



INDIANA PESTICIDE REVIEW BOARD

February 8, 2022; 9:03 am – 12:02 pm

Beck Agricultural Center
4550 U.S. Highway 52 West
West Lafayette, Indiana, 47906-9286
765-583-0590

<u>Members Present:</u>	<u>Members Present Virtually:</u>	<u>Ex officio</u>
Bill Johnson	Julia Tipton-Hogan	David Scott
Bruce Bordelon	Martha Clark-Mettler	Mark LeBlanc, State Chemist
Christian Krupke	Scott Robbins	Fred Whitford (virtually)
John Bacone		
Lee Green		
Ron Hellenthal (Chair)		
Mike Titus		<u>Members Absent:</u>
Megan Abraham		Kevin Underwood
		Jim Hawbaker
Bob Andrews		
Jamey Thomas		
Stuart Orr		

1. Approval of the meeting agenda
https://oisc.purdue.edu/pesticide/iprb/iprb_168_draft_agenda_011322.pdf
MOTION to approve by Bob Andrews, seconded by Lee Green; **VOTE**... was unanimous
2. Approval of previous meeting minutes (November 17, 2022)
https://oisc.purdue.edu/pesticide/iprb/iprb_168_167_draft_minutes.pdf
... **MOTION** to approve by Bob Andrews, seconded by Christian Krupke; **VOTE** was unanimous
3. Review of cases involving civil penalties since the last meeting
https://oisc.purdue.edu/pesticide/iprb/iprb_168_case_summaries.pdf
 - Fine structure, new law went into effect last July
 - July 1st – penalties, if act occurred prior before July 1st it was the

- assessed based on older structure
 - Prior to July 1, penalty assessed to business
 - After July 1, penalty assessed to applicator even though business may pay it.
 - New penalty, misuse with an RUP = \$1,000
 - Questions on what can be mitigated, options for abeyance
 - When someone reports an unregistered pesticide is being sold by a retailer, is there a any notice that goes to the retailer
 - SSURO/AO issued against the product
 - Brick and mortar/retailer - compliance assistance, locations are given warning letters on first count. Future violations will likely receive penalties
 - It is possible for all retail and distribution locations to know what is registered in the state of Indiana (state product search; NPIRS)
 - PS21-0373
 - Dispute between two neighbors; alleged deliberate spraying of children
 - An article of clothing was sampled, but no significant residue was found
 - OISC routinely requests clothing samples and takes samples near the location of the alleged exposure.
4. Update on mosquito control drift mitigation efforts (Bob Andrews, Lee Green)
- First training is 2/9/22
 - Goes back to 2021 when there were concerns about drift due to residential mosquito applications. It is a growing business
 - Sept, 2021: First meeting to bring industry together about mosquito control
 - Found out that one group, didn't know what the other group was doing/knowledge (biology, red flags, equipment, etc)
 - Began development of a training program
 - We are very committed to onsite, in-person training.
 - Worked across industry and stakeholders to create planning/programs
 - Next year, mosquito applicators will be part of Category 8

Discussion

Julia: Is anyone grandfathered into Cat 8 from another category or will they have to do full training

Dave: We have no plans of grandfathering anyone into Category 8.

Leo: There is little content in Category 7A training or exam addressing mosquito management, no plans of grandfathering in

Julia: How do I know what you are going to teach in Category 8 will address the off-target issues we are experiencing?

Ron: There is an entire training document/manual, it is very comprehensive

Julia: Concerns about safety – we already have two rules that the newer application technologies (fogging) will apparently break

Fred: PPP Category 8 training course, is high level. I see adding discussion related to the backpack foggers, application. Plan to include elements of the program that Bob Andrews & Lee Green are putting on.

Julia: Confused about formulations, persistence, pollinators

Fred: Recommend Julia goes to a training to see what is presented. Following the labels is very important

Dave: This is a work in progress; Fred has made a commitment/recognized that Cat 8

needs to be expanded, updated (manuals, training, and exams). We can continue to address in the continuing education (CCH sessions). Proper products, adequate use assessments, labels are accurate; we are still working to figure this all out. We have questions to EPA to ensure the safety of residential mosquito control. Dave is drafting a white paper/issue paper with other SLAs to ask EPA questions related to these concerns. Where is Cat 8 exam in the queue to be revised?

Leo: 4th on the list

Julia: Impact on children, concerns about previous work that we have done,

Dave: OISC does not do our own exposure scenarios, personal health evaluations – we are defaulting and relying on EPA for a lot of this. We want to limit involuntary exposure.

Seth Dibblee (EPA Region 5): Do I understand that the material in this training is going to be exposure reduction tactics and other elements that are not identified on the label?

Lee: Yes, that is the main goal – best management practices. 1) chemicals have not been developed specific for mosquito control in 60+ years; because of the wide spectrum; the label language is not specific to residential mosquito control/backpack sprayers. Residential vs Community mosquito control needs to be clearly identified/explained.

Seth: the white paper/issue paper is going through the process to be addressed

Fred: We will try to get this information incorporated into the April Cat. 8 training class.

Martha (virtually): Is OISC thinking about ways for neighbors to be aware/informed of upcoming applications?

Dave: Notification/pre-notification is a whole different conversation. Only notification requirement we have right now is for lawncare and schools. Posting of flag on lawn. There is a recommendation for community wide mosquito control, best business practices.

John: How would we follow up on the complaints? Is there going to be a mechanism for complaints?

Christian: There is a difference applications exposure risks for disease prevention vs quality of life for the target customer – a lot of these concerns (butterflies, children) can be mitigated if people are up to speed with that these applications have a lot more hazards. Take the fear/paranoia out. Include in the training, an explanation of the biology; reducing the fear (chance of getting West Nile in your backyard... cost/benefit?)

Lee: Yes, in the training it specifically states not to make health claims on residential applications. There are minimum locations where “resting site” applications will take place. That is where application should be targeted.

Julia: To Dave, in your white paper – are you going to discuss notification?

Dave: Not at this point. EPA might ultimately identify that notification is a necessary mechanism to mitigate risk, but for now that is not our objective.

Rick Perdue (IOMA): In the Landscape Industry, we treat for insects all the time, it seems that the whole concern is with the mister/fogger. What if the lawn was treated with larger droplets?

Lee: the benefit in the mister is the coating of the bottom of the leaves with finer droplets. More product is used with larger droplets. Misters aren't new they are just popular in achieving the objective of good lower leaf coverage.

Christian: Do we talk about efficacy? Does it work? How well does it work?

Dave: We talk about this in the registration process, every day. We do look at efficacy. Does the board talk about efficacy – with 25(b), we typically don't with Section 3. If it doesn't work, someone is going to figure that out (extension specialist, growers, etc) It's not off the table but we don't get in the weeds on it.

5. Drift data review for 2021 & dicamba herbicide update for 2022

https://oisc.purdue.edu/pesticide/iprb/iprb_168_drift_data.pdf

Dave presented the information in this link. Discussion...

Megan: Is this happening all over the country or just a concern of the top 10 soybean states?

Dave: It's mostly the top 10; but dicamba is overwhelmingly impactful to soybeans

If the board wishes to take a vote, or make changes, we can. OISC proposes we stay at least where we are. The number of dicamba complaints is still not ideal.

Christian: Things are about as reasonable as can be expected. What is one thing you would recommend to reduce numbers even more?

Dave: Moving the date up even more. June 1st, most of the violations would go away. What is the balance of protection we can put in there to still allow our growers to utilize the technology?

Christian: So, Bill, what if we move it to June 1 or 10?

Bill: When the drift numbers were so high, adoption to DT was increasing. This growing season, the number of acres of DT soybeans being planted in IN is going down. Post-emergent spray season – we had more application dates than in years past. The market is reacting, there is a continual decline. Many are moving over to 2,4-D tolerant soybeans.

Bruce: Will 2,4-D data go up?

Dave: most 2,4-D complaints come from burn down applications earlier in the season, not OTT applications.

Bill: Takes at least 10x as much 2,4-D than dicamba (soybeans are more sensitive to dicamba) to illicit an exposure response.

There was no proposal by the Board to change the HVH designation or the current June 20th application cutoff date.

6. New Endangered Species Act (ESA) & runoff restrictions on Enlist herbicide labels

https://oisc.purdue.edu/pesticide/iprb/iprb_168_enlist_herbicide.pdf

- Product registrations expired 1/12/22; decision/revised labels
- “likely to occur” language (enforceable or not?)
- We might be looking at the future of herbicide label mitigations.
- Support of the board in providing next steps/training support
- EPA’s Endangered Species Announcement. Identify EPA’s concern with being sued recently. Balance act to comply with ESA and have products registered for use
- Enlist Press Release: “likely to adversely affect listed species...”
 - o Approximately 200 counties in the USA are listed
 - o No Indiana counties

Discussion

Martha: How frequently do the bulletins change?

Seth: Bulletins change on a rolling basis; but typically updates in the EPA system once per year, unless there is some significant development in information/habitat (e.g., a newly listed

species).

Christian: Regarding the runoff mitigation credit slide, a lot of IN will easily make the 4 or 6 credit requirements. Tillage in soybeans are going to help a lot; it's not going to be hard to get there. Check the soil data and see if there is going to be any major concerns with the basic details for Indiana. Conservation program signups.

Bill: this may not be as hard as it looks. Mike, for applicators – what does this mean for your group? Responsibility on the applicator

Mike: complying with the blooming vegetation restrictions may be the most challenging. Ok, so another label I can't follow. We need to be more vigilant.

Bill: if you put more of the burden on the owner of the ground; in the long term, conservation items that relate to the land may be more beneficial.

Jamey: we'll see when this gets to other labels – re-registration review, registration was about to expire, litigation. Defense from litigation for registration decisions is pretty tough – EPA just didn't do it without cause. It is so difficult and puts a barrier on newer technology. ESA “jeopardy” language is very important, EPA is getting closer to that concept. Language on the label is driven by litigation.

7. Update on rulemaking process for draft revisions to pesticide rules

https://oisc.purdue.edu/pesticide/iprb/iprb_168_355-IAC-4.pdf

- Dave: this draft is the same as that voted on at the last meeting with the exception of the wind and weather requirements having been removed from all recordkeeping requirements except agriculture application records.

Discussion

John: this would not apply to mosquito applications discussed earlier

Bruce: would non-ag need to take any wind speed/direction?

Dave: No

Ron: noted default 75% passing score on all certification exams has been deleted, can Leo, provide brief explanation about setting exam pass/fail scores?

Leo: the rule that is being changed, previously said 75% or set by committee. For the last 30 years, we set the pass score by subject matter expert committee. Same people that work with OISC in the specific exam development. We rewrote this section of the law, will be established by OISC with consideration and recommendation of the committee.

Dave: we are in the process of revisions to certifications because EPA has made changes to the federal requirements.

Leo: We can look at values, assessment, P-values. Percentage of individuals that have gotten the question correct. We feel setting an arbitrary passing score in rule without considering the difficulty of the measurement tool (the exam) would be arbitrary and capricious.

MOTION to approve this draft for preliminary rulemaking by Bob Andrews, seconded by Mike Titus; **VOTE...** was unanimous

https://oisc.purdue.edu/pesticide/iprb/iprb_168_355-IAC-5.pdf

MOTION to approve this draft for preliminary adoption by Bob Andrews, seconded by Bruce Bordelon; **VOTE...** was unanimous

https://oisc.purdue.edu/pesticide/iprb/iprb_168_355-IAC-1.pdf

Dave: this draft is the same as that voted on at the last meeting except for Sec.1-5-4; requiring commercial applicators removing granular fertilizers and pesticides from non-target impervious surfaces following application. OISC estimates that 90% of the industry already complies with this long-established BMP, but the intent is to create regulatory

support to address the remaining 10%. OISC already had discussions with IPLLA and they supported this proposal.

MOTION to approve this draft for preliminary rulemaking by Christian Krupke, seconded by Stuart Orr; **VOTE...** was unanimous

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Next meeting: May 10, 2022

1:00 p.m. Adjourn