MINUTES – 124th MEETING

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

Date and Time: February 16, 2010, 9:13 AM – 1:10 PM

Members present: Greg Campbell
Martha Clark Mettler
Julia Tipton Hogan
Philip T. Marshall
Larry Clemens
Bruce Bordelon (Vice Chair)
Mike Sinsko
Ronald Hellenthal (Chair)
Michael Titus
Rick Foster

Ex officio: Dave Scott
Fred Whitford

Members absent: Bob Andrews
Steve Dlugosz
Raymond Brinkmeyer
Kevin Underwood
Tim Gibb
Gary Reding
Robert Waltz

Minutes from previous meeting: The previous two Board meetings were conducted on August 5, 2009 and November 12, 2009. Mike Sinsko and Phil Marshall made a motion to accept the August 5 minutes as distributed. The vote was unanimous. Larry Clemens and Phil Marshall made a motion to accept the November 12 minutes as distributed. The vote was unanimous.

Review of case summaries involving civil penalties since the last meeting: Board members asked questions about case numbers 2009/0372 and 2009/0579. Office of Indiana State Chemist (OISC) Compliance Officer George Saxton responded to the Board inquiries. George also advised the board of two potential enforcement action appeal hearings before this board. It was agreed that the current three member Administrative Law Judge (ALJ) panel of the board would continue to serve, if needed, for these hearings.

Appeal hearing for license denial action: Deputy Indiana Attorney General Gordon White provided a historical summary of the regulatory, appeal and judicial events involving Black Diamond Termite and Pest Control, its owner, and its employees. That history is pertinent to the appeal hearing being conducted today. Today’s appeal hearing is solely for the applicator license denial action by OISC for the
application from Durwin Keith Duncan, Jr. (Duncan). No other licenses are being considered in this action.

OISC Compliance Officer George Saxton provided the Board with a summary of the recent telephone conversations between Duncan and OISC, a face-to-face meeting between Duncan and OISC staff, and the level of cooperation demonstrated by Black Diamond during recent routine inspections by OISC. Saxton characterized the recent interactions as positive. He suggested that because Black Diamond is still in operation and because OISC is still required to regulate their pesticide activities, a positive working relationship might be in the best interest of the people of Indiana. Duncan could help insure that positive working relationship as a licensed owner/operator, rather than an unlicensed employee of Black Diamond. Saxton responded to a number of Board questions regarding the status of historic enforcement actions, the payment of civil penalties, Black Diamond customers that may have been wronged, and the pending civil tort cases by Black Diamond employees against OISC. Saxton indicated that OISC would support an agreement with Duncan that, among other things, would insure that Duncan Sr. would no longer be the operational director of Black Diamond.

Duncan addressed the Board to plead his case for the appeal of his license denial. Duncan’s appeal is based on the following: 1) he is committed to pest control as a career and never being eligible for a license would severely compromise his ability to earn a living for his young family; 2) the Board has only seen him as an employee and son of Duncan, Sr., who was “along for the ride” during the past regulatory and appeal process for which he was personally charged with only one violation; 3) being eligible for a license would enable him to assume operational control of Black Diamond from his father and build a positive working relationship with OISC in the future.

Board members asked Duncan a number of questions and deliberated on the merits of considering his appeal. Duncan indicated that he was amenable to a probationary license, other special conditions discussed with OISC, and conditions raised by the Board. Mike Sinsko and Bruce Bordelon made a motion to have the Attorney General, Duncan and OISC collaborate to draft a probationary license Agreed Order for consideration at the next meeting. The vote was unanimous. No formal action was taken on the license denial appeal at this meeting.

On a related matter, Martha Clark Mettler and Mike Sinsko made a motion to have OISC research what is meant by the term “revocation” as it applies to pesticide credentials so that a definition can be developed to guide future enforcement actions. The vote was unanimous.

**Plans for implementing pesticide NPDES permitting under the Clean Water Act:**

Board secretary Dave Scott distributed to the board a February 16, 2010 update of a one page discussion paper outlining the major issues and the proposed timelines for development and implementation of the pesticide NPDES permitting requirements. The permitting process is to be developed and implemented for pesticide applications made “to, over or near waters of the U.S.” by April, 2011. IDEM Surveys Section Chief Cyndi Wagner, who has been tasked by IDEM to develop and implement the pesticide NPDES permitting program, explained to the Board the difference between individual permits and general permits. General permits will be developed for pesticides in Indiana. Cyndi stated that we are waiting on the draft pesticide general permit (PGP) model from U.S. EPA before we start the process of developing the PGP for Indiana. IDEM and OISC will be coordinating to develop the permitting and outreach programs for Indiana applicators. OISC and IDEM will keep the board apprised of the progress on this issue
and will use the Board meetings as a mechanism to gather input and comment on the draft Indiana PGP. Indiana Pest Management Association member Greg Long expressed concern about how the scope of pesticide applications made “near water” would be determined and defined.

**Draft rule on pesticide use in schools:**
Dave Scott distributed to the Board a 2-3-10 draft rule. The last draft that had been discussed by the Board prior to this was dated 11-16-09. Scott covered the changes that had been made to the draft since the last meeting. Board members made several additional suggestions for changes to the draft, including the explanation or definition of a number of term used and the clarification that the four hour re-entry time into the pesticide application site should not apply to the application of rodenticide bait products. Recently appointed Improving Kids Environment (IKE) Director Jody Perras asked the Board to consider adding to the draft the inclusion of school staff members on the notification registry. Board Chair Ron Hellenthal asked the Board to come prepared at the next meeting to consider moving the draft rule into the formal rulemaking process.

**Next meeting date:**
The next meeting will be held on **Thursday, May 6, 2010** at 9:00 AM at the Daniels Turfgrass Center, Cherry Lane, Purdue University, West Lafayette, Indiana.