



# INDIANA PESTICIDE REVIEW BOARD

**159<sup>th</sup> Meeting Minutes (DRAFT)**  
**November 6, 2019; 9:04 am – 11:49 am**  
**Daniel Turf Research and Diagnostic Center**  
**1340 Cherry Lane**  
**West Lafayette, IN 47907**

**Members Present:**

Bob Andrews  
John Bacone  
Bruce Bordelon  
Cyndi Wagner  
Steve Dlugosz  
Rick Foster  
Tim Gibb  
Lee Green  
Jim Hawbaker  
Ron Hellenthal (Chair)  
Stuart Orr  
Megan Abraham  
Jamey Thomas  
Julia Tipton-Hogan  
Mike Titus  
Kevin Underwood

**Ex officio**

David Scott  
Bob Waltz  
Fred Whitford

**Members Absent**

Scott (Donald) Robbins

- 1. Approval of the meeting agenda...MOTION...** to approve by Steve Dlugosz and Rick Foster; **VOTE...** was unanimous
- 2. Approval of the previous meeting minutes (April 8, 2019).** **MOTION...** to accept by Mike Titus and Bruce Bordelon; **VOTE...** was unanimous
- 3. Review of cases involving civil penalties since the last meeting...**  
Ron Hellenthal-Whenever there are public health concerns, there are always people that jump into the system with miraculous cures and it is the duty of OISC to get those products off the shelf. I noticed a number of such cases in this summary.
- 4. 2019 Eastern Equine Encephalitis emergence and response...** Presentation by Lee Green about the mosquito-borne alphavirus epidemic and how it greatly affected Southern

Michigan and Northern Indiana earlier this year. This is the first time this has affected this area since 2002 and caused a lot of financial impact of horses and human.

[https://www.oisc.purdue.edu/pesticide/iprb/iprb\\_159\\_eastern\\_equine\\_encephalitis\\_virus.pdf](https://www.oisc.purdue.edu/pesticide/iprb/iprb_159_eastern_equine_encephalitis_virus.pdf)

Fred Whitford- We will have the extension services remind people in the spring about vaccinations against this epidemic.

##### **5. Draft revisions to state pesticide rules prompted by recent federal applicator certification & training rule revisions...**

Ron Hellenthal- There is no written documentation on this yet.

Dave Scott – We anticipated having a draft for everyone to take home and 3 weeks ago Dicamba started again and we lost all opportunity to do that. Currently there are a dozen different rules, and about 6 or 7 of those rules have certification and licensing and recordkeeping components in them. We are looking to update and consolidate all of these similar requirements. We are evaluating the potential benefits of segregating requirements for Restricted Use and General Use products. We are looking at a holistic revision of certification and licensing and record keeping. Some things have changed over the last 20 years. The board has discussed penalties assessment in the past, and now we can look at the how the penalty assessment process might be improved. We have some experienced long-tenured members on the board.

Bob Andrews – Are you going to have a study group?

Dave Scott– OISC will probably take the first reorganization look at it and then come to the Board. Some things will be Board things and some things OISC things. But they go together. We will provide ample opportunity for discussion. If the board decides that there is a need for a study group then one can be created.

Bob Andrews– Seeing a big increase in turnover, a few years ago we added schools, 33 different school corporations and the level of knowledge is low. We have had to back down in our training in order to bring them up to speed.

Dave Scott– We are not the same as we were 40 years ago and things have changed. I think this will allow the opportunity to differentiate between all of the changes, and we will want the input from the targeted audience.

Ron Hellenthal– A lot of what is needed here is to consolidate things into a single place instead of having to deal with each individual things separately. After we get to that point, we would bring that to the board and discuss.

Fred Whitford– Do we have to go thru the General assembly to get the changes completed?

Dave Scott – We are not talking about changes of fees, so we do not have to go to the general assembly. We do not envision that and will be going thru rule making.

Fred Whitford– 1 year to 1 ½ years?

Dave Scott– That is an optimistic time frame.

Q -Leo gave a presentation in the last meeting. Are things heading in the direction that he discussed?

Dave Scott– Yes. Tracking pretty closely. Record keeping has been the same since 1976. This may be an opportune time to revisit some of these rules. Some things are not required by federal law anymore so why keep doing it. Does recordkeeping at golf courses need to be the same as commercial?

Ron Hellenthal – Once there is a draft set of revisions, it will be fully discussed at a board meeting. The board would vote on this and then open to public discussion. Going to happen how all administrative laws are made. Nothing in rulemaking will happen automatically without full input from everyone.

Dave Scott– Always an opportunity for public input into rulemaking. If we need a special committee for input, we will do that. In the meantime, OISC will do some initial editing and cutting and pasting of like rules together. We will bring the results of the editing process back to the board for review.

Q – Blessed to have a great relationship with the State Chemist office and other states have their hands full.

**6. Dicamba 2019 off-target movement response & plans for 2020...**Presentation by Dave Scott

[https://www.oisc.purdue.edu/pesticide/iprb/iprb\\_159\\_2019\\_dicamba\\_plans\\_2020\\_DRAFT.pdf](https://www.oisc.purdue.edu/pesticide/iprb/iprb_159_2019_dicamba_plans_2020_DRAFT.pdf)

We have been talking about Dicamba for 10 to 15 years as a board. We have been talking about this specific product on Soybeans for the last 3 years. We can hopefully identify a path forward for 2020. The products are up for federal reregistration in 2021, so today's discussion will be for the 2020 growing season in Indiana. We are talking about a state registration decision by the State Chemist. This board, by law, is the first level of appeal. We will not be asking the board for a vote today on this proposed state chemist action.

This is not a nationwide problem. We are talking about a problem that is in the top 10 soybean producing states. Arkansas has kind of led the fact of the issues with Dicamba. This has been a very divisive issue since implementation. Response and response strategy. 2017 thru 2019. We have not yet finalized many of our 2019 investigations. You can see what portion Dicamba complaints have been of all Ag ground complaints.

Will talk about the Resource expenditures. Went from over 2500 samples in 2017. Found out these samples told us very little information to help in the investigation (drift, inversion...) I will share some cost figures with you. These are just cost figures just on Dicamba in our office and not expenditures by others or environmental costs. Does not include what the office is not doing since we are doing 65% of our complaints on Dicamba.

These are some of the things we did to help reduce our costs. If misuse is what is causing the issue, what can we do to change the behavior of those non-compliant applicators? Found from years one and two that it is not hard to find label violations. Are we gaining on compliance? We offered two types of investigation options to the complainant. Complete compliance investigation (same as we have done for the last 40 years) or documentary only investigations. With the second option we went out, viewed the issue, and reported relative to yes, your property has been exposed to Dicamba. We can do the documentary investigations in a day. The down side is that we could not evaluate if there was compliance or not compliance.

We have been tweaking the response policy and have been sharing this policy with this board. There have always been design label restrictions on the label. Dicamba has caused us to change the way we look at things. The new label has about 20 design label restrictions. However, we are learning that the only option we have is reviewing the violation of the label. The penalties have been in effect since 1988. We have found that those penalties are not an incentive to change their compliance. So now, we are going the route of license suspension or revocation.

The proposed application date is June 20, 2020.

Ron Hellenthal- Before we begin the discussion about this issue, this is not a simple issue. This issue is one of the harder decisions that we have had to address over the last 20 years. Some people have a serious issue with controlling weeds. There are sensitive crop areas that are concerned. The board prides itself on listening to all points of view. The board is composed of all areas and approach everything on a consensus point of view. Please be respectful. Our goal is to consider as many points as possible and come up with a fair and equitable outcome.

Dave – There may be some confusion based on the slides that were presented as to the OISC label restriction decision. The only thing we are discussing is the June 20<sup>th</sup> cut off date for application of the product.

#### Comments from the Audience

Tom Schmidt – Bayer Crop Science - We as AG we need to all work together a little bit better. Per Dave, there were 178 investigations this year. Every affected field could be represented by more than one investigation. Therefore, the 178 investigations does not necessarily represent the number of fields that showed any kind of symptomology. A conservative example of where we are viewing things. Of those 178, if we presume 150 represent actually affected fields. And we assume each of those fields show symptomology across 100 acres. That is 15,000 affected acres in the state of Indiana. There are 6 million acres of soybeans planted in Indiana this past year. 2.5 million of those were non Dicamba Tolerant soybeans. So, if there were 15,000 acres presenting symptomology, that is less than 1% of the acreage showing any symptomology. Farmers need resources to combat weeds and keep their field clean. There are very few resources, very limited resources out there to really help combat those. But right now the Dicamba tolerant soybeans and Dicamba technologies offer great protection against these resistant weeds. We also look at the cut of dates and I know we have June 20 on the table here. Ohio did not have a cutoff date and they had 25 complaints/investigations. Illinois more than doubled their

complaints when they added a cutoff date. We honestly do not know why. There was not a lot of opportunity for people to make good applications because of the weather. Did that drive people to make bad applications? The federal label mandates a 45 day after planting as a cutoff date. Bayer's investigations have gone down drastically over the last few years. Your growers are using this correctly. They know how to use it. They are using it to combat weed pressures and they need this technology desperately throughout the entire season. Have that flexibility to meet the needs of the grower.

Amy Cornell – President of Agri Business Council of Indiana –This is a very complicated issue. Within the membership of ACI, there are a lot of different opinions on how to best handle this issue. The majority of our membership has asked for there not be a favorable recommendation today on the June 20th cutoff date. We have many folks within our membership that have not had a complaint against them or where the complaint numbers have been very low. And so, from their perspective they do not necessarily see the causation. They do not understand why they would be subject to additional restrictions. There is also a lot of concern particularly for our members in Southern Indiana. The complaint numbers in southern Indiana are much lower and the planting dates, particularly in the southeast have historically lagged behind the rest of the state. Concerns from our membership about the impact of being able to use that technology throughout all of the season including on double crop soybeans. There has also been confusion in the industry regarding the flexibility of this state. We have heard today where some states were lobbied to push it back and they agreed to push it back or that they were lobbied and they didn't. There has been multiple conversations over the course of time about whether or not a cutoff date in Indiana would be flexible or not. I think we need to have clarity up front on what this truly means and what the flexibility is. We can't have the situation where you are looking at a neighboring state and pointing to their cutoff date and the fact that that was extended and maybe saying that is part of the reason why they saw an increase in complaints or maybe not. That adds confusion. We need certainty and what the flexibility is. We don't know what the state laws are in each of those states. What would trigger a complaint? We have heard several times that under Indiana state law, just the fact that a soybean was crinkled but there is no yield or economic damage, that that is still a complaint under Indiana State law. We don't really know if we are doing a true apples to apples comparison. Some of our neighboring states have not chosen to implement a cutoff date as of yet. We also have heard the Office of State Chemist concerns regarding the changes in the enforcement policy and ACI is part of a working group with other organizations that is working on a proposal. We have heard the concerns about the low level that they State Chemist is allowed to fine based on statute, but we also have concerns about the enforcement policy continuing to change over and over and we think that is another area that needs more consistency.

Fred Whitford– We can do nothing and just follow the label. But there is a million dollar cost to the State Chemist Office. Are your groups willing to pay more money? We would have to raise from \$20 to \$400 in order to help with these costs. There is a cost component that nobody is addressing. If we do nothing and the numbers continue, who is going to pay for this? Who is going to pick up the tab? If we are throwing farmers under the bus, then someone has to pick up the costs. We have been talking about this for 3 years. I am not

hearing any solutions. OISC cannot enforce the label. I am asking both speakers where does the cost come in and those kind of considerations.

Amy Cornell– I think the question regarding the OISC funding and resources is fair and folks have not asked us about this before. You also have to look at the calendar year.

Bruce Bordelon- It is 4.3 million up to now. If you find a violation and you charge the violator and put the costs to the violator, testing and investigation costs, then you would probably recover funds and you would probably change behavior too.

Kevin Underwood– The concern, I think for most producers is probably related to the arbitrary date and hoping that we can see the point where we are going to have more availability of the new technology that has been mentioned. I understand the corner that we have been backed into as well. We, ourselves have not been using the technology specifically to spray post beans because of the issues we are seeing with the off target movement.

Steve Howell –Indiana Soybean Alliance - Appreciated the state chemist effort to keep this technology available in Indiana. Farmers wonder why the June 20 cutoff date. Is this the right date for Stueben County and the right date for Posey County. I know you have to keep it somewhat simple to implement. Why not a June 30 cutoff? Some of our members thru that out there as an option. We do appreciate any discussion we can have with the industry on a more robust enforcement policy that will curb bad behavior. We do appreciate any opportunity to work on that. We do have some concerns about the three strikes and you are out. I think that needs some time for to be absorbed and understood by farmers.

Steve Smith - Red Gold – I think we have heard a vain attempt to muddy the waters about the problem. The problem is real. I think we all know that the number of claims that come in are not the number that are actually happening out in the world. There are estimates that there are actually 5 to 10 times more claims than reported. As a public policy, I think it behooves this board to make sure that you are protecting everyone's interest. I sincerely believe that Red Gold's entire business is at risk if one big mistake by an applicator would come along because of zero residue tolerance we have to completely destroy a farms tomatoes. If the problem is so minute as we have heard, why don't the manufacturers step up and compensate losses? If it is not a big deal, what is the risk for them? There is no way that cut off dates actually would have any bearing in increasing reports. To the contrary, it probably kept numbers down. Complaints are bound to go down as the percentage of tolerant beans go up. June 20 is not the right cutoff date. June 1<sup>st</sup> would be a lot better. I understand that is probably not likely. June 20 is not nearly the date it should be. If that is truly the goal of the Pesticide Review Board and the State Chemist to get the complaint down to the 20's or 30's then should be a date you might look at.

Megan Abraham – Question for Steve Howell – What percentage of your folks growing soybeans in Indiana are using the new technology.

Steve Howell –That is something I don't have a handle on but I would like to find that out. That is something I will look into.

Julia Tipton-Hogan -I think that would be very helpful. That piece of information feels like it is an industry secret. Over time pulling those numbers out of the producer has felt that is something that they are not giving us. This time you gave us a lot of good numbers

Tom Schmidt -One of the issues with reporting how much Dicamba is sprayed, we don't know. We know how much Dicamba we sold but we don't know on what crop it was sprayed and when, and whether it was bought in Indiana and applied in Illinois. We have estimates. Know there were about 3.5 million DT beans planted in Indiana this year . Hard to track where the chemistry is being applied and when.

Bruce Bordelon – Dave, does the office keep that information?

Dave Scott – No. We do not keep that information. Other states have tried it. The best is that they default to USDA survey data. People are supposed to keep records of the application, but probably possible with today's technology but today I do not know of anyone collecting such data. Don't have a way to assimilate that information.

Bruce Bordelon – We have long-term data from crop and weather meetings that our guys go to on soybean planting dates, when 80% is planted, 90% planted year by year long term. So we should be able to compare that June 20<sup>th</sup> date to the 45 day post plant and see where that is at.

Julia Tipton-Hogan – I think that there is the issue of the different parts of the state. How many weather zones do we have in our state?

Bruce Bordelon– Two winter climate zones. It ranges quite a bit in southern Indiana. About a three week range.

Julia Tipton-Hogan – Yes. Exactly. This resonated a lot with me but it might really muddy the waters.

Bruce Bordelon – You cannot do it by climate alone because some of the areas are wetter and such.

Fred Whitford– Many of our people, both farmers and specifically commercial applicators have already set a self-imposed cutoff date. Is that a fair statement?

Mike Titus – I cannot speak for anyone else but you within our own situation yes we self-impose some dates within our own company. It is all about risk and how much risk you are willing to accept. We need a product. We need that tool in our toolbox. I have never seen a situation in my life like this before. It is not a new compound. It is very unique and emotional. There is a lot of money involved here from everybody. And I think there are other companies that have done this as well.

Fred Whitford – Whatever that date is, you have been able to come back on your farmers and provide weed control because if you didn't, you would not be in business.

Mike Titus – I think we have done a fair job with that.

Fred Whitford - Not great but fair.

Ron Hellenenthal –The process of asking for a changed or a specific cutoff date is relatively straightforward. For example, if we have had a wet year and it was clear that the cutoff date that was established needs to be change, that is a relatively trivial task to do. Or if in fact that different parts of state need different cut off dates, as I understand it that is simply a matter of requesting the change to the EPA and it would probably be approved in a matter of days. If we had a date, that date is not written in stone. That is subject to change based on local needs. OISC trying to look out for the best interest of the people of the people of the state.

Tyler Starkey - Agri Business Council of Indiana- The EPA is reevaluating how they do the 24c. That is something to take into consideration

Dave Scott – For 20 plus years the EPA has allowed the states to use 24c to add state restrictions to labels. They said that they would not change anything until we get stakeholders input and they have not done that yet. We have heard a rumor that they are going to start doing that. They have been missing in action in 2019. In 2017 and 2018 we were talking with them on a weekly basis about what is going on out here in the real world.

Seth Dibblee – As a general principal at EPA is that, we typically allow states to make regulatory decisions that are more stringent than the federal decisions for any given topic or media.

Steve Dlugosz– Dave. About the flexibility, could you envision that being a regional type of thing or does it always have to be one for the whole state.

Dave Scott – Not it doesn't, but it is obvious the more complicated you make this, the more difficult it is to implement. There will always be the issue of saying well I was confused. Keep it simple. Any differentiating decision that you make sould be based on logic.

Steve Dlugosz – In this day with the internet, you list the county and they can check. Again they have to go back to the web site to check stuff for the label.

Fred Whitford – That is something that extension can get information out in the trade magazines. So that is doable.

Julia – So you are agreeing to have different cut off dates based on what is happening in different parts of the state.

Steve – You have this cutoff date but it is subject to change based on planting patterns, weather patterns or whatever, so there is potential for the need for adjustment.

Ron – Are there any other speakers that would like to make comments, specifically on the June 20 proposed cutoff date.

Bob Andrews – What is the role of the board on this issue? The Chemist Office makes the change and the board is not being asked to vote on this.

Ron Hellenthal– If the change is approved, then it can be appealed.

Bob Andrews – If a person does not like it, then they can appeal to the board?

Dave Scott– A special hearing can be set up to make a decision.

Bob Andrews– I am not in the soybean business, Having sat in on past hearings, I am amazed at the lack of outrage by the people that were affected. Board responsible for a lot of topics we are not talking about because we have been talking about Dicamba for 2 hours of every meeting. Believe something needs to be done and the \$100 fine is a joke and the licensing revocations should be for a longer time frame. There needs to be some method of cost control. The State Chemist has spent an enormous amount of money on this one problem. There are a lot of other issues that are not being covered at all.

Steve – How much did they recover from imprecis ? Be careful with the Dicamba. It is a very common active ingredient in the lawn control industry. Dicamba is a component of a lot of what you spray. Dicamba is used in a big way in your industry.

- 7. Next Meeting...** Scheduled for February 20, 2020 at the John S Wright Forestry Center, 1007 N 725 W, West Lafayette, IN 47906