MINUTES – 129th MEETING

Location of meeting: Tippecanoe County Cooperative Extension Service
3150 Sagamore Parkway South
Lafayette, Indiana

Date and Time: August 19, 2011, 9:05 AM – 1:02 PM

Members present: Ex officio Members absent:
Greg Campbell Dave Scott Kevin Underwood
Bruce Bordelon Robert Waltz Gary Reding
Michael Titus Fred Whitford
Rick Foster
Tim Gibb
Bob Andrews
Jennifer House
Ronald Hellenthal (Chair)
Martha Clark Mettler
Raymond Brinkmeyer
Julia Tipton Hogan
Larry Clemens
Steve Dlugosz
Philip T. Marshall

Approval of the meeting agenda:
-Mike Titus & Martha Clark Mettler…motion to approve the meeting agenda, as presented to the Board. The vote was unanimous.

Approval of previous meeting minutes:
-Bruce Bordelon & Rick Foster…motion to approve the draft minutes of the 127th meeting. The vote was unanimous.
-Bruce Bordelon & Rick Foster…motion to approve the draft minutes from the 128th meeting. The vote was unanimous.

Review of case summaries involving civil penalties since the last meeting:
-Greg Campbell…it appears some violators aren’t paying their assessed civil penalties.
-George Saxton (OISC) …these are primarily applicators without licensing.
-Larry Clemens…does OISC address penalties if violators eventually come in for licensing?
-George Saxton (OISC)…yes.
- Ron Hellenthal…details on case of Golden Malrin fly bait being purchased for raccoon control?
- George Saxton…Golden Malrin misuse for pest mammal control appears to be common, nationwide; recipes & recommendations can be found on the web.
- Bruce Bordelon…do we need to consider something like state restricted status to limit distribution in Indiana?
- Dave Scott (OISC)…perhaps, if misuse continues.
- Jennifer House…any evidence of child exposure resulting from this misuse?
- Dave Scott (OISC)…none reported thus far.

**Review of Purdue Pesticide Programs (PPP) recent training & outreach activities:**
- Fred Whitford (PPP Director)…except for Fred’s salary, PPP is fully supported by program income (training fees) & civil penalty income from OISC (~$30-40,000 per year).
  …voluntary Commercial Applicator training numbers are up 20% this year.
  …2011 scheduled training sessions already full.
  …doing school staff training at four regional school Education Centers.
  …trainers include Fred, Andrew Martin (PPP), state agencies, CES specialists & industry.
  …about 15 years ago Private Applicator (farmer) program switched from re-exam every five years to a continuing education requirement program (PARP) run through local CES offices.
  …104 PARPs this year, far superior to the re-exam program of old.
  …Cheri Jansen (PPP) runs PARP program & is deputized by OISC to give regional exams to farmers.
  …PPP also worked with OISC & Indiana Fertilizer Advisory Board this year to develop training & certification exam (category 14) for agricultural fertilizer & manure applicators.
  …goal of certification program, like pesticides, is safe & effective fertilizer use while protecting water resources.
- Martha Clark Mettler…still some issues to work out between OISC & IDEM authorities.
  …who will be enforcing OISC fertilizer use rules?
- Dave Scott (OISC)…probably OISC pesticide investigators.
- Steve Dlugosz…issues regarding transportation & profitability of manure as a nutrient source will need to be monitored closely.
- Fred Whitford (PPP) …distributed list of current PPP publications & copies of new PPP-92 addressing secure trailer hitches hauling pesticide & farm loads.
  …most PPP publications come from ideas from Fred’s training class participants.
  …future pubs. could include use of dry fl owable pesticides & safe use of pet product pesticides.
  …most publications take one to one and a half years to develop.
  …most pubs are downloadable, free, or nominally priced.
  …financial support comes from grants, gifts, $10 per product annual registration fee passed through by OISC, or civil penalties.
  …common theme is safety & environmental protection.
  …some overlap with other Purdue farm safety programs.
  …if any questions or comments about applicator training or publications, contact Fred.
- Rick Foster…Fred’s PPP training/education program is as good as any in the country and better than most.

**Non-target injury to trees & ornamentals from use of Imprelis Herbicide:**
- George Saxton (OISC)…slide presentation on the investigation of almost 400 complaints of damage to ornamental trees & shrubs resulting from the application of brand new Imprelis Herbicide to adjacent turf for tough to control of broadleaf weeds.
...non-target damage on this large scale was not anticipated by anyone.
...OISC has had to scramble to respond to this volume of complaints & to develop the necessary investigation tools for response.
...OISC has ceased most other routine compliance activities & has been devoting most resources to Imprelis complaint response and case development, since mid-June.
...too early to determine if injury will result in complete tree death in every case.
...EPA has not been leading in this response effort to date, OISC has been.
...manufacturer DuPont has been relatively closed mouth up to this point but has indicated that the applicators may be to blame for misuse of the product resulting in damage.
- Bob Andrews…used Imprelis this year & has experienced tree damage on many properties.
...if licensed applicators are left to address damage claims, they will be forced out of business or may have significant difficulty filing claims with their insurance carriers, based on the specifics of their policies.
... thanks to OISC for being responsive in determining that the problem is inherently with the product and its labeling rather than one of misuse by applicators.
...EPA, other states, and DuPont have not been as responsive as OISC & IPLLA thus far.
- Julia Tipton Hogan… how did this product make it through the registration process without identifying this serious problem?
- Rick Foster… why didn’t EPA’s Experimental Use Permit (EUP) process catch this?
- Ray Brinkmeyer… this product was not introduced into the ag market first, it went straight to turf management, plus EUPs are not mandated, it is up to manufacturer to develop adequate data.
- Steve Dlugosz… can OISC provide an accounting of the resources expended on Imprelis response?

Report from the pesticide liability insurance rule review committee:
- Mike Titus… our committee drafted some language (8-18-11 draft distributed) for consideration as revision to the existing liability insurance rule for pesticide businesses.
...would like input from the Board & several applicator association groups before progressing.
...we identified that policy exclusions & endorsements could modify coverage considerably.
- Fred Whitford… we identified two potential claimants, the target customer/property owner & the non-target neighbor/environment.
- Steve Dlugosz… where did minimum required limits come from?
- Mike Titus… from current rule & some examples we looked at.
- Mike Titus & Steve Dlugosz… proposed limits appear low for agricultural operations.
- Fred Whitford… tried to balance public protection & applicator business protection.
- Bob Andrews… in 31 years my company has rarely used our liability insurance for pesticides.
- Martha Clark Mettler… does OISC routinely perform insurance checks on businesses?
- Leo Reed (OISC)… usually only when we receive notice of cancellation from the carrier.
- Ron Hellenthal… we will proceed by getting feedback from both Board members & applicator groups simultaneously for discussion at the next meeting & consider preliminary adoption of the draft at that time.

Recommendations for pesticide law amendments:
- Dave Scott (OISC)… distributed 8-2-11 draft legislative proposal for 2012
...gave an overview of the draft revisions that were characterized by:

Synopsis: Pesticide application. Amends the pesticide law and the pesticide use and application law as follows: (1) Expands the definition of produce to match the federal definition. (2)
Clarifies descriptions of members on the Indiana pesticide review board. (3) Clarifies that the board is to study and interpret both matters of pesticide registration and use. (4) Clarifies provisions in state pesticide law to make them consistent with similar provisions in federal pesticide law. (5) Eliminates the annual pesticide applicator license fee charged to employees of not-for-profit organizations. (6) Eliminates ineffective registration requirements and fees for pesticide consultants. (7) Clarifies that most of the provisions of state pesticide law are intended to apply to all pesticide products (both chemicals and devices). (8) Clarifies provisions in state pesticide law to make them consistent with similar provisions in federal pesticide law.

-Jodi Perras (IKE)...why eliminate the consultant registration requirement which IKE supports?
-Dave Scott (OISC)...it has not been very widely adopted by retailers & it is difficult to enforce effectively without having field staff become very leading or misleading during inspections. ... many retailer just opt out to avoid the annual $45 registration fee, the need to train staff & the need to post signs regarding their qualifications.
-George Saxton...it is not believed that it is achieving the original intent of improving the quality & legality of pesticide purchase recommendations at the average retail locations. ...OISC already has the ability to act on violations where it is determined that retailer is making off-label (illegal) pesticide use recommendations to consumers, even without the consultant registration requirement.
...the fees collected in this program do not support an effective compliance program.
-Steve Dlugosz...work in other programs has demonstrated to me that verified self training & certification do not achieve the desired results.
-Martha Clark Mettler...the worst offender is probably the retailer who is consciously opting out of the program. ...would prefer that PPP develop a voluntary education & outreach program to retailers rather than try to maintain a regulatory hook.
-Julia Tipton Hogan...is there some way to make this program effective?
-Dave Scott...it may be difficult without a significant infusion of additional resources.
-Mike Titus & Steve Dlugosz...motion to support the draft with all of its proposed elements with the additional intent of formulating a plan to address the void that may be created by the elimination of a regulatory requirement for pesticide retailers. The vote was unanimous.

**Next meeting date:**
Julia Tipton Hogan...add a discussion of bed bugs & the seeming plethora of over-the-counter pesticide products being marketed for their control to the next meeting agenda. The next meeting will be held on **Friday, December 2, 2011** at 9:00 a.m. at the Purdue University Daniels Turf Research & Diagnostic Center, Cherry Lane (SR 126), West Lafayette, Indiana.