MINUTES – 133rd MEETING

Location of meeting: Dow AgroSciences Research Facility
7200 E. State Road 47
Lebanon, Indiana 46052

Date and Time: August 20, 2012; 9:15 AM

Members present: Ex officio
Raymond Brinkmeyer Dave Scott
Phil Marshall Robert Waltz
Julia Tipton Hogan Fred Whitford
Cyndi Wagner for Martha Clark Mettler
Larry Clemens
Ronald Hellenthal (Chair)
Michael Titus
Steve Dlugosz
Bruce Bordelon
Kevin Underwood
Bryan Price for Jennifer House
Rick Foster

Members absent:
Greg Campbell
Bob Andrews
Tim Gibb

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

Approval of previous meeting minutes:
-Julia Hogan & Ray Brinkmeyer…motion to approve the minutes of the 132nd meeting, as drafted; the vote was unanimous.

Final adoption of state restricted use pesticide rule (LSA #12-135):
-Bruce Bordelon & Rick Foster…motion to adopt as final the proposed rule which has been through the public hearing process with no comments being filed; vote was unanimous.
-Bruce Bordelon…to confirm, this will require applicators to be certified to purchase and use these methomyl fly bait products.
-Ron Hellenthal…neighboring states are keeping a watchful eye on this action.

Introduction of proposed rule revisions resulting from recent legislative amendments:

a) Draft proposed rule amending applicator certification & licensing requirements
-Dave Scott…draft proposals intended to make State Chemist rules consistent with recent legislative recodification and legislative amendments; insert minimum age requirements for certification into rules in anticipation of potential federal rule changes by EPA; add references to combined commercial turf pesticide and fertilizer applicators.
-Fred Whitford…would this prevent farm kids from applying pesticides for the family on the farm?
-Dave Scott…the proposed minimum age restrictions are currently those under internal consideration by EPA; farm kids could still operate under direct supervision, but could not become certified unless 18.
-Ray Brinkmeyer…any Indiana figures on number of those under 18 attempting to become certified?
-Fred Whitford…maybe a couple of individuals a few years back but not many.
-Julia Hogan…at least 18 seems reasonable for using pesticides.
-John Baugh…FFA encourages high school age kids to start small businesses, including lawn care, and this might interfere with those ventures.
-Mike Titus…this would not preclude those businesses if those individuals had adult supervision such as a parent who is certified.
-Bruce Bordelon…can you get the required liability insurance for a business license if under 18?
-Ron Hellenthal…it is not unreasonable to expect an individual to be 18 if using pesticides commercially.
-Bruce Bordelon…this would also apply to lawn fertilizer application under the current rules.
-Julia Hogan & Larry Clemens…motion to adopt this draft document into rule making process; vote was unanimous.

b) Draft proposed rule amending civil penalty & pesticide storage near well heads
-Dave Scott…draft proposals intended to make Board rules consistent with recent legislative recodification and legislative amendments; consolidate the two separate civil penalty rules into one comprehensive rule, as recently suggested by the Indiana Attorney General; clarify some of the pesticide handling practice requirements in well head protection areas.
-Ron Hellenthal…this document has many pages of changes for consideration, but if it is largely reformatting and there is little new actually being introduced, it may be manageable at this meeting.
-Phil Marshall…IDNR also recently went through some similar rule changes resulting from the legislative recodification process.
-Rick Foster…do we need to add a definition of the term “WHPA”?
-Dave Scott…that definition already exists in the complete rule, but the definitions section is not being changed so it is not a part of this proposed rule.
-Mike Titus…I see reference in the civil penalty chart to “highly volatile herbicides”; does Indiana have any so classified today?
-Dave Scott…not currently; have not had any so classified for about 20 years.
-Steve Dlugosz & Mike Titus…motion to adopt this draft document into the rule making process; vote was unanimous.

Review of cases involving civil penalties since the last meeting:
-Julia Hogan…for case #2012/0567 why only $100 for second drift incident?
-Bruce Bordelon…it also appears that the violator tried to mislead you during the investigation.
-George Saxton…this was a private applicator, and $100 is the maximum fine allowed by law.
-Julia Hogan…if we get into a series of drift problems associated with the new 2,4-D and dicamba tolerant crops the $100 maximum penalty will not be enough.
-Bruce Bordelon…$100 is not much of a deterrent.
-Fred Whitford…how does the current legislature view civil penalties?
-John Baugh…right now increased regulatory burdens are not favorably viewed by the legislature.
George Saxton…a finding of violation by OISC is often a slam dunk for complainants, should they feel compelled to pursue restitution civilly in court.

Steve Dlugosz…economic interface for violations or drift damage on the commercial application side is much much larger, as compared to the dollar value of a civil penalty.

Bruce Bordelon…expecting homeowners to file a civil suit to obtain results seems to be asking a lot.

Bruce Bordelon…case #2012/0158 appears that it might have bordered on entrapment of the store clerk.

Beth Carter…this was part of a much larger investigation of many methomyl fly bait vendors that I conducted; prior to inspecting any of them George Saxton and I were careful to prepare a fairly specific script to avoid any possibility of entrapment; I identified the pest problem, and the vendors offered the illegal control solutions without prompting.

Mike Titus…are Tractor Supply Company stores independent or company owned?

George Saxton…we are not sure.

Fred Whitford…could we mandate staff training for some of these violative store outlets?

George Saxton…they may be receptive to that.

**Fertilizer use regulation primer:**

-Ron Hellenthal…at the last meeting we asked OISC to provide some background on fertilizer use regulation now that OISC has civil penalty authority for fertilizer violations too.

-Matt Pearson…while historically OISC fertilizer regulation focused primarily on “truth in labeling” of products, it has recently been expanded to include rules regarding proper use of fertilizers, similar to following pesticide label use instructions.

-Ray Brinkmeyer…are there use directions on fertilizer labels?

-Matt Pearson…no, there are general use rules that apply to all fertilizers, including the need to develop nutrient management plans to protect against over application and application near sensitive sites.

-Fred Whitford…not a label per se as we have for pesticides.

-Steve Dlugosz…is the management plan reviewed by OISC?

-Matt…no.

-Steve Dlugosz…the focus is best management practices and changing animal manure disposal practices.

-Elisha Kemp…does this rule apply to application of turf fertilizers too?

-Matt Pearson…no, just agriculture fertilizers and manures at this point.

-Fred Whitford…there is also a continuing education requirement for fertilizer applicator certification; it is being run in tandem alongside the pesticide education program.

**2,4-D tolerant crop update & related drift & volatility research tour:**

-Elisha Kemp and other Dow AgroSciences staff hosting the meeting provided a tour of the field research facility and updates on the status of the new tolerant crop seed technology as well as their new formulation of 2,4-D that will be marketed to growers jointly with the seed; the primary focus for the Board was drift reduction and management.

**Next meeting:**

-Targeted date is Tuesday, November 20, 2012, location to be determined.