



INDIANA PESTICIDE REVIEW BOARD

162nd Meeting Minutes
August 6, 2020; 10:03 am – 10:55 am
Office of Indiana State Chemist
175 S University St.
West Lafayette, IN 47907

Members Present:

Bruce Bordelon
Ron Hellenthal (Chair)

Members Present Virtually:

Jamey Thomas
John Bacone
Julia Tipton-Hogan
Kevin Underwood
Lee Green
Martha Clark-Mettler
Megan Abraham
Rick Foster
Bob Andrews
Scott Robbins
Stuart Orr

Ex officio

David Scott
State Chemist - Vacant
Fred Whitford

Members Absent:

Jim Hawbaker
Mike Titus
Tim Gibb

- 1. Approval of the meeting agenda...MOTION...** to approve by Rick Foster and Bruce Bordelon; **VOTE...** was unanimous
- 2. Approval of the previous meeting minutes...MOTION...** to accept by Bruce Bordelon and Rick Foster; **VOTE...** was unanimous
- 3. Roll call vote on acceptance of IPRB Civil Penalty Work Group recommendations to the Indiana legislature...**
Ron Hellenthal: Third item on the agenda, roll call vote on acceptance of the Civil Penalty Work Group rule recommendations to the Indiana legislature. You want to introduce that, Bruce? Give

us a summary?

Bruce: L.E., can you post the proposed document on the screen? Dave, you'll probably be as anyone to address this...

Dave Scott: Okay.

Bruce: I can introduce it, as the chair of that group. It's on the pesticide review board website as well. The civil penalty work group was established by the legislature last year and we met for the first time in May, had a little bit of a delayed start due to COVID, but once we got going, we made fairly rapid progress and we've come up with what we feel is a very good solution to the existing civil penalty rules that are in place. I'll turn it over to Dave Scott to let him give an overview of the new proposal.

Dave: Thanks, Bruce, I'm going to focus primarily on the changes that the work group made since the last meeting of the entire board earlier this year. The primary changes are relatively minor. Scroll down to the first yellow highlighted area. (Thanks, everyone for your patience.) This document has been posted on the review board meeting website, probably since about July 18th.

The first change we made is item number 6, distinguishing when the violation relates to storage of a mini-bulk container outside of secondary containment. And again in this language we are distinguishing between both mini-bulk containers which are designed to be portable and larger, permanent bulk containers which are meant to be permanent and stationary. We are also distinguishing between mini-bulk containers containing general use pesticides and those that contain restricted use pesticides. Previously those were lumped together but it was pointed out that there should be a distinction between those storing restricted pesticides versus general use, with a higher penalty to those containing the restricted products-- because they are often a threat to groundwater/water quality or to humans upon exposure. That's one of the changes made from the last meeting. Ron, do you want to ask for audience input one topic at a time or all together at the end?

Ron: Why don't we ask for comments or questions one at a time, since there's really only a handful.

Rick Foster: I have a question. Is it redundant to say "non-restricted general use" or is there a "restricted general use" or would general use be sufficient?

Dave: That's a great catch, Rick. It is redundant and it is redundant on purpose. General use is not an official term. They're either restricted or unclassified, but in general parlance, everyone refers to them as "general use" and we're just trying to make the distinction abundantly clear. But, yes, it is redundant.

Ron: Any other questions or comments? ...If not, let's go on to the next point.

Dave: The next item is section 7, this is a continuation of splitting out the general use mini-bulk pesticides from the restricted use mini-bulk pesticides, the reason this one looks a little bit different is that this category/grouping applies both to restricted mini-bulk or any bulk pesticide container. The difference being if it is a large, permanent storage container that is uncontained, whether it be general use or restricted use, this is the penalty that would apply, in addition to mini-bulks containing restricted pesticides.

Rick (?) : Do we have a definition separating mini-bulk from bulk?

Dave: The question was, do we have a definition separating mini-bulk from bulk and we do, it's the containment rule, we make that clear. And, actually, I prefer to keep it this way in the event we have to tweak the definitions at some point, we don't have to tweak the statute.

In essence, as we did with the last issue we discussed, are there any questions or comments?

The next item, highlighted in yellow, as pointed out at the last review board meeting, as it was stated previously it wasn't clear if only one or all of these mitigating factors could be applied to a civil penalty fee, for example, could a violator only qualify for 20% mitigation or, if you did all three of these things, the penalty could be mitigated by 60%. The intent was to apply each that were applicable to the violation to a 20, 40, 60% reduction in fee. We have used the word "each" instead of "any" and we believe that clarifies the intent that all three could apply and the could be cumulative. Questions or comments on that change? Hearing none, we'll proceed.

This one, which I believe is the last (one more each in another section)-- this was pointed out in the last full board meeting. It was pointed out that we have a variety of off-label use penalties but we neglected to include an additional scenario, you could have the misuse of general pesticide with no resulting adverse effect, you could have the misuse of general pesticide with a resulting adverse effects, you could have the misuse of restricted use pesticide with a resulting adverse side effects, but we had failed to account for the possible misuse of restricted use pesticide without adverse side effects. So we inserted or added this number to account for that possibility.

As discussed at the last meeting, in practicality, it's probably rare that we would document the misuse of restricted use pesticide without adverse side effects –usually, no one calls us to come investigate if there is no adverse effect-- but it is possible. One of the most logical possibilities of such an occurrence might be failure to comply with worker protection requirements on a label for example... there's no obvious resulting document-able adverse effect, but it's still off label use. Any questions or comments on that change? Hearing none...

The final change is another incidence of changing "any" to "each" – this language is redundant from the last section and the purpose for the redundancy is we're talking about two different chapters of the statute, IC 15-16-4 that deals primarily with product registration and the rules and regulations and requirements under that and IC 15-16-5 which deals primarily with applicator certification and licensing and pesticide application, so there is a need to make it consistent from one chapter to the next. I'll ask if there are any questions or comments on this revision. Hearing none, I'll turn it back over to you, Ron or Bruce.

Ron: Any general comments or questions? None? Then a movement for adoption.

MOTION... to approve by Bruce and Ron; **VOTE...** was unanimous

Ron: On behalf of the board, I would like to thank the members of the working group for, really, an extraordinary effort, bringing what might have been a very divisive discussion to what amounted to a consensus, including members of the regulated community. I truly think this was an enormously important product and I hope it will be received by the legislature in the spirit in which it has been provided.

Dave: Can I ask John Baugh to make a few comments on how the process will proceed with this recommendation at this point?

John: I have talked to Senator Leahy and representative Liesing, both are willing and want to carry the legislation. I told them we'd have language for them by September 1st, I didn't want to over-promise, so it looks like we're going to be well ahead schedule for that. I will talk to them

and we will get it into legislative services, they will get it drafted and move forward. In the meantime, I think it would be very appropriate that either or letters or emails to the state chemist in support that we could pass along to those folks, saying we were part of the process, we watched the process, we feel good about in the end product, we are in support of this recommendation, something along those lines. It is critical to these legislators that the industry shows their support. The second thing is to be prepared to be called upon in committee hearings, be ready to step forward and testify. If there is any issue or need to alter-- it will go back through the process. We don't want to use this bill for anything that would be controversial at all. Thank you all for your hard work and all the good will that has developed from this process and the work that has gone into it. I think we can move this fairly quickly so long as everyone stays on board and in agreement.

Ron: I've watched all the videos and thank you for your enormous contributions

Bruce: I agree, I appreciate John's input. It was helpful to have him on board. I believe that a request for letters has been sent out, it's something we need to follow up, and that's something I'm happy to help facilitate.

Ron: One other short item— Office of Indiana State Chemist drift data that George was going to present to us... George go ahead.

4. Review of Drift Cases

Dave: Again, we're just trying to identify for you data that we have collected historically, data that you've probably seen over the last four years or so. We started charting our off target movement or drift complaint response investigation data by active ingredients, that became important a few years ago. So you can see what types of ingredients are involved in drift cases more often than others. This is just an indication of the top four over the last 15 years or so.

Ron: Are these counts equivalent counts, for the entire season?

Dave: All of the data is for the entire year, except for 2020 as we're still in the middle of putting that data together.

Ron: But is this a typical reflection of other years? Is it likely to go up a lot from here?

Bruce: This has been a better year for planting, so I imagine there will be fewer drift complaints, compared to last year, which was disaster.

Dave: One of the challenges was getting the active ingredient specific information in a form we can present it, usually you're not able to do that until the end of the year, but we are able to track dicamba complaints because we've been tracking dicamba complaints specifically and we usually know when a complaint comes in that we suspect it's a dicamba complaint. But for the other ingredients, such as glyphosate, you will see that number go up once we finalize some of those cases.

Ron: Normally, dicamba has already been used, right? So it looks like a real improvement, is that a fair assessment?

Dave: Yeah, I think there's an improvement if your estimation is fewer incidents, 2020 is an improvement.

Bruce: Again, we don't know whether that's due to enforcement or weather. This has been an extraordinarily good year for planting, compared to last year, 2017, 2018, both of which had a real wet spring.

Dave: I think you'll see that reflected partly in the total complaints, you'll see that as we're coming through.

George: I have taken a poll of the field staff, and although they do believe weather has had an impact and 9th circuit court has an impact, they all believe that the cutoff date was the most significant factor in reducing drift complaints. We're about 90 down from where we were last year, according to OCM, we had about 90 of those come in August-- my phone has fallen silent on dicamba complaints now.

John Baugh: Question back to the slide-- what do you contribute the increase in glyphosate for those three years? Was it because it was part of the dicamba mix?

George: Yes, almost all of those had a glyphosate dicamba mix and that shot the glyphosate numbers up quite a bit.

John: Thank you.

George: As a matter of interest, whenever we keep track of these ag drift complaints, it's all ag drift, we've had approximately 13 Aerial drift cases, so those numbers are up just a bit... to coin a phrase, we've probably flattened the curve. Most of the investigators feel it's probably the June 20th cutoff date that's had the biggest impact on that.

Martha Clark-Mettler: Can you explain that a little more for me? Is it because it gives you less time to apply before it gets windy?

George: Looking at the data before this meeting, last year we had about 90 drift complaints come in in the month of August, I don't think we're going to get those this year, because anyone who is going to complain about dicamba already has.

Dave: Martha, if I can add, it may have to do with temperature. Higher temperature leads to a greater volatility with dicamba products... It could due to a more advanced stage of neighboring crops, if you apply when they're in a sensitive stage... if they're not emerged yet, they aren't impacted while in the later in the year you go, the more plants may be there to impact.

Martha: So this cutoff date was a mandated date?

Dave: Yes, June 20th was a state restriction above and beyond what the federal label required. Several other states did so too, IL, MN, SD, ND... but those are all state actions above and beyond EPA requirements.

Martha: All right; seems like you made the right choice.

Rick: Do we have it sorted out what's mostly being impacted in the complaints? Which crops?

Dave: We are tracking that data, it may not all be in the database yet. Most of these are non-target movement to non DT soybeans.

George: No, you are correct. In the spring we get a lot of homeowner complaints, about their trees their ornamental, but then it's impacting non DT beans, those are the complaints we get. We're including documentary, so they don't have to have confrontations with their neighboring farmer, that has boosted the numbers a little bit, but most of it is impacting non DT beans.

Dave: Looking at it holistically, it was a good year to avoid drift. Maybe that had a lot to do with favorable conditions. Overall numbers look better and the dicamba numbers on top of that look better.

George: Right. If we got those same 90 complaints this year, the numbers would bounce right back up to the 2019 levels, but I don't expect that to happen, and that's due to the cutoff date.

Dave: Questions for George?

Seth Dibblee: George, this is Seth with EPA Chicago- I wondered if you've had any complaints of any post cutoff use? Of use of dicamba after June 20.

George: One. Yes, we've gotten one-- they were in a time crunch and have actually admitted that they did it, but yes, we have one that we're investigating where they applied after the cutoff date.

Seth: Okay, thanks.

Dave: Any other questions? No... Ron, talk about next meeting?

5. Next Meeting...

Ron: We need to have one additional meeting this year. The date is uncertain as part of it going to depend on what EPA might do between now and the end of the year. Considering that we seem to be successful at having virtual meetings (hopefully there won't be many more) it seems like it might make more sense to hold on deciding the date until its clear whether we will need a specific response to whatever comes across. Given that, we'd like to defer any decision about a projected date-- three months from now would put it in early to mid-November, but it might have to be sooner than that depending on what is expected of the board.

If there are no objections to that, then, when the time comes, we will canvas everyone to find an acceptable meeting date.

Are there any objections to that? ...

Dave: The only other comment I will make-- potential topics for future meetings, as Ron indicated, reacting to EPA decision on dicamba use on soybeans for the upcoming year, that'll be important to us as it has been the past five years. In addition to that the only other agenda item in the queue... we will maybe have some decisions related to enforcement appeal hearings, figuring out if we can do that virtually and safely between now and a future board meeting. There may be a panel decision to vote on at a futrue meeting, but in addition to that, the intention is to get back to an overall rule revision, collectively deciding if adjustments or tweaks are necessary. Started that process over six months ago, got sidetracked due to COVID, but we can get back to the business of that, of maybe approving and fine tuning our rules. Some things are of significance only to the State Chemist Office for revision, other things are significant to industry and public, once we start that process again, we'll get that information to you, hopefully in a timely fashion,

so please be prepared to make comments on those, because we'd like to do rule changes as an entire package rather than one at a time.

Unless there are other agenda items folks think we should put into the queue, and we're open to that.

Ron: Contact me or Dave if there are other such items. We've completed the agenda, we can take a motion for adjournment. If there are no other items, let me have a movement for adjournment?

MOTION... to approve by Ron and Bruce; **VOTE...** was unanimous

Ron: Thank you for your attendance.

DRAFT