 2020

**Disposition:** Brian Wischmeier was cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding drift management. A civil penalty in the amount of \$100.00 was assessed for this violation. Consideration was given to the fact this was his first violation of similar nature. Consideration was also given to the fact a restricted use pesticides was involved.



George N. Saxton  
Compliance Officer

Draft Date: March 19, 2020  
Case Closed: May 21, 2020



## CASE SUMMARY

Case #PS20-0022

**Complainant:** Office of Indiana State Chemist (OISC)  
175 S. University Street  
West Lafayette, IN 47907  
765-494-1492

**Respondent:** Green Agri Solutions, LLC.  
Keith Warren Owner  
P.O. Box 3989  
Spring Hill, FL 34611

**Respondent:** Garwood Orchard  
Mike Garwood Secretary/Treasurer  
5911 W 50 S  
LaPorte, IN 46350

**Respondent:** Sunrise Produce  
Bill Kercher Business Development  
19498 County Road 38  
Goshen, IN 46526

### Preamble

1. April 19, 2017, Ed White, Assistant Pesticide Administrator, sent a package to FL Dept. of Agriculture & Consumer Services in regard to concerns that were brought to his attention regarding GreenAgri Solutions LLC. Concerns about the product included:
  - a. At that time, GreenAgri Solutions could not be located in the EPA database as a primary or distributor company.
  - b. Mr. White confirmed concerns about the unregistered pesticide from the company's website ([www.greenagrisolutions.com](http://www.greenagrisolutions.com)).
    - i. An unregistered antimicrobial product called SAFE-ZONE LOD or SAFE-ZONE LOD PW3300
    - ii. Misleading information about the product's active ingredient. The website claimed, "stabilized ozone" represented as "mineral oxy-chloride". However, these ingredients cannot be located in EPA's chemical name dictionary.
2. Mr. White did not receive any response from Florida in regards to this letter.
3. On September 10, 2019, the Office of Indiana State Chemist (OISC) pesticide registration department received an application to register AG 5000 (EPA Reg. No. 92945-1-93735) from Green Agri Solutions LLC.
4. Our initial review of the label identified claims on the marketplace label that were not supported by the master label or the basic registration through U.S. EPA. Upon identifying

concerns of the products labeling, Mr. White recommended collaboration between OISC pesticide registration and enforcement departments to determine current distribution and use of the product in Indiana and pending registration.

Sarah K. Caffery  
Pesticide Product Registration Specialist

Date: November 27, 2019

## Investigation Summary

- On October 25, 2019, a conference was held between OISC, Indiana State Department of Health, and Purdue University Department of Food Science about potential concerns with the Green Agri Solutions product AG5000. Indiana State Department of Health Food Safety Farm Consultant, Jennifer Coleman, had concerns about the product's registration status in the state of Indiana. Mrs. Coleman was able to provide two locations in Indiana where she knew the AG5000 product was being used, Garwood Orchard and Sunrise Produce.
- On October 29, 2019, OISC Agent Joe Becovitz, Sarah Caffery, and I inspected Garwood Orchard in LaPorte, IN. We met with Mike Garwood and explained to him the reason for our inspection. Mr. Garwood stated that they currently use AG5000 and did have some on site. He allowed us to walk back to where the product was stored and used. I was able to photograph and sample the product from the open container of AG5000 that was in use at the time. I assigned the sample a formulation collection number and sealed it for transportation to the OISC Formulation Lab.



Fig. 1) AG5000 product at Garwood Orchard.

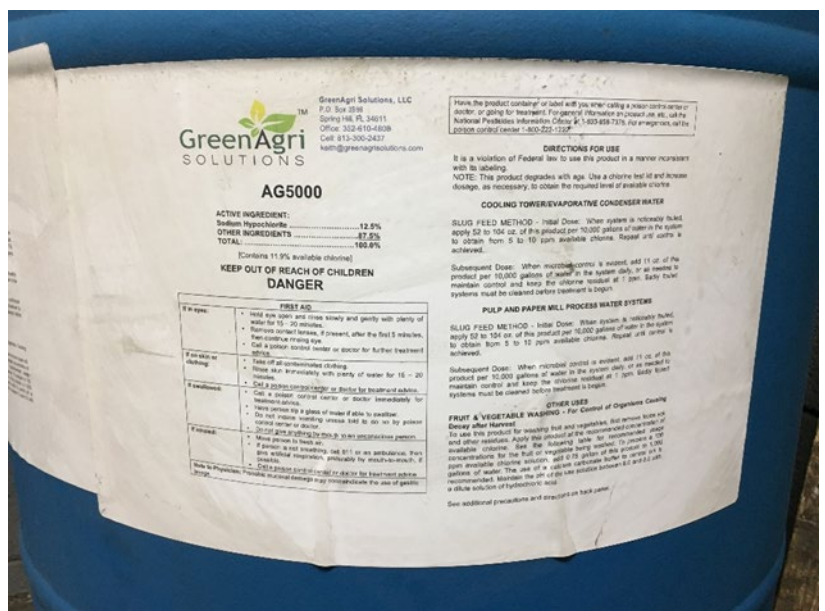


Fig. 2) Label of AG5000 at Garwood Orchard

7. Mr. Garwood informed us that this was the only product used at this facility for sanitization/pathogen removal at the time and that they have used the product for approximately three years. He advised that this product greatly reduced stem end decay on peppers after they are packaged. Mr. Garwood provided an invoice showing the product was shipped to Garwood Orchard on July 2, 2019.
8. Upon completing the inspection at Garwood Orchard, we then went to Sunrise Produce in Goshen, IN. There we met with Bill Kercher. I explained to Mr. Kercher the reason for our visit. Mr. Kercher allowed us to walk back to the processing facility and view the AG5000 product that was on site. At the time of the inspection there were two unopened 55-gallon drums on site. I was able to take a sample from one of the unopened drums. The lot number on the drum that the sample was taken from was "BCH2895000". I assigned the sample a formulation collection number and sealed it for transportation to the OISC Formulation Lab.
9. Mr. Kercher stated that this was the only product used at this facility for sanitization/pathogen removal at the time. Mr. Kercher provided an invoice showing the product was shipped to Sunrise Produce on July 25, 2019.



Fig. 3) Photo of AG5000 at Sunrise Produce

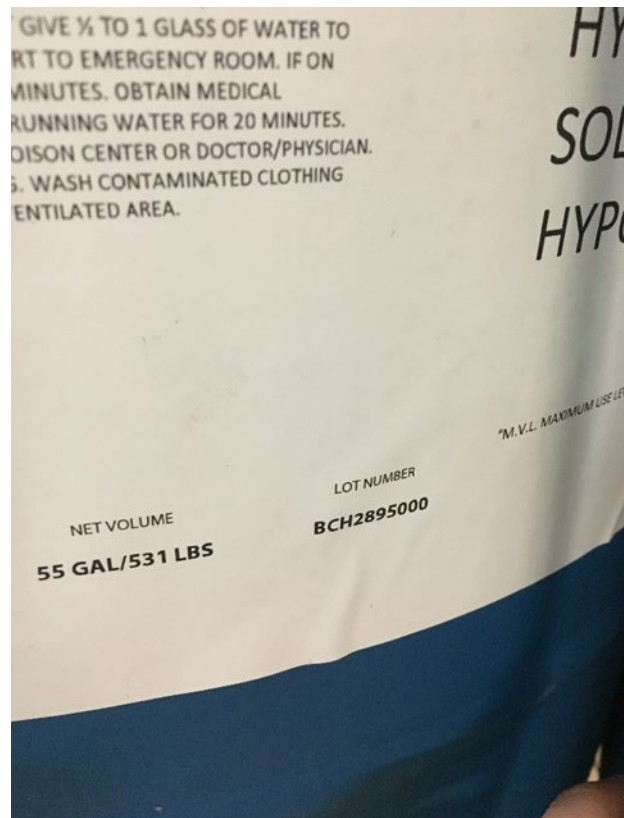



Fig. 4) Photo of Lot Number from sampled

10. On October 30, 2019, I delivered the evidentiary samples to the OISC Formulation lab.
11. On November 21, 2019, I received lab analysis results from the OISC Formulation lab for the samples collected. The sample of AG5000 taken from the opened container at Garwood


Orchard failed low when tested. The sample of AG5000 taken from the unopened container at Sunrise Produce also failed low when tested. The lab results are as follows:

**OFFICE OF INDIANA STATE CHEMIST**  
*Pesticide Formulation Laboratory*  
 Lab Report

OCM Collection #	123122	Case #	PS20-0022	Investigator	G. Creason / S. Caffery
Sample #	Product Description				Sample Size
20-3-0104 3	AG5000				1 x 100 mL
ACTIVE INGREDIENT				% GUARANTEE	% FOUND
Sodium Hypochlorite*†				12.5%	N/A
*Tested as Available Chlorine				11.90%	6.45%
†Tested as Calcium, Elemental				UNK	0.000157%
†Tested as Sodium, Elemental				3.86%	9.12%
Remarks: Available Chlorine tested on Metrohm Titrandο titrator with in-house method and QC. QC passes. Elemental Calcium and Sodium tested in Fertilizer Lab on ICP 720 with in-house method.					
Signature					Date 11/21/2019

Lab Analysis of AG5000 sample from Garwood Orchard (open container)

**OFFICE OF INDIANA STATE CHEMIST**  
*Pesticide Formulation Laboratory*  
 Lab Report

OCM Collection #	123129	Case #	PS20-0022	Investigator	G. Creason / S. Caffery
Sample #	Product Description				Sample Size
20-3-0105 8	AG5000				1 x 100 mL
ACTIVE INGREDIENT				% GUARANTEE	% FOUND
Sodium Hypochlorite*†				12.5%	N/A
*Tested as Available Chlorine				11.90%	9.05%
†Tested as Calcium, Elemental				UNK	0.000554%
†Tested as Sodium, Elemental				3.86%	7.71%
Remarks: Available Chlorine tested on Metrohm Titrando titrator with in-house method and QC. QC passes. Elemental Calcium and Sodium tested in Fertilizer Lab on ICP 720 with in-house method.					
Signature					Date 11/21/2019

Lab Analysis of AG5000 from Sunrise Produce (unopened container)

12. On December 13, 2019, I issued an Action Order to Green Agri Solutions LLC instructing the company to stop sales of AG5000, EPA Reg# 92945-1-93735, into the state of Indiana.
13. On December 17, 2019, Sarah Caffery and I spoke with Keith Warren, Green Agri Solutions LLC, and informed him of the lab analysis results. We also were able to speak about the product labeling. I also asked Mr. Warren if he was able to provide information for other sales of AG5000 into the State of Indiana. Mr. Warren was able to provide me with a list after our conversation.
14. With the information given by Mr. Warren I was not able to locate any more AG5000 being used in Indiana.
15. On January 24, 2020, I issued Action Orders to Garwood Orchard and Sunrise Produce. The Action Orders instructed the companies to "Return remaining AG5000 product, EPA Reg. #92945-1-93735, back to registrant/distributor or dispose of according to label directions. Notify OISC when completed."
16. On March 13, 2020, I spoke with Mr. Warren and he advised that he worked with his customers regarding the AG5000 product. Garwood Orchards only had a small amount left so they chose to dispose of the product. Mr. Warren stated that he had the product from Sunrise Produce shipped back to Green Agri Solutions LLC.



Garret A. Creason  
Investigator

Date: March 15, 2020

### **Label Review**

17. On November 27, 2019, I completed the label reviews for the products found in distribution at both locations. The labeling that we reviewed was found to be misbranded, federally and state unregistered, and includes claims that are considered false or misleading.

The following concerns were identified:

#### **On the container:**

- Wrong EPA Reg. Number –
  - The EPA Reg. Number on the container does not include the distributor number. Therefore, the company responsible does not match the company listed on the label.
- There is no EPA Establishment Number identified on the container
  - The label lists three different EPA Est. Numbers, with the location being identified by A, B, or C within the Lot number.
  - The lot number on the container starts with a B, an assumption could be made that the Texas would be the establishment location. However, the shipping portion of the label includes the BellChem contact information and a person could also assume that the Florida location is the correct establishment.
  - All in all, an establishment number is not accurately, or appropriately, identified.



- NSF claim is not on the master label
  - This statement is included on both the product label and shipping label
- Under “Other Uses” the following is stated, “See the following table for recommended usage concentrations for the fruit or vegetable being washed” – there is no table included on the label (on the container). There is a table within the documents provided to Garwood (see scanned doc)
- “Safe Zone LOD AG 5000” is referenced on the generic label for Sodium Hypochlorite and the top of the container. “Safe Zone LOD AG 5000” is not an accepted product name; the only distributor name listed on PPLS for 92945-1-93735 is “AG 5000”.
- Under “Other Uses”, the last statement on the master label is:
  - “Maintain the pH of the use solution between 6.0 and 8.0 with a dilute solution of a food grade acid”
  - The marketplace label states “hydrochloric acid” instead of “food grade acid”
- The container includes a shipping label, with statements/information not included on the master label:
  - Chem Bell contact information
    - Creates confusion as to which company is responsible for the product or if this is the establishment producing the product (see statements above)
  - Danger, hazard statements with first aid directives
    - Not accurately depicted, as required on a pesticide label
  - NSF symbol
  - UN1791
  - According to the Label Review Manual,
 

*“Some labels submitted to the Agency have information addressing non-FIFRA issues (e.g., Department of Transportation (DOT) shipping rules)... A registrant may choose to place such text on the label, but the text may not replace, obscure, conflict with, or supersede the FIFRA-required text”* (Chapter 3.II.K – Non-FIFRA labeling)

This text was not included on the master label submitted to EPA and thus is considered misbranded and in violation.

- The pesticide label for the product does not identify the net contents, lot no., or plant no., as spots are available on the pesticide label. The lot number and net volume are included on the shipping label.

### **Additional Labeling**

The following statements were found within the records.

The GreenAgri Solutions letter incorrectly identifies the product as “Safe Zone LOD AG 5000”. This is not the accepted product name via US EPA’s PPLS site.

The letter from Jenfitch indicates that “Safezone AG 5000” has EPA registration, this is not correct per US EPA’s PPLS site.

The labeling provided by the orchards included the following statements that are considered false or misleading and are not on the master label:

- Sodium Hypochlorite Stabilizer (0.3%) included in the ingredient statement

- The following claims on the marketplace label have not been accepted by EPA and therefore are considered false or misleading, and misbranded.
  - Broad Spectrum Bactericide/Fungicide, Disinfectant and Sanitizer
  - For use as a sanitizer on food contact surfaces, food processing equipment
  - For use in fruit and vegetable wash waters to control and prevent spoilage
  - Helps keep fruits and vegetables fresher longer
  - FDA Approved
  - USDA Approved
  - NSF Certified

Another label within the packet of records (page 5 of 18) uses the name “Safe Zone LOD AG5000”, which as stated previously is not the accepted product name.

18. Review was only completed on the product/label that was found in distribution. Additional concerns might become apparent with review of application documents and websites.



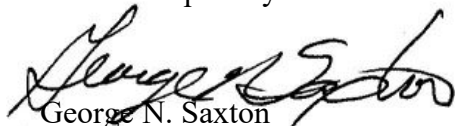
Sarah K. Caffery  
Pesticide Product Registration Specialist

Date: November 27, 2019

**Disposition:** Green Agri Solutions, LLC was cited for violation of section 57(1) of the Indiana Pesticide Registration Law for distributing a pesticide product that was not registered in the state of Indiana. A civil penalty in the amount of \$250.00 was assessed for this violation.

Green Agri Solutions, LLC was cited for violation of section 57(5) of the Indiana Pesticide Registration Law for distributing a pesticide product that was adulterated or misbranded. A civil penalty in the amount of \$250.00 was assessed for this violation.

Green Agri Solutions, LLC was cited for violation of section 57(9) of the Indiana Pesticide Registration Law for distributing a pesticide product that violates the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) or regulations adopted under the Act. A civil penalty in the amount of \$250.00 was assessed for this violation.



George N. Saxton  
Compliance Officer

Draft Date: March 30, 2020  
Case Closed: July 24, 2020

## CASE SUMMARY

Case #PS20-0044

**Complainant:** Office of Indiana State Chemist (OISC)  
175 South University Street  
West Lafayette, IN 47907-2063

**Respondent:** Keith A. Morgan  
12326 South 125 West  
Brookston, IN 47923

Non-certified User

1. While investigating an agricultural drift incident (case #PS19-0320), I found that Restricted Use Dealers (RUD), Windy Ridge Ag LLC (WRA); West Lafayette, IN (case #PS20-0043), and Nutrien Ag Solutions; Clarks Hill, IN (case #PS19-0374), had been distributing Restricted Use Pesticides (RUP) to customers that were not certified through the Office of Indiana State Chemist (OISC). I identified Keith Morgan, Brookston, IN, as one of the customers that had unlawfully purchased RUPs from WRA.
2. I found Mr. Morgan's Private Applicator certification from OISC had expired on December 31, 2015 and he was not legally eligible to purchase or apply RUPs. Mr. Morgan was found to have purchased the three following RUPs from WRA;
  - a. Invoice #2682, 04/16/2018
    - i. Nirvana RTU (EPA Reg. #89168-36-91395, active ingredient of Bifenthrin)
  - b. Invoice #2990, 07/29/2019,
    - i. Bifenture LFC (EPA Reg. #70506-305, active ingredient of Bifenthrin)
  - c. Invoice #3033, 09/05/2019
    - i. Silencer (EPA Reg. #66222-104, active ingredient of Lambda-cyhalothrin)
3. In response to the above incident, I met with Mr. Morgan at his residence on December 11, 2019. I informed Mr. Morgan that his purchases of the above RUPs from WRA and his proceeding applications of the RUPs were unlawful due to his Private Applicator certification from OISC had expired and he was no longer a certified user. Mr. Morgan advised he believed he had completed his recertification in 2018 and was permitted to purchase and apply RUPs after he received notice from OISC that he had passed his Private Applicator exam. I found Mr. Morgan had passed his exam and was eligible for certification on April 12, 2018 but failed to send his Private Applicator application and licensing fee to OISC to complete his certification.
4. Mr. Morgan admitted he had purchased the above RUPs from WRA, as well as from Nutrien Ag Solutions; Buck Creek, IN (see case #PS20-0046). Mr. Morgan provided me with his RUP sales receipts and application records. Mr. Morgan advised me he did not recall being asked by WRA for proof of OISC certification before purchasing the RUPs from them. Mr. Morgan advised he had spoken with Charles Padgett at Nutrien Ag before he began purchasing RUPs from them. Mr. Morgan stated Mr. Padgett had requested a copy of his OISC certification

before purchasing the RUPs from Nutrien Ag. Mr. Morgan stated he informed Mr. Padgett he only had a record of his passing exam results that he received from OISC. Mr. Morgan stated Mr. Padgett advised him that his exam results would suffice and sent Mr. Padgett a copy of them, via text message.

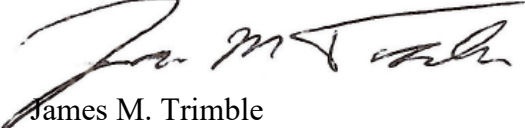
5. The following are Mr. Morgan's purchases of RUPs from Nutrien Ag;

- a. Invoice #40279735, 08/19/2019 (received product for William Morgan)
  1. Tombstone (EPA Reg. #34704-912, active ingredient of Cyfluthrin)
- b. Invoice #40279736, 08/19/2019
  1. Tombstone

6. The following are Mr. Morgan's applications of RUPs;

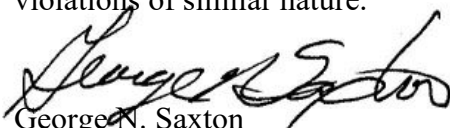
Date	Field Designation	RUP Applied
04/27/18	My house	Nirvana RTU
04/28/18	Hurst	Nirvana RTU
04/29/18	Bill	Nirvana RTU
05/01/18	My house	Nirvana RTU
05/25/19	My house	Bifenture LFC
06/02/19	Pat's house	Bifenture LFC
06/03/19	Clausen	Bifenture LFC
06/04/19	Main farm	Bifenture LFC
08/14/19	Bill's house	Tombstone
08/15/19	Klaus	Tombstone
08/16/19	Clausen	Silencer

7. I concluded that Mr. Morgan had purchased four Restricted Use Pesticides, in the form of five sales, from Nutrien Ag Solutions Inc. and Windy Ridge Ag LLC as a noncertified user. I also found Mr. Morgan to have applied the four Restricted Use Pesticides on 11 different days as a noncertified user.

  
James M. Trimble  
Investigator

Date: January 6, 2020

**Disposition:** Keith A. Morgan was cited for eleven (11) counts of violation of section 65(10) of the Indiana Pesticide Use and Application Law for using a restricted use pesticide without having an applicator who is licensed or permitted under IC 15-16-5, in direct supervision. A civil penalty in the amount of \$1,100.00 (11 counts x \$100.00 per count) was assessed. However, the civil penalty was reduced to \$330.00. Consideration was given to the fact Mr. Morgan cooperated during the investigation; corrective action was immediately taken and there were no previous violations of similar nature.

  
George N. Saxton  
Compliance Officer

Draft Date: March 19, 2020  
Case Closed: May 21, 2020

## CASE SUMMARY

Case #PS20-0045

**Complainant:** Office of Indiana State Chemist (OISC)  
175 South University Street  
West Lafayette, IN 47907-2063

**Respondent:** Chad Sterrett  
6711 Goldsberry Rd.  
Battle Ground, IN 47920

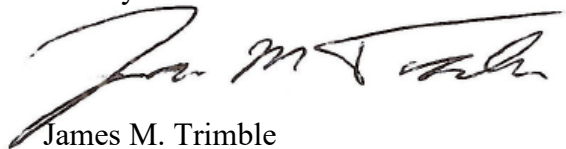
Noncertified User

1. While investigating an agricultural drift incident (case #PS19-0320), I found that Restricted Use Dealers (RUD), Windy Ridge Ag LLC (WRA); West Lafayette, IN (case #PS20-0043), and Nutrien Ag Solutions; Clarks Hill, IN (case #PS19-0374), had been distributing Restricted Use Pesticides (RUP) to customers that were not certified through the Office of Indiana State Chemist (OISC). I identified Chad Sterrett; Battle Ground, IN, as one of the customers that had unlawfully purchased a RUP from WRA.
2. I found Mr. Sterrett had never received a certification from OISC to legally purchase or apply RUPs. The following is the one unlawful RUP purchase made by Mr. Sterrett from WRA,
  - a. Invoice #2991, 07/29/2019
    1. Atrazine 4L (EPA Reg. #66222-36, active ingredient of Atrazine)
3. In response to the above incident, I made contact with Mr. Sterrett, via telephone, on December 9, 2019. I advised Mr. Sterrett that his purchase of Atrazine from WRA and his proceeding applications of the RUP was unlawful due to him not being certified through OISC. Mr. Sterrett advised me he was unaware that he needed a certification from OISC in order to purchase or use RUPs as he had never purchased or used an RUP before. Mr. Sterrett stated WRA had recommended the use of Atrazine to him and they had not requested him to provide proof of OISC certification before he purchased the product from them.
4. Mr. Sterrett was advised to provide me with his Atrazine application records, which I received, via email, on December 16, 2019. My inspection of the records found the following applications of the RUP, Atrazine 4L, made by Mr. Sterrett;

Date	Field Designation	RUP Applied
06/20/19	Roach-95 acres	Atrazine 4L
06/20/19	W.P.-51 acres	Atrazine 4L
06/21/19	Clark-77 acres	Atrazine 4L
06/21/19	W side of Ranch-27 acres	Atrazine 4L



5. I concluded that Mr. Sterrett had purchased one Restricted Use Pesticide from Windy Ridge Ag LLC, in the form of one purchase, while being a noncertified user. I also found Mr. Sterrett to have applied the one Restricted Use Pesticide, to four separate locations on two different days as a noncertified user.



James M. Trimble  
Investigator

Date: January 7, 2020

**Disposition:** Chad Sterrett was cited for four (4) counts of violation of section 65(10) of the Indiana Pesticide Use and Application Law for using a restricted use pesticide without having an applicator who is licensed or permitted under IC 15-16-5, in direct supervision. A civil penalty in the amount of \$400.00 (4 counts x \$100.00 per count) was assessed. However, the civil penalty was reduced to \$220.00. Consideration was given to the fact Mr. Sterrett cooperated during the investigation and there were no previous violations of similar nature.



George N. Saxton  
Compliance Officer

Draft Date: March 19, 2020  
Case Closed: May 21, 2020

## CASE SUMMARY

Case #PS20-0049

**Complainant:** Office of Indiana State Chemist (OISC)  
175 South University Street  
West Lafayette, IN 47907-2063

**Respondent:** Andrew Cole  
948 W. 550 N.  
Williamsport, IN 47993

Noncertified User

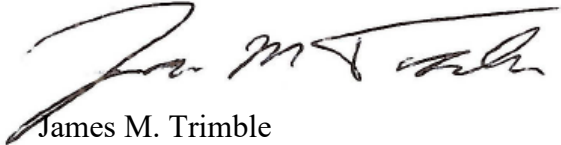
1. While investigating an agricultural drift incident (case #PS19-0320), I found that Restricted Use Dealers (RUD), Windy Ridge Ag LLC (WRA); West Lafayette, IN (case #PS20-0043), and Nutrien Ag Solutions; Clarks Hill, IN (case #PS19-0374), had been distributing Restricted Use Pesticides (RUP) to customers that were not certified through the Office of Indiana State Chemist (OISC). I identified Andrew Cole, Williamsport, IN, as one of the customers that had unlawfully purchased RUPs from WRA.
2. I found Mr. Cole's Private Applicator certification from OISC had expired on December 31, 2007 and he was not legally eligible to purchase or apply RUPs. Mr. Cole was found to have purchased the three following RUPs, in the form of two sales, from WRA.
  - a. Invoice #2688, 05/04/2018
    1. Aatrex 4L (EPA Reg. #100-497, active ingredient of Atrazine)
    2. Corvus (EPA Reg. #264-1066, active ingredients of Thien carbazon-methyl & Isoxaflutole)
  - b. Invoice #2987, 07/29/2019
    1. Engenia (EPA Reg. #7969-345, active ingredient of Dicamba)
3. In response to the above findings, I made contact with Mr. Cole, via telephone, on December 20, 2019. I informed Mr. Cole that his purchases of the above RUPs from WRA and his proceeding applications of the RUPs were unlawful due to his Private Applicator certification from OISC had expired and he was no longer a certified user. Mr. Cole advised me he was unaware that his certification had expired and he had not intentionally purchased the products without a license. Mr. Cole stated he was not sure how many years a Private Applicator's certification was valid for but knew it had been a long time since he had received his certification from OISC.
4. Mr. Cole was advised to provide me with his application records for the above RUPs, which I received, via email, on January 3, 2019. My inspection of the records found the following RUP applications made by Mr. Cole.

**PRIVATE APPLICATOR - INDIANA RESTRICTED USE PESTICIDE RECORDKEEPING FORM<sup>1</sup>**  
(Record to be maintained for 2 years from date of pesticide application)

Name Andrew Cole Certification Number \_\_\_\_\_ Mailing Address 948 W. 550 N. Williamsport, IN 47993

Field No., other designation	Name of Applicator <sup>2</sup>	Application Date <sup>3</sup>	Crop treated	Pest Controlled	No. Acres or Area Treated	Chemical Brand Name	Chemical Formulation <sup>4</sup>	Rate of Application <sup>5</sup>	Total Amount Used <sup>6</sup>	Name of Manufacturer	EPA Registration Number
Sec 17 TWP 22N R 9W JORDAN	Self	07/04/19	Soybeans	Grasses & Broadleaf	408	Engenia	S	12.8 oz/A	42.5 gal.	BASF	7969-345
Sec 17 TWP 22N R 9W JORDAN	Self	05/08/18	Corn	Grasses & Broadleaf	408	Corvus	S	3.0 oz/A	10 gal.	Bayer	264-1066
Sec 17 TWP 22N R 9W JORDAN	Self	05/08/18	Corn	Grasses & Broadleaf	408	Aatrex	4L	16 oz/A	50 gal.	Syngenta	100-497

5. I concluded that Mr. Cole had purchased three Restricted Use Pesticides from Windy Ridge Ag LLC, in the form of two sales, while being a non-certified user. I also found Mr. Cole to have applied the three Restricted Use Pesticides on two different days, to the same location as a noncertified user.



James M. Trimble  
Investigator

Date: January 7, 2020

**Disposition:** Andrew Cole was cited for three (3) counts of violation of section 65(10) of the Indiana Pesticide Use and Application Law for using a restricted use pesticide without having an applicator, who is licensed or permitted under IC 15-16-5, in direct supervision. A civil penalty in the amount of \$300.00 (3 counts x \$100.00 per count) was assessed. However, the civil penalty was reduced to \$165.00. Consideration was given to the fact Mr. Cole cooperated during the investigation and there were no previous violations of similar nature.



George N. Saxton  
Compliance Officer

Draft Date: March 19, 2020  
Case Closed: May 21, 2020

## CASE SUMMARY

Case #PS20-0065

**Complainant:** Office of Indiana State Chemist (OISC)  
175 South University Street  
West Lafayette, IN 47907-2063  
765-494-1492

<b>Respondent:</b>	Timothy Marshall	Unlicensed Applicator
	No More Bites Tonight	Unlicensed Business
	63 Candlelite Lane	
	Pontiac, Michigan	
	248-402-3405	

1. On February 7, 2020, Tom Logwood of Affordable Bio Control Pest Management contacted the Compliance Officer of the Office of Indiana State Chemist (OISC) to report a possible unlicensed pesticide application in Michigan City, Indiana. Mr. Logwood stated he was hired by Robert Bober (landlord) to make a pesticide application for bedbugs at an apartment located at 913 Wabash Street Unit 1, Michigan City, Indiana. Mr. Logwood stated when he arrived at the apartment, he saw a white powdery substance throughout the entire apartment (figures 12-14). Mr. Logwood stated he asked the tenant (Deidra Splechter) what it was, and she told him Timothy Marshall came to her apartment and made a pesticide application with diatomaceous earth to her apartment.
2. On February 12, 2020, I spoke to Tom Logwood of Affordable Bio Control Pest Management. Mr. Logwood stated the new property owner (Robert Bober) hired him for bed bug pest control treatment at his apartment complex. Mr. Logwood stated when he arrived at the apartment complex, the tenant in unit 1 had what appeared to be diatomaceous earth residue all over the apartment. Mr. Logwood stated the tenant also had the product bags and paperwork from "No More Bites Tonight" which was the company that was hired by the previous owner to apply the diatomaceous earth.
3. On February 12, 2020, I spoke to the property owner Robert Bober. Mr. Bober stated he purchased the apartment unit in June 30, 2019. Mr. Bober stated he was contacted by Deidra Splechter (tenant in unit 1) about three weeks ago regarding the bed bugs in her apartment. Ms. Splechter told him the previous owner brought in Timothy Marshall to make a pesticide application and she still had bed bugs in her apartment. Mr. Bober stated there was not anything disclosed in the sale of the property regarding bed bugs or any pest control problem.
4. On February 18, 2020, I met the maintenance employee Joe Bober at 913 Wabash Street Unit 1, Michigan City, Indiana. Mr. Bober stated in apartment unit 1 there was a white powdery substance throughout the apartment which was applied before his son Robert Bober purchased the property (figures 1-7). The tenant Deidra Splechter was not home at the time but her

daughter Kerrigan Splechter gave me permission to photograph the area. I also photographed the direction sheet (figure 8) and plastic product bag (figure 5) from Timothy Marshall.

5. On February 18, 2020, I called Deidra Splechter and she stated she believed the pesticide application by Timothy Marshall happened sometime in spring of 2019 but couldn't remember an exact date. Ms. Splechter stated she remembered the weather was nice enough outside for the windows to be opened while Mr. Marshall was in her apartment. Ms. Splechter stated she informed her previous landlord John Tilford of the pest problem and John was the one who hired Timothy Marshall to make a pesticide application for bedbugs. Ms. Splechter described Timothy Marshall as kind of "hippie" looking with a long beard. Ms. Splechter did not know if Timothy Marshall made additional pesticide applications to the other units (four total) in the building. Ms. Splechter stated Timothy Marshall came into her apartment and covered her entire apartment with the diatomaceous earth powder. Ms. Splechter stated Timothy Marshall even ate some of it in front of her. Timothy Marshall then came into her apartment with some kind of "blower" and blew the dust everywhere. Timothy Marshall also cut open her mattress and box springs (two (2) sets) and injected the diatomaceous earth into each of them. Ms. Splechter stated Mr. Marshall left a bag of the powder with his company label on it (figure 5). Ms. Splechter stated her landlord John never even followed up to see if the treatment had worked.
6. On March 6, 2020, I met with the previous landlord John Tilford. Mr. Tilford stated he does not remember when he hired Mr. Marshall to make the pesticide application for hire at 913 Wabash Street. Mr. Tilford stated he does not have any records of phone calls, emails, or payment with Mr. Marshall. Mr. Tilford stated he does remember there was a complaint of bedbugs in one of the units but could not give me any further information.
7. Mr. Marshall produced, handled, transported, and distributed a pesticide product in a manner that may endanger or cause injury to humans by the following actions:
  - A. Mr. Marshall produced a pesticide product by using an unregistered pesticide product "Perma-Guard Fossil Shell Flour" food grade diatomaceous earth for a pesticide application for hire (product identified/self-disclosed in OISC Case#2018-0853).
  - B. Mr. Marshall knowingly and intentionally packaged the unregistered product in a secondary container with his business label on the exterior of the container (figure 5, 12, and 13).
  - C. Mr. Marshall knowingly and intentionally transported and distributed an unregistered pesticide product from Michigan to Indiana to make an unlicensed pesticide application for hire.
  - D. Mr. Marshall was operating in a careless and negligent manner which may endanger or cause injury to humans by the following:
    1. Mr. Marshall applied excessive amounts of the unregistered pesticide product powder in and around clothing, and furniture. This includes cutting open mattresses and couches and injecting the powder, where prolonged and repeated human exposure would typically occur (figures 3,4,6, and 7).
    2. Mr. Marshall advised the customer in his leave-behind instruction sheet to do the following (figures 8-11):
      - a. Leave the powder for an extended period of time by stating "*Just don't clean for two weeks*"
      - b. Instructing the customer to use the mattresses "**indefinitely**" after they have been injected with the powder "*Treatment can last indefinitely (1*



*year warranty is legal maximum, don't clean what you don't see and leave a sheet permanently on the beds for warranty"*

- c. To not clean the diatomaceous earth dust for two (2) weeks, four to six (4-6) weeks if there was a previous poison treatment, indefinitely if it is an area that is unseen, and to lay on the mattresses over a fitted sheet after they have been injected with the powder. *"Procedure is messy (cannot stain or hurt anything) for only two weeks (4-6 weeks because of prior poison treatments) then you are safe to clean normally (use a shop vac or clean filters regularly with regular vacuums); leave full strength in unseen areas, and the one good fitted sheet on the beds..."*

- E. Mr. Marshall's pesticide application and his instructions create an environment where there is prolonged and repeated respiratory exposure to the diatomaceous earth powder without the necessary personal protective equipment. The Perma-Guard Fossil Shell Flour Safety Data Sheet shows the following statements regarding product handling and storage, exposure controls/personal protection, and toxicology

7. HANDLING AND STORAGE		
Minimize dust generation and accumulation. Avoid breathing dust. Avoid contact with eyes. Seal broken bags immediately Continue to follow all SDS/Label warnings when handling empty containers.		
Fossil Shell Flour® SDS revised 06/16/2016 pg. 2		
8. EXPOSURE CONTROLS/PERSONAL PROTECTION		
<b>Goggles:</b> Goggles or Safety Glasses with Side Shields are recommended . <b>Gloves:</b> Not normally required. <b>Respirator:</b> <10X PEL. Use an N95 Quarter or half mask respirator: <50X PEL, use a full face respirator equipped the N95 filters, <200X PEL, use a powder air purifying respirator (positive pressure) with N95 filters, Type C supplied air respirator (Continuous flow mode). <b>Ventilation:</b> Use Sufficient Natural or Mechanical ventilation to keep dust level below PEL. <b>MSHA PEL</b> —6 mg/M3 total nuisance dust (uncalcined Diatomaceous Earth) <b>ACGIH TLV</b> – 10 mg/M3 Total Dust		
11. TOXICOLOGY INFORMATION		
<b>Summary:</b> Prolonged and repeated exposure to excessive concentrations of this product's dust, or any nuisance dust, can cause chronic pulmonary disease. Dust contact with eyes may cause temporary scratchiness or redness. This product has not been classified as a carcinogen by NTP or IARC.		

8. There appears to be a violation in this case based on the following:

- Mr. Marshall made a pesticide application for hire at 913 Wabash St Unit 1, Michigan City, Indiana.
- Mr. Marshall operated in a careless and negligent manner advising the complainant that *"Treatment can last indefinitely (1 year warranty is legal maximum, don't clean what you don't see and leave a sheet permanently on the beds for warranty."*
- Mr. Marshall has produced, handled, transported, and distributed a pesticide product in a manner that may endanger or cause injury to humans. The Perma-Guard Fossil Shell

Flour Safety Data Sheet advises to “*avoid breathing dust*” and “*prolonged and repeated to excessive concentrations of this product’s dust, or any other nuisance dust, can cause chronic pulmonary disease.*”



Melissa D. Rosch  
Investigator

Date: June 10, 2020

**Disposition:** This case was forwarded to EPA’s Criminal Investigation Division (CID) and Office of Pesticide Programs (OPP) for federal review.



George N. Saxton  
Compliance Officer

Case Closed: June 16, 2020

## CASE SUMMARY

Case #PS20-0067

**Complainant:** Office of Indiana State Chemist (OISC)  
175 South University Street  
West Lafayette, IN 47907-2063  
765-494-1492

**Respondent:** No More Bites Tonight  
Timothy Marshall  
63 Candelite Lane  
Pontiac, MI 48340  
248-402-3405  
  
Seven Springs Farm  
426 Jerry Lane Northeast  
Check, VA 24072  
  
Unlicensed Business  
Business Owner

1. On September 4, 2019, I, OISC Investigator Melissa Rosch was notified by OISC Investigator Jay Kelley regarding a possible **ACTION ORDER** violation. Investigator Kelley stated it appeared the respondent Timothy Marshall had continued to make unlicensed pest control applications for hire in Indiana and advertising for a pest control company in Indiana via the “No More Bites Tonight” facebook website (OISC Case#2019-0573). The **ACTION ORDER** was issued to Tim Marshall and/or the business “No More Bites Tonight” on December 4, 2018 (OISC Case#2019-0047) and ordered the abovementioned to, *“Stop advertising or making pesticide applications for hire in Indiana until your business is registered with OISC.”*
2. On September 4, 2019, I visited Facebook website for “No More Bites Tonight” at <https://www.facebook.com/marshalllaw1260/>. I saw a Facebook postdated August 1, 2019 that advertised for a pest control business and a pest control product (figure 1). The facebook post specifically advertised for a “do it yourself” mail order pest control product. The Facebook advertisement stated the following:  
*“I’m sorry to tell you but your only option is now poison. That will be a long battle and you’ll pay them over and over. So because I’m now living in Israel I’ve put together a ‘do it yourself’ package. I will walk you through your house to show you how to apply everything and I’ll send enough materials to last you many years even if you do some things wrong. The package is 378.00 and should last 12 years or longer because the treatment never expires. Please send me your email and I’ll forward lots of information and videos to explain why the poison companies are your worst enemy if you get bedbugs. Plus not only is the treatment not poison but super healthy for the home eliminating germs, dust mites and nasty molds. Antique dealers use it to preserve antiques and old books. It won’t stain or hurt anything just the bedbugs., thanks I’m Timothy...”*

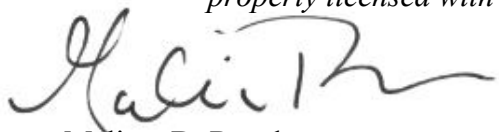
3. I sent a facebook message to the “No More Bites Tonight” chat messenger and stated I was looking for a pest control option to harsh chemicals. I received numerous messages (figures 2-12) from the “No More Bites Tonight” Facebook chat messenger including:
  - Instructions to read all of his Facebook posts and watch his video on YouTube “No More Bites Tonight’ Bed Bug removal and Prevention.”  
([https://youtube.com/channel/UC8af8WEtPn74zzjxRkYR\\_w](https://youtube.com/channel/UC8af8WEtPn74zzjxRkYR_w)) (figure 3)
  - Money transfer information for the Paypal account  
bedbugsbegone.mi@gmail.com to purchase the pest control product for \$378.00 (figure 5)
  - Message stating he would send pest control product application instructions to my email address (figure 8)
4. On November 15, 2019, I visited to the website for Paypal and searched for “bedbugsbegone.mi@gmail.com.” I sent a Paypal money transfer payment to bedbugsbegone.mi@gmail.com account registered to “Timothy Marshall” in the amount of \$378.00 US Dollars. The currency automatically converted on the Paypal money transfer transaction to the Israeli currency amount of 1,263.96 ILS (Israeli New Shekel).
5. On November 20, 2019, I received an email from a Gmail account showing the name “Timothy Marshall” at tm1260@gmail.com. The email message stated, “See YouTube channel for No More Bites Tonight” and contained six (6) attachments titled:
  - Diatomaceous Earth General Fact Sheet
  - Instruction Sheet No More Bites Tonight Mail Order Kit (figures 20-24)
  - SDS\_FSF\_2016.pdf
  - Untitled Document
  - No More Bites Tonight YouTube Art Banner.jpg
  - No More Bites Tonight 1-4 of the poison price, Immediately relief, and Protection for the future....mp4 (advertisement video)
6. I transcribed the “No More Bites Tonight 1-4 of the poison prices, Immediately relief, and Protection for the future” video advertisement attachment from paragraph 5:

*“Hello I’m timothy From no more bites tonight since 1974 bed bug infestations go up 100% every year since the pesticide DDT was outlawed we stop bed bugs immediately with a simple clean and safe procedure we come in with overwhelming force and treat absolutely everywhere bugs can hide it's a little messy for a week or two but will not stain anything and is safe for humans and animals to eat after wiping off your surfaces and vacuuming what you see and leaving it heavy where you don't see it can last indefinitely and will give you years of protection from all exoskeleton bugs if you have a minor infestation other than bed bugs we're not the company for you if you have a new infestation and no experience with bed bugs than a plague has entered your home and it can and will get worse the eggs will be alive for 1 year whether you use us or poison company our treatment will be on every egg in the house and kill them when they hatch we also specialize in the worst cockroach skeleton infestations for immediate relief at 1/4 of the price with protection for the future call today and sleep in peace tonight excuse me I have to do another job the poison companies couldn't handle”*

7. The instruction sheet sent as the email attachment noted in paragraph 5 states, in part:
  - Remove bedding
  - Put a 7 inch slit in mattress and inject powder from 1 bottle (applicator bottle included in the package)
  - Cover the top of mattress with 2-4 bottles full of powder
  - Cover mattress with two fitted sheets
  - Treat all sleeping places like couches and chairs
  - Do not remove powder from seams or under cushions as this is the long term protection
  - Spray along baseboards to completely cover all wall baseboards
  - Treat heavy behind bedroom furniture
  - Vacuum baseboards after one month but leave what you can't see because that is your long term protection
  - Treat the rest of the home heavy behind all things that don't move and leave it permanently
8. On November 29, 2019, I met US Postal Inspector Michael Williams at the US Post Office in Lafayette, Indiana to receive the pesticide product I purchased from "No More Bites Tonight". Inspector Williams escorted the package to a secure area where we photographed and documented the evidence. I received the following items and took them to the OISC Pesticide Formulation Laboratory:
  - One (1) cardboard box with photocopied paper label stating, *"No More Bites Tonight...The only healthy cure...Contact Timothy: bedbugsbegone.mi@gmail.com"* (Figure 13)
  - One (1) USPS Shipping label on exterior of cardboard box dated 11/25/2019 from *"Seven Springs Farm, 426 Jerry Ln NE, Check, VA 24072-3255"* (Figure 14)
  - Miscellaneous packaging material (Figure 15)
  - One (1) Perma-Guard Safety Data Sheet for the product trade name "Fossil Shell Flour" (Figures 16 & 17)
  - Six (6) semi-transparent plastic bottles (pesticide product application devices) with an exterior photocopied paper label stating, *"No More Bites Tonight...The only healthy cure...Contact Timothy: bedbugsbegone.mi@gmail.com"* (Figure 18)
  - One (1) 50 lb. bag of Perma-Guard Fossil Shell Flour Anti-Caking Agent: Food Chemical Codex Grade (Figure 19)
9. In OISC Case#2019-0047, the Michigan Department of Agriculture and Rural Development (MDARD) documented in March of 2018 that Mr. Marshall was using Perma-Guard food-grade diatomaceous earth distributed by Seven Springs Farm in Virginia. This is the same company name that is on the shipping label in figure 14. Seven Springs Farm is also listed on the Perma-Guard webpage as a product distributor in figure 25.
10. There appears to be a violation in this case based on the following:
  - Mr. Marshall was advertising for a "do-it-yourself" pest control product on his facebook page
  - Mr. Marshall sent specific instructions for the pesticide application
  - Seven Springs Farm produced an unregistered pesticide product by labeling the exterior shipping box with a pest control company label, labeling the application bottles with a

pest control company label, and placed the items in the pesticide product box to be distributed.

- Seven Springs Farm distributed an unregistered pesticide product via USPS from Virginia to Indiana.
- Mr. Marshall violated an **ACTION ORDER** issued on December 4, 2018 to “*Stop advertising or making pesticide applications for hire in Indiana until your business is properly licensed with OISC.*”



Melissa D. Rosch  
Investigator

Date: June 10, 2020

**Disposition:** This case was forwarded to EPA’s Criminal Investigation Division (CID) and Office of Pesticide Programs (OPP) for federal review.



George N. Saxton  
Compliance Officer

Case Closed: June 16, 2020

Cc: Michael Williams, U.S. Postal Inspector  
Indianapolis Field Office  
7188 Lakeview Pkwy. West Drive  
Indianapolis, IN 46268



## CASE SUMMARY

Case #PS20-0071

**Complainant:** Leo Reed  
Office of Indiana State Chemist (OISC)  
175 South University Street  
West Lafayette, IN 47907-2063  
765-494-1492

**Respondent:** E. Issac C. Jones (RT)  
Greenway Lawn and Tree Services  
707 N. Miller Avenue  
Marion, IN 46952

1. On February 26, 2020, I was proctoring the Turf Management exam at the Daniel Turf Center of Stewart Center on Purdue University campus
2. After I give a regulatory presentation, examinees are given a break and told upon return all electronic devices need to be turned off. During the examination instructions, they are told two additional times that all electronic devices must be turned completely off, including cell phones, blue tooth devices, smart watches and tablets. I also advise the examinees that if they are caught with an operable electronic device they will be kicked out of the exam and denied the opportunity to take an exam for 5 years. Additionally, instructions on the cover of the exam include the statement, **“talking is prohibited and electronic communication devices must be turned off”**.
3. During the exam session, I heard a loud buzzing coming from Mr. Jones. Initially he reached for his pocket but quickly went back to working on the exam. I approached him and asked if that was his phone and he stated that it was. He gave me his phone, and it was clearly operable and on. I took his exam and advised him to leave the exam room. Mr. Jones stated that he was only advised to put his phone on vibrate. I refuted his statement and advised him to leave. He then stated, “So, I can’t take an exam for 5 years?!” I replied that he was correct.
4. 355 IAC 4-1-2.1 (f) of the Indiana Pesticide Use and Application Law (f) states that 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.



Leo A. Reed  
Manager, Certification and Licensing

Date: February 27, 2020

**Disposition:** E. Issac C. Jones was cited for violation of section 65(6) of the Indiana Pesticide Use and Application Law, specifically 355 IAC 4-1-2.1 (f), for failure to comply with instructions during an examination. Mr. Jones' exam was not scored and he was prohibited from taking an exam for a period of 5 years from April 8, 2020.

A handwritten signature in black ink, appearing to read "George N. Saxton", written in a cursive style.

George N. Saxton  
Compliance Officer

Draft Date: February 28, 2020  
Case Closed: May 21, 2020