February 28, 2014
Daniels Turf Research & Diagnostic Center
Cherry Lane (SR 126)
Purdue University
West Lafayette, Indiana

AGENDA

9:00 a.m.

1. Approval of the meeting agenda

2. Approval of previous meeting minutes (December 2, 2013)

3. Review of cases involving civil penalties since the last meeting

4. Discussion of mapping pesticide sensitive public recreational trails on Drift Watch

5. Follow-up on insurance requirement for Cat.12 wood destroying pest inspection businesses

6. Review of common run-off language on pesticide labels; is it adequate?

1:00 p.m. Adjourn
To Get to the Daniel Turfgrass Center

From North: Take I65 to exit 133 (US231), US231 south to US 52, US52 east to W Lafayette, take Northwestern Ave Exit to 3rd stop light, west on Cherry Lane, 0.75 miles to Turf Center.

From SR26: West on SR26 through Lafayette and W. Lafayette about 5 miles to the west side of Purdue campus, north on McCormick Road (Airport Road), east on Cherry Lane, 0.5 mile to Turf Center.

From SR25: Take US52 (Sagamore Bypass) around Lafayette into W. Lafayette, south on Yeager Road (there’s an Ace Hardware on the corner), south on Northwestern to 2nd stoplight, west on Cherry Lane, 0.75 miles to Turf Center.

Location: The WH Daniel Turfgrass Research and Diagnostic Center is located on the North Edge of the Purdue Campus, immediately west of the Purdue Golf Courses on Cherry Lane (SR126).
DRAFT MINUTES – 137th MEETING

Location of meeting: Daniels Turf Research & Diagnostic Center
Cherry Lane (SR 126)
Purdue University
West Lafayette, IN

Date and Time: December 2, 2013; 9:05 AM-12:26 PM

Members present:
Rick Foster
Phil Marshall
Julia Tipton Hogan
Cyndi Wagner for Martha Clark Mettler
Michael Titus
Ronald Hellenthal (Chair)
Bruce Bordelon
Bob Andrews
Jennifer House
Tim Gibb
Steve Dlugosz
Larry Clemens
Kevin Underwood

Ex officio
Dave Scott

Members absent:
Raymond Brinkmeyer
Greg Campbell

Approval of the meeting agenda:
-Steve Dlugosz & Mike Titus…motion to approve the agenda as written; vote was unanimous.

Approval of previous meeting minutes:
-Phil Marshall & Bruce Bordelon…motion to approve the minutes of the 136th meeting, as drafted; the vote was unanimous.

Review of cases involving civil penalties since the last meeting:
-Bruce Bordelon…there are obviously numerous instances of indoor misuse of fipronil insecticide; has there been any action by US EPA to re-evaluate indoor uses as part of the registration of that product?
-George Saxton (OISC compliance officer)...OISC asked EPA to help us estimate the risks that may be posed by the indoor residue levels, but EPA was unable to do so based on the environmental regulatory samples collected during our investigations; regulatory samples are somewhat different from risk assessment samples; Jay Kelley of OISC will be warning other pest
management professionals about the pitfalls of this misuse scenario at the January Purdue Pest Management Conference.

-Ron Hellenthal…regarding case #2013/1037, how did OISC arrive at 19 counts of violation?
-George Saxton…penalty was assessed on a per day of violation basis versus number of incidents; introduced Brian Baker as one of the two new OISC investigators; this was his case.

**Inquiries regarding the errors and omissions insurance requirement for Category 12 wood destroying pest inspection businesses:**

-Dave Scott (OISC)…Jay Kelley and Scott will be at a meeting of home inspectors next week to discuss the new insurance requirements created by the recent insurance rule revision; several pest inspectors have expressed their displeasure with the E&O insurance requirement.
-Leo Reed (OISC Certification & Licensing Manager)…have had conversations with insurance providers over the last several years and learned that the E&O insurance or professional liability insurance for inspections may add about $200 per year to premiums.
-Bob Andrews…agrees that the $200 increase seems about right.
-Julia Tipton Hogan…isn’t the E&O protection required for the other aspects of the home inspectors’ activities?
-Leo Reed…No, it is not required for the general home inspection license in Indiana.
-Ron Hellenthal…what is the value of the inspection if it is not supported by E&O?; is the certification training the same for Category 12 inspectors and Category 7b applicators?
-Drew Martin (PPP Manager of Commercial Applicator Training)…the non-application portions of the two training programs are interchangeable.
-Jay Kelley (OISC Investigator)…some inspectors have commented that they might just get the full Category 7b certification to avoid the E&O required for Category 12.
-Mike Titus…the goal of the Board work group charged with drafting the revised insurance requirements was protection of the consuming public served by these licensees; not also requiring E&O of 7b applicators who also do inspections may have been an unintentional oversight.
-Larry Clemens…is pesticide liability insurance also required of Category 12 inspectors, as it is of Category 7b applicators?
-Leo Reed…no.
-George Saxton…there is also a difference between a 7b company that focuses on treatment and does inspection as more of a sideline versus being the primary business function.
-Julia Tipton Hogan…is pest inspection all that a Category 12 will do?
-Jay Kelley…these inspectors also do whole house inspections for electrical, HVAC, structural, roof, etc.
-Julia Tipton Hogan…part of the concern by home inspectors may be that they are only relatively recently falling under the regulatory umbrella.
-Bruce Bordelon…do we require E&O insurance for any of the other pesticide activities?
-Leo Reed…no.
-Ron Hellenthal…another issue is that some of these pest omission incidents are not discovered until months or years after the inspection; I don’t see this as a requirement for additional insurance for one group versus another, just a different kind of insurance for each group.
-Bruce Bordelon…perhaps we should invite them to the next meeting to present their concerns to the Board.
Ten year pesticide summary data and trends:
-Dave Scott …presented the following “Data & Trends-Rules & Laws” (pdf, 150kb)
-Leo Reed …presented the following “Data & Trends-Certification & Licensing” (pdf, 1,141kb)
-George Saxton…presented the following “Data & Trends-Compliance” (pdf, 597kb)

Operational highlights & trends at Purdue Pesticide Programs:
-Drew Martin & Cheri Janssen…PPP divides applicator training program responsibilities into Commercial Applicators and Private Applicators; Martin manages the commercial program and Janssen manages the private program; commercial training is split into core training and category specific training; each training is approximately one day in length, followed by exam administration by OISC; most training occurs at Daniels Turf Center; last year there were 1130 core training attendees and 639 category attendees; also PPP and OISC jointly provide 2 lawn care operator and 2 termite control operator practical trainings each year; these trainings are required of new for-hire applicators; Category 3b is the largest applicator group (208 trained last year) and Category 8 is the smallest training group; 10-12 years ago Category 1 was the largest group; with training the core exam pass rate is 96.7% and the combined category pass rate is 70.89%; have been methodically converting the applicator training manuals to an objective-based format; that provides study needs feedback to test takers; in recent years writing manuals has become much more efficient based on known test blue prints and curricula going into the process; most major categories have been recently updated; focus will be soon turn to the smaller categories; 5-10% of attendees at core training are new private applicators (farmers); PPP has been deputized by OISC to administered core exams to private applicators at regional locations, as a convenience; in addition to PA exams, PPP administers fertilizer certification (cat. 14) exams regionally; PA recertification training is managed largely by PPP and local County Extension Educators; most PAs choose the continuing education option over the re-exam every 5 years.

Pesticide regulatory plans & projections for 2014 & beyond:
-Dave Scott…it may be time to re-examine certain aspects of water quality protection.
-Julia Tipton Hogan…further discussion of potential 2,4-D and dicamba use and unintended consequences may be prudent.
-Bruce Bordelon…chemical manufacturers have had meetings with some sensitive crop producers; regulatory restrictions at this point may be premature without being able to calculate specific risks at this point
-Ron Hellenthal…do we need to provide sensitive crop producers the opportunity to provide updated concerns or information?
-Mike Titus…more information is needed before any regulatory decision could be rendered.
-Bruce Bordelon…we should ask pesticide manufacturers to share their most current label language proposals.
-Dave Scott…do we need to wait for USDA & EPA environmental risk assessments?
-Julia Tipton Hogan…the status of updated food tolerance data should be reviewed for 2,4-D and dicamba; other topics could include the current status of pollinator protection efforts and the status of regulatory restrictions on methomyl fly baits.

Next meeting:
-February 28 2014 was targeted for the next meeting.
A Summary of Cases

2013/0942  **Disposition:** Crop Production Services was cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding reuse of a pesticide container. A civil penalty in the amount of $250.00 assessed.

2013/1013  **Disposition:** Holganix was cited for violation of section 57(1) of the Indiana Pesticide Registration Law for distributing a pesticide that was not registered for sale in Indiana. A civil penalty in the amount of $250.00 was assessed. Holganix was cited for violation of section 57(9) of the Indiana Pesticide Registration Law for distributing a pesticide that was not registered by the United States Environmental Protection Agency. A civil penalty in the amount of $250.00 was assessed for this violation. The total amount of civil penalty assessed for this investigation is $500.00. On November 18, 2013, Holganix and OISC entered into an Agreed Order to settle this matter.

2013/1099  **Disposition:** Dan West was cited for one (1) count of violation of section 65(6) of the Indiana Pesticide Use and Application Law, specifically 355 IAC 4-2-5, for failure to properly supervise a non-licensed employee. A civil penalty in the amount of $125.00 was assessed.

2013/1145  **Disposition:** Dawn Fall was cited for violation of section 65(6) of the Indiana Pesticide Use and Application Law, specifically 355 IAC 4-2-3, for failure to properly supervise a non-licensed employee. A civil penalty in the amount of $125.00 was assessed for this violation.

2013/1175  **Disposition:** Steve Foss was cited for thirty-two (32) counts of violation of section 65(12) of the Indiana Pesticide Use and Application Law. A civil penalty in the amount of $4,000.00 (32 counts x $125.00 per count) was assessed. However, the civil penalty was reduced to $400.00. Consideration was given to the fact Mr. Foss cooperated with the investigator; corrective action was taken; there was no previous history of similar nature; no potential for damage; a good faith effort to comply and no restricted use pesticides were involved.

2013/1177  **Disposition:** Rest Easy LLC was cited for violation of section 57(1) of the Indiana Pesticide Registration Law for distributing a pesticide that was not registered in Indiana. A civil penalty in the amount of $250.00 was assessed for this violation. Rest Easy LLC was cited for violation of section 57(9) of the Indiana Pesticide Registration Law for failure to comply with the Federal Insecticide, Fungicide and Rodenticide Act. A civil penalty in the amount of $250.00 was assessed for this violation. Total amount of civil penalty assessed for this investigation is $500.00.
CASE SUMMARY

1. On May 16, 2013, OISC was forwarded information that a company hired to clean-up a petroleum fuel spill at the Marathon Travel Plaza in Cloverdale, Indiana, may have improperly reused bulk pesticide tanks for the spilled liquid. Pesticide labels were observed on the tanks.

2. On May 22, 2013, Agent Bob Brewer and I went to the Travel Plaza and met with Shelly Lam. Ms. Lam was the Federal On-Scene Coordinator from US EPA Region 5 there to oversee the clean-up of the spill. Ms. Lam showed us the seven (7) bulk pesticide storage tanks in question. The tanks were labeled T-1 through T-7 and all but one tank was completely full. None of the tanks contained a complete pesticide label and only the cautionary label information sheet was still adhered to the tanks. Six of the seven tanks had cautionary labels, but were badly deteriorated and painted over. The label language contained on these tanks was illegible. The storage tank labeled T-7 was still legible and is shown below in Photograph #1. This partial label stated in part, “Do not reuse this container”. Photograph #2 below shows an example of a deteriorated and painted over label observed. Photograph #3 below shows the seven (7) tanks at the Travel Plaza.
3. On May 22, 2013, Agent Brewer and I went to the business location of Joe Goode, owner of Spill Busters. Mr. Goode explained that he had acquired the pesticide tanks (totes) from Sam Horn. Mr. Horn was allegedly the Production Manager for Crop Production Services (CPS) (reference case # 2013/1054) in Roachdale around 1 ½ years ago when Mr. Goode took possession of the tanks. Mr. Goode informed us that he had asked Mr. Horn specifically for the totes and he was not aware that CPS had not been giving them away previously. We observed thirty-eight additional bulk totes on Mr. Goode’s property. Several did not have any pesticide labels on them, including two (2) tanks which contained motor oil. All of the tanks observed on his property with pesticide labels were empty. We discussed with Mr. Goode the violation of reusing pesticide containers as outlined in the attached labels. Mr. Goode stated that he had no idea that reusing these containers was prohibited. Mr. Goode also stated that he had a disposal company coming to pick-up the seven (7) bulk tank from the Travel Plaza and would not be getting those tanks back. We issued an Action Order to Mr. Goode prohibiting him from further using the pesticide containers and to properly dispose of them. Mr. Goode was informed that we would be discussing this complaint with the current manager of CPS and a plan for returning the totes to CPS and ensuring the containers would be properly disposed of.

4. On May 22, 2013, Agent Brewer and I went to the Crop Production Service business in Roachdale, Indiana, and met with Facility Manager, Patrick Delaney. Mr. Delaney informed us that he had only been the manager for about five (5) months and was not aware of any instances where their bulk pesticide containers would have been given away. Mr. Delaney informed us that the manager for that facility 1 ½ years ago was no longer with CPS and neither was Mr. Horn. Mr. Delaney was cooperative and agreed to take back all 38 of the bulk pesticide tote containers from Mr. Goode for proper disposal, as long as they were empty.

5. On June 14, 2013, I followed-up with Mr. Goode who informed me that he had taken most of the tanks back to CPS and that they had been very cooperative with the process.

Scott M. Farris
Pesticide Investigator
Date: June 14, 2013

Disposition: Crop Production Services was cited for violation of section 65(2) of the Indiana Pesticide Use and Application Law for failure to follow label directions regarding reuse of a pesticide container. A civil penalty in the amount of $250.00 assessed.

George N. Saxton
Compliance Officer
Draft Date: July 19, 2013
2nd Draft Date: August 26, 2013
Final Date: February 6, 2014

CC: Shelly Lam – US EPA Region 5  Email: lam.shelly@epa.gov
    Dave Daugherty – IDEM  Email: ddaugher@idem.gov
CASE SUMMARY

Case #2013/1013

Complainant: Office of the Indiana State Chemist (OISC)
175 S University Street
West Lafayette, IN 47907-2063
800-893-6637

Dealer: Holganix
711 Concord Road
Glen Mills, PA 19342
866-563-2784

1. On June 3, 2013, I was assigned to investigate a product called “Holganix”. It was suspected that Holganix was making pesticidal claims but was not registered for sale, distribution, or use as a pesticide by the U.S. Environmental Protection Agency or by the Office of the Indiana State Chemist.

2. On June 4, 2013, I went to the following web address: http://www.holganix.com/
The site contained lots of information and claims regarding Holganix. They included:

- 100% natural and chemical free
- Fights harmful insects and diseases
- Functions as a Biological Meta-Catalyst (aka bio-stimulant)
- A dozen other botanical extracts are then layered in and include:…..Melaleuca Oil is a natural anti-fungal and antibacterial material that creates an environment that is much less prone to insects and disease
- Helps “suppress” insects
- Helps ‘prevent’ diseases
- It will also act as a great mosquito repellant

3. Later that day, I ordered the Holganix by calling the phone number listed on the website, 866-563-2784.

4. The order arrived at the OISC office on June 10, 2013. The shipping date was June 4, 2013. There was no invoice in the box. Please see the photos below of the sample.
5. On June 12, 2013, I attached a sample collection number of 2013-0912 to the container. I then delivered it to the OISC Formulation Lab.

6. I then searched the OISC database for Holganix and found no state or federal registration.

Elizabeth C. Carter                             Date: August 22, 2013
Pesticide Investigator

Disposition: Holganix was cited for violation of section 57(1) of the Indiana Pesticide Registration Law for distributing a pesticide that was not registered for sale in Indiana. A civil penalty in the amount of $250.00 was assessed.

Holganix was cited for violation of section 57(9) of the Indiana Pesticide Registration Law for distributing a pesticide that was not registered by the United States Environmental Protection Agency. A civil penalty in the amount of $250.00 was assessed for this violation.

The total amount of civil penalty assessed for this investigation is $500.00.

On November 18, 2013, Holganix and OISC entered into an Agreed Order to settle this matter.

George N. Saxton                                                                          Draft Date: November 19, 2013
Compliance Officer                                                                            Final Date: February 6, 2014
CASE SUMMARY

Complainant: Office of Indiana State Chemist (OISC)
175 S. University Street
West Lafayette, IN 4790
800-893-6637

Respondent: Ken Afterkirk
Dan West
Company Green Property Management LLC
5830 Perry Woods Way
Indianapolis, IN 46227
317-919-9971

1. On July 15, 2013, I performed a records inspection with Ken Afterkirk of Company Green Property Management LLC. Mr. Afterkirk's vehicle had two (2) 300 gallon plus mini-bulk shuttles on a trailer with a "ride on" type sprayer. See figures 1-2.

2. Mr. Afterkirk stated the mini-bulk shuttles contained only organic liquid fertilizer. However, Mr. Afterkirk stated he had applied herbicide this season. Mr. Afterkirk stated he had taken and passed the Core exam but had not submitted his application for the Registered Technician (RT) credential.

3. On July 15, 2013, I spoke with Dan West, owner and certified applicator for Company Green Property Management LLC. Mr. West stated he had Mr. Afterkirk’s application but got busy and forgot about submitting it to OISC. Mr. West stated he would email me the invoices for Mr. Afterkirk applying herbicides.

4. On July 22, 2013, I received copies of four (4) invoices (all dated July 9, 2013) for applications made by Mr. Afterkirk without a credential.

Disposition: Dan West was cited for one (1) count of violation of section 65(6) of the Indiana Pesticide Use and Application Law, specifically 355 IAC 4-2-5, for failure to properly supervise a non-licensed employee. A civil penalty in the amount of $125.00 was assessed.

Paul J. Kelley
Investigator
Date: July 31, 2013

George N. Saxton
Compliance Officer
Draft Date: August 26, 2013
Final Date: February 6, 2014
CASE SUMMARY

Case #2013/1145

Complainant: Office of Indiana State Chemist (OISC)
175 S. University St.
W. Lafayette, IN 47907
800-893-6637

Respondent:
- Hernandez Gomez: Unlicensed Applicator
- Eleazar Juarez: Unlicensed Applicator
- Dawn Fall: Certified Supervisor
- Engledow Group: Licensed Business
1100 E. 116th St.
Carmel, IN 46032
317-575-1100

1. On August 2, 2013, I observed Mr. Gomez and Mr. Juarez with backpack sprayers at the Greenwood Park Mall in Greenwood, Indiana spraying weeds in the parking lot. See figures 1 and 2. I learned that the Certified Supervisor, Dawn Fall, was not on site supervising Mr. Gomez or Mr. Juarez. I spoke with Ms. Fall by telephone.

Disposition: Dawn Fall was cited for violation of section 65(6) of the Indiana Pesticide Use and Application Law, specifically 355 IAC 4-2-3, for failure to properly supervise a non-licensed employee. A civil penalty in the amount of $125.00 was assessed for this violation.

Date: August 26, 2013

Paul J. Kelley
Investigator

George N. Saxton
Compliance Officer

Draft Date: October 24, 2013
Final Date: February 7, 2014
CASE SUMMARY

Complainant: Anonymous

Respondent: Foss Pest Control Licensed Business
Steve Foss Certified in 7a only
8005 Old State Road 60
Sellersburg, IN 47172
502-432-1167

1. On July 26, 2013, I received an anonymous complaint that Steve Foss of Foss Pest Control was doing termite work (category 7b) without a proper applicator’s license. The complainant sent me an internet link to an online review of a termite job done by Foss Pest Control. A check of the Office of the Indiana State Chemist (OISC) database indicated that the business had not been 7b licensed since 2009.

2. On August 14, 2013, I met with Mr. Foss at his place of business/residence. I explained the complaint to him. He seemed confused and stated that he thought he was licensed. I then asked to see his applicator’s license, and I showed him that he did not have the correct category endorsement. I then asked to see his termite application records. He produced 3 records dated:
   • 6/25/12
   • 4/19/13
   • 6/18/13

He also gave me copies of 29 wood destroying insect (WDI) inspection reports he completed. The inspection dates were:
   • 2/4/2013
   • 2/6/2013
   • 2/13/2103
   • 2/21/2013
   • 3/5/2013
   • 3/18/2013
   • 3/26/2013
   • 4/1/2013
   • 4/22/2013
   • 5/6/2013
   • 5/7/2013
   • 5/17/2013
   • 5/21/2013
   • 5/23/2013
3. Mr. Foss asked about the licensing process, and I explained the procedure to him. He assured me he would take care of this matter promptly. I then issued him an *Action* Order stating he could not do any for-hire termite treatment jobs or WDI inspections until he acquired the proper licensing.

4. On August 16, 2013, Mr. Foss contacted me to tell me he completed and passed his 7b exam that morning.

Elizabeth C. Carter                             Date: August 16, 2013
Pesticide Investigator

**Disposition**: Steve Foss was cited for thirty-two (32) counts of violation of section 65(12) of the Indiana Pesticide Use and Application Law. A civil penalty in the amount of $4,000.00 (32 counts x $125.00 per count) was assessed.

However, the civil penalty was reduced to $400.00. Consideration was given to the fact Mr. Foss cooperated with the investigator; corrective action was taken; there was no previous history of similar nature; no potential for damage; a good faith effort to comply and no restricted use pesticides were involved.

George N. Saxton                                                                               Draft Date:  August 29, 2013
Compliance Officer                                                                            Final Date:  February 6, 2014
CASE SUMMARY

Case #2013/1177

Complainant: Office of the Indiana State Chemist (OISC)
175 S University Street
West Lafayette, IN 47907-2063
800-893-6637

Dealer: US Bed Bugs.com (Samela)
650 A Anthony Trail
Northbrook, IL 60062
888-587-2332

Registrant: Rest Easy LLC
149 W Trigg Avenue
Memphis, TN 38106
800-6767-4871
901-948-3572

1. On April 16, 2013, I performed a virtual marketplace inspection of http://www.usbedbugs.com. During that routine inspection, I found a pesticide that appeared to have various registration issues. The pesticide in question was Rest Easy.

Fig 1: General item description for the pesticide
2. I then ordered the pesticide.

3. The order arrived at the Office of the Indiana State Chemist (OISC) on April 17, 2013. The shipping date was April 16, 2013, and the order number was US 34636.
4. Later, I attached sample collection numbers to the pesticide. The sample number was 2013-0911. The sample was then submitted to OISC Formulation Lab for documentary purposes.

5. I checked the OISC database again for registration of Rest Easy but could not find any record of it being registered for sale or use in Indiana.

6. In addition, in order to meet the criteria to be classified as a “Minimum Risk Pesticide” (25b exemption from federal registration), the following must be met:
   - The product may only contain ingredients that are exempt from pesticide residue tolerance requirements.
   - The product may only contain approved inert ingredients.
   - Active and inert ingredients must be listed on the label. Active ingredients must also be listed by percentage by weight.
   - The label cannot make false or misleading statements
   - In general, public health claims are prohibited. Minimum risk pesticide labels may not bear claims to control rodent, insect or microbial pests in a way that links the pests with any specific disease.

7. Rest Easy is misbranded because:
   a. it bears the false and misleading statement . . . “100% based on all-natural ingredients”. Sodium lauryl sulfate is a synthetic chemical compound and therefore is not a natural product;
   b. “Rest Easy is not a pesticide or an insecticide . . .” This product claims to kill pests; and
   c. use of the EPA/USDA logos implies the product is approved or endorsed by these federal agencies.

Elizabeth C. Carter  
Pesticide Investigator

Date: August 7, 2013

Disposition: Rest Easy LLC was cited for violation of section 57(1) of the Indiana Pesticide Registration Law for distributing a pesticide that was not registered in Indiana. A civil penalty in the amount of $250.00 was assessed for this violation.

Rest Easy LLC was cited for violation of section 57(9) of the Indiana Pesticide Registration Law for failure to comply with the Federal Insecticide, Fungicide and Rodenticide Act. A civil penalty in the amount of $250.00 was assessed for this violation.

Total amount of civil penalty assessed for this investigation is $500.00.

George N. Saxton  
Compliance Officer

Draft Date: August 26, 2013

Final Date: February 6, 2014