MINUTES – 131st MEETING

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

Date and Time: February 29, 2012; 9:02 AM – 1:07 PM

Members present: Greg Campbell
Phil Marshall
Larry Clemens
Martha Clark Mettler
Ronald Hellenthal (Chair)
Michael Titus
Rick Foster
Tim Gibb
Bob Andrews
Jennifer House

Ex officio: Dave Scott
Robert Waltz
Fred Whitford

Members absent: Kevin Underwood
Bruce Bordelon
Julia Tipton Hogan
Steve Dlugosz
Raymond Brinkmeyer

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

Approval of previous meeting minutes:
-Martha Clark Mettler…correction to the minutes; IDEM pesticide NPDES general permit was not developed by rule.
-Larry Clemens & Greg Campbell…motion to approve the draft minutes of the 130th meeting, as corrected by Martha.
-The vote was unanimous.

Status of Board membership terms:
-Dave Scott…current vacancies include terrestrial ecologist and crop producer; request for re-appointment of all other expired/expiring board terms has already been made to the Governor’s office; no word back yet.

Review of cases involving civil penalties since last meeting:
-Greg Campbell…what were details of case #209/0950 regarding misuse and forwarding to IDNR for criminal review?
- Jay Kelley (OISC)…intentional dumping of chlordane dust into farm pond as part of a domestic squabble.
- Sgt. Roger Goldman (IDNR Law Enforcement)…IDNR worked with OISC and originally pursued it criminally as a Class D felony, but the prosecutor wasn’t confident about the integrity of the primary witness in the case.
- Fred Whitford…pesticide civil penalties seem inadequate for something like this; need to find a way to increase them.
- Dave Scott…legislature would need to increase the maximum penalty amounts.
- Ron Hellenthal…can IDEM mandate remediation of the pond?
- Martha Clark Mettler…no, because this was a private pond, not waters of the state.
- Phil Marshall…was there an increase in aerial drift cases in 2011?
- George Saxton (OISC)…numbers may have been up a little.

**Follow-up on Imprelis Herbicide damage to non-target ornamentals:**

- Bob Andrews…heard that damage claims costs to DuPont in some 20 odd states may be in the $750-800 million range; DuPont claims adjusters have visited most Indiana lawn care operator facilitated claimants to date; the process seemed professional and above board; April 15, 2011 was the first known Imprelis application date in IN; dead and damaged trees probably won’t be replaced within the first year from application date; DuPont is requesting claimants to sign off on future damages when accepting settlement offer; DuPont is offering settlement options that can include tree replacement, soil replacement, and financial compensation for pain and suffering type damages; injured parties in the current or proposed law suits are not part of the current claims process; Indiana lawn care operators are asking: 1) Are all residues gone from the treated turf/soil and impacted trees? 2) How will the mild winter impact residues and potential 2012 problems? 3) Do we fertilize injured but not dead trees in 2012? 4) How long will it take to replace the dead/damaged trees? 5) What to advise claimants that do not want to sign off on the claims settlement process? 6) What will be the future of DuPont’s Turf and Ornamental Division? 7) What have we learned and what can we do in IN to prevent against a similar future incident of a federally and state registered pesticide? 8) What can OISC do to safeguard against such a travesty for products they register for sale and use in the state?
- Mike Titus…any plans for follow-up on these investigations in 2012?
- Dave Scott…OISC has an EPA grant to do some limited follow-up soil sampling this Spring to see if Imprelis residues are still present.
- Bob Andrews…problem could have been much worse if DuPont did not have distribution delays in 2011 and a homeowner version of this product gained registration as planned.
- Martha…is DuPont compensating lawn care operators and other Imprelis users for loss of time and business resulting from damages experienced?
- Bob Andrews…some customers have canceled service, but DuPont is providing some compensation for users’ time and effort.
- Fred Whitford…is EPA doing anything to address this for the future?
- Bob Andrews…disappointed that the national turf and ornamental trade association did not pursue an active role in dealing with this.
- Rick Foster…couldn’t an experimental use permit approach on limited research acres prior to full registration of this product have worked to prevent this?
- Dave Scott…the IPRB has the authority to limit new product distribution if needed.
- Tim Gibb…not to minimize the size or scope of the damage caused, but drastic across the board rules or restrictions for all new product registrations may be an overreaction, based on the limited number of occurrences such as this; this may be the exception rather than the rule; big changes to
the product registration program and process may be pre-mature; does OISC still have soil sub-
samples from the investigations that could be used to run some degradation studies or bioassays?

**Intentional misuse of non-restricted fly bait pesticides to control nuisance mammals:**
- George Saxton (OISC)…made a Power Point presentation titled “Golden Malrin”, the trade
  name of the non-restricted fly bait that has been widely and illegally misused; the primary
  misuse is mixing it with sweets and other foodstuffs to make toxic baits to kill nuisance
  mammals such as raccoons, possums, skunks, etc.; current label already prohibits use around the
  home, pets, food producing animals, and children; currently 10 methomyl (active ingredient)
  containing products registered in IN, 6 restricted use ag products and 4 non-restricted fly baits;
  fly baits sold primarily through farm stores; currently 14 other fly bait products registered in IN
  with active ingredients that have no known history or obvious potential of similar misuse;
  recipes, instructions, and testimonials for misuse of Golden Malrin for nuisance mammal control
  are wide spread and readily available on the internet just by searching on Golden Malrin; a
  survey of pesticide regulators reports 12 of 21 states have documented incidents of mammal
  poisoning investigations involving Golden Malrin; some states have documented poisonings of a
  bald eagle and family pets; Michigan did a covert market place investigation finding 11 of 43
  farm stores openly recommending Golden Malrin misuse for mammal control; Indiana did a
  similar covert investigation finding 9 of 34 farm stores openly recommending the same misuse;
  a public outreach education campaign in Wisconsin has been unsuccessful in minimizing the
  misuse; OISC undercover investigator Beth Carter also got unsolicited recommendations and
  testimonials from farm store customers suggesting mixing the fly bait with a jelly sandwich.

- Lt. Roger Goldman (IDNR Law Enforcement)…IDNR conservation officers statewide are well
  aware of this wildlife poisoning practice; showed an undercover investigation video confiscated
  from a deer poacher, which depicted a opossum, a raccoon, and a skunk all consuming a Golden
  Malrin bait concoction, and later expiring as a result; there is an IDNR law prohibiting killing
  any wildlife by poisoning; Goldman’s mother-in-law advised him of the illegal practice which
  she became aware of through contacts in the Master Gardener program.

- Rick Foster… this is a well known mammal control option among tree fruit producers with
  whom he works.

- Larry Clemens…is there a risk of secondary poisoning from consuming poisoned animals?

- Lt. Goldman(IDNR)…yes; has also heard rumors that experienced IDNR licensed trappers and
  critter controllers are now using it as a control option for nuisance mammals

- Jennifer House…this product appears to enter the mammal’s system so quickly that the
  regurgitation mechanism as a protection against primary or secondary poisoning would seem
  irrelevant.

- Dave Scott …OISC advised methomyl fly bait manufacturers of the IPRB agenda item; only the
  Golden Malrin manufacturer responded, indicating that they were aware of the misuse, but were
  essentially powerless to mitigate it.

- George Saxton (OISC)…the Board has the statutory authority to restrict the sale, distribution, or
  use of any pesticide product to prevent undue hazards to persons, animals, or wildlife; OISC is
  recommending that the Board restrict the sale and use of these products to only certified
  applicators so the general untrained and unreachable public will not have ready access to them.

- Alisha Modisett-Kemp (Dow AgroSciences)…are any other states making these restricted
  products?

- Dave Scott (OISC)…not yet, but other Region 5 states like MI, WI, and OH are very interested,
  and this is a current discussion item with a state/EPA issues committee.
-George Saxton (OISC)…waiting on EPA to act may not be protective enough, i.e. Imprelis Herbicide.
-Mike Titus…would restriction apply just to Golden Malrin or all fly baits with methomyl?
-George Saxton (OISC)…the OISC recommendation is for all products.
-Ron Hellenthal…it appears this would require rule making so the process should be to ask OISC to draft a rule to make all methomyl products restricted use pesticides so the Board could review and vote on it formally at the next meeting.
-Phil Marshall…recommend starting the fiscal impact analysis for OMB and State Budget Agency as quickly as possible to avoid unnecessary delays.
-Tim Gibb and Mike Titus…motion to ask OISC to initiate the rule making process to make all methomyl containing products restricted use pesticides in IN.
-The vote was unanimous.

**Review of draft language for the pesticide liability insurance rule revision:**
-Ron Hellenthal…referenced the 2-27-12 draft rule document; note that the draft proposes to raise the minimum liability limits from $300,000 to $500,000 for general liability.
-Leo Reed (OISC)…we talked to vendors that suggested going from $300,000 to $1,000,000 would result in an approximate 30-45% increase in cost to the insured.
-Mike Titus…a spot check of OISC files found that many of the current policies are already at the $1,000,000 coverage level; going from $300,000 to $500,000 is a step in the right direction; also the proposal to address endorsements and exclusions in the current draft fills a previously significant hole.
-Greg Campbell…my agent advised that dropping my policy from a $2,000,000 level to $1,000,000 level would result in a very insignificant cost savings.
-Dave Scott…recent discussions with the Indiana Department of Insurance resulted in some suggested verbiage modifications and reference to a specific common industry endorsement and also a specific form number for this endorsement; they had no advice on the appropriate levels of coverage for these industries.
-Fred Whitford…does the term “handling” in the definition of “use” include transportation?
-Dave Scott…the intent was that it not include transportation.
-Tim Gibb…is handling defined anywhere?
-Dave Scott…handling is not defined; deleting the definition of “pesticide use” might be the best approach if the rule makes sense without it.
-Phil Marshall and Tim Gibb…motion to incorporate the revisions discussed today and bring it back to the Board for review and approval at the next meeting.
-The vote was unanimous.

**Miscellaneous:**
-Greg Campbell…does inspection for bed bugs or treatment of bed bugs with heat but no pesticides require a license from OISC?
-Dave Scott…no to both.

**Next meeting date:**
- Greg Campbell…would like to include a discussion of the recent label changes to pyrethroid insecticides and to rodenticides and the justifications for those changes.
- The next meeting will be held on **Monday, 21, 2012** at 9:00 a.m. at the Purdue University Daniels Turf Research & Diagnostic Center, Cherry Lane (SR 126), West Lafayette, Indiana.