MINUTES – 126th MEETING

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

Date and Time: September 2, 2010, 9:20 AM – 11:45 AM

Members present: Greg Campbell  Bob Andrews  Julia Tipton Hogan  Philip T. Marshall  Cyndi Wagner for Martha Clark Mettler  Steve Dlugosz  Mike Sinsko  Ronald Hellenthal (Chair)  Michael Titus  Rick Foster

Ex officio: Dave Scott  Robert Waltz

Members absent: Bruce Bordelon  Gary Reding  Raymond Brinkmeyer  Kevin Underwood  Tim Gibb  Larry Clemens  Fred Whitford

Approval of the meeting agenda:
Steve Dlugosz and Greg Campbell made a motion to exchange the order of items #7 and #9 and then approve the agenda as drafted. The vote was unanimous.

Minutes from previous meeting:
The previous Board meeting was conducted on May 6, 2010. Mike Titus and Mike Sinsko made a motion to accept the minutes as drafted and distributed. The vote was unanimous.

Status of license denial action appeal from previous meeting:
Board Secretary Dave Scott distributed to the Board the 6-25-10 draft Agreed Order developed to reflect the Board’s decision to issue a probationary pesticide license with specified conditions to Durwin Keith Duncan, Jr. Scott also distributed a copy of an e-mail message expressing his concern about the language in the last sentence of item #5 under “terms and conditions” of the order. After discussion Steve Dlugosz and Rick Foster made a motion to not further modify the drafted order.

Review of case summaries involving civil penalties since the last meeting:
Board members asked for case number 2010/0748 why there was no civil penalty assessed for failure to follow pesticide label container disposal directions. Office of Indiana State Chemist
(OISC) Compliance Officer George Saxton responded to the Board that since all documented violations in this case were part of one pesticide use incident, he did not want to “stack” charges for purposes of assessing monetary penalties.

The Board asked about the inclusion of civil penalty letters in the distributed Board materials for pesticide product type violations. George explained that OISC does not do case summaries in product violation cases, so copies of the enforcement letters were the most efficient way to communicate OISC actions. George advised that such letters would continue to be part of the case summary materials distributed to the Board.

**Enforcement hearing for pesticide storage/containment case #2010/0926:**
George Saxton explained that Big R Stores in Marion was being assessed a $5,250 civil penalty for 21 counts (days) of storing mini bulk pesticides outside of secondary containment. George explained that the penalty was not mitigated at all due to the provision in the Board’s civil penalty assessment rule which states, “* this penalty shall not be subject to the potential for mitigation listed in section 5 of this rule.”

Gerald Sherman and Bruce Fairburg representing Big R Stores expressed their feelings that the amount of the penalty was excessive. They pointed to Big R’s history of general compliance with OISC rules. They did not contest the validity of the charges against them, just the penalty amount.

Following an extensive discussion of the technical difficulties associated with disregarding the above referenced provision of the civil penalty rule, the Board thanked Big R for coming to discuss the issue but advised that the Board did not have the authority to contradict this very specific language in the rule.

**Vote on final adoption of LSA #10-336 (pesticide use in schools rule):**
Dave Scott gave a status report on the current rule making process to date. Julia Tipton Hogan then gave a summary of the long legislative, voluntary and now rulemaking historical journey that has brought us to today’s vote for final adoption of this rule.

Following a few questions about the implementation plan for this rule once final, Julia Tipton Hogan and Mike Sinsko made a motion to adopt the proposed rule published in the Indiana Register as final. The vote was unanimous.

Jodi Perras of Improving Kids Environment thanked the Board and OISC for their patience and diligent pursuit of this issue. She also requested that the Board initiate discussions for a similar regulatory requirement for pesticide use in child care facilities.

**Status of pesticide NPDES permitting under the Clean Water Act:**
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 are being developed for pesticides in Indiana, but they are more difficult to develop than individual permits. Cyndi stated that we have seen draft federal general permits from US EPA, but we are still waiting to see their final permit. IDEM is drafting state general permits, based on the federal model, but is doing what it can to make the Indiana process as simple for all parties as possible. Cyndi identified April 1, 2011 as the compliance date for permit implementation. IDEM is targeting February,
2011 to have the first step in the permitting process (filing of Notice of Intent) in place. That will then allow adequate time for subsequent permitting steps.

Some Board members expressed concern about effectively communicating the permitting procedure requirements to municipalities that perform area-wide mosquito control. That will be more difficult than working with local health departments. Others expressed concerns about the potential for citizen suits under the Clean Water Act. Cyndi advised that historically IDEM has not been aware of many citizen suits filed under the NPDES program. Jodi Perras echoed that most citizen suits are filed as a mechanism to get an agency such as USEPA or IDEM to react to a situation or issue.

**Status of revisions to category 3b (turf management) to include fertilizer application:**
Scott informed the Board that the rule making process had already been initiated and that the draft rule language approved by Board at the last meeting would be reviewed by the Fertilizer Advisory Board (an advisory group to OISC in fertilizer regulatory matters) at their 9-16-10 meeting.

**National right-of -way pesticide applicator exam development report:**
Andrew Martin of Purdue Pesticide Programs reported to the Board on the completion of the national exam development effort that he had been spearheading with the assistance of a National Association State Department of Agriculture (NASDA) grant and committee. Andrew explained the process for occupational analysis, test plan and training syllabus development, piloting the exam item bank of questions, and anticipated general release of the finished product to states this fall.

**Next meeting date:**
The next meeting will be held on Thursday, December 16, 2010 at 9:00 AM at the Efroymson Conservation Center (The Nature Conservancy’s Indiana headquarters), 620 E. Ohio St., Indianapolis, Indiana.