



INDIANA PESTICIDE REVIEW BOARD

171st IPRB Meeting

November 9, 2022
Daniels Turf Research &
Diagnostics Center
1340 Cherry Lane
West Lafayette, Indiana, 47907

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

9:02 a.m. *Call to order*

1. Approval of the meeting agenda

https://oisc.purdue.edu/pesticide/iprb/iprb_171_agenda_102822.pdf

MOTION to approve by **Bob Andrews**, seconded by **Lee Green**; **VOTE...** was unanimous

2. Approval of previous meeting minutes (August 9, 2022)

https://oisc.purdue.edu/pesticide/iprb/iprb_169_168_draft_minutes.pdf

MOTION to approve by **Mike Titus**, seconded by **Bob Andrews**; **VOTE...** was unanimous

3. State Ethics Training

IPRB members were asked to complete training and asked to send email to L.E. that you have completed the training by 12/30; link to training will be available.

4. Review of cases involving civil penalties since the last meeting

https://oisc.purdue.edu/pesticide/iprb/iprb_171_case_summaries.pdf

PS21-0081; pest control company, repeatedly operating without a business license; have we collected the fine? OISC responded, not yet.

PS22-0044 Ebay selling RUP Golden Malrin (methomyl) Fly Bait in plastic bags to noncertified end users. Question to OISC: Ebay warned for violation; what responsibility does Ebay have? They aided in the illegal distribution. But, Ebay was very responsive and quickly removed repackaging-sellers from their site.

5. Review of annual civil penalty collection data since 1991

https://oisc.purdue.edu/pesticide/iprb/iprb_171_fines_for_education.pdf

OISC: Several 2021 and 2022 civil penalty cases are still pending.

2022 represent the first full year of new civil penalty schedule from 2021 law change.

Fred Whitford: This civil penalty money to PPP goes almost entirely into publications; not connected to PPP salary.

Question to OISC: Has the documentary investigation option, inspection but no enforcement, impacted the number of fines? OISC: Many of these complaints may not have been filed if potential enforcement against their neighbor was required. Question to OISC: how many documentary cases are there in a year? OISC: for drift, approximately 50/50 for enforcement vs. documentary. This option was extended to drift cases other than just dicamba drift.

Virtual Comment: Phil Marshall, IDNR is receiving an increased level of reports of herbicide damage to oak trees in State Forests. IDNR is going to set up monitoring trees to possibly determine off-target herbicide impacts on trees. Most reports are for White Oak. These occurrences are reportedly also occurring in IL, MO, IA, and other states. The impacted trees are not necessarily adjacent to agricultural fields.

6. Review of OISC license suspension & revocation actions in recent history

https://oisc.purdue.edu/pesticide/iprb/iprb_171_history_of_revocations.pdf

Question to OISC: Revoked for not attending mandatory training; did they ever get trained?

OISC: not aware of the person taking the training.

Question to OISC: is there a time limit/length required for revocation?

OISC: not provided in law or rule; we are following the recommendations from AG; 5-year certification cycle; internal OISC policy is 5 years; reportedly similar to state M.D. license?

Virtual Comment: Claire Dyer, Deputy AG: Revocation for medical licenses is not less than 7 years.

OISC: Most of the cases for suspension & revocation are personal licenses rather than business licenses.

Question to OISC: How many applicators are in Indiana?

OISC: 30,000 credentials; 500 RUP dealers; 10,000 farmers; 15,000 commercial applicators.

OISC: Our enforcement response policy has guidance for suspensions and revocations, but those criteria, which have been revised frequently in recent years, are not established in law or rules; OISC also examines similar action criteria from neighboring states in an effort to approach consistency, where appropriate; to achieve adequacy under our state plan for C&T, EPA is asking OISC to add a provision about revocation & suspension in our state law; the take home message, it is very hard to correctly identify the specific criteria for a fair assessment; annually it is a very limited number of people that could be revocation/suspended.

7. Review of the Clean Sweep Project

https://oisc.purdue.edu/pesticide/iprb/iprb_171_2022_cleansweep_report.pdf

OISC: it appears OISC will need to increase the size of our annual grant request from EPA for future clean sweep projects; OISC will work with EPA Region 5 to see if we can increase.

Fred Whitford: PPP willing to help via penalty money, as they have in the past, if needed.

Mike Titus: We need to continue this program; it is needed; if this stuff is left sitting around, the integrity of the container is at issue.

OISC: the timing annually for collections is usually 2nd & 3rd week of August.

8. Update on residential mosquito control questions posed to EPA

https://oisc.purdue.edu/pesticide/iprb/iprb_171_sfiredg_mosquito.pdf

https://oisc.purdue.edu/pesticide/iprb/iprb_171_mosquito_response.pdf

https://oisc.purdue.edu/pesticide/iprb/iprb_171_res_mosquito_update.pdf

Julia Tipton Hogan: concern with the lack of label language; not understanding the mist blower- what it does/where it goes/etc; the mist blower has a whole different method/application and that doesn't seem to have been adequately reviewed/looked at.

John Bacone: All the effort in pollinators (monarchs), there was a 4-prong approach – one of them was urban; hard to believe that there is no ecological risk from off-target drift/drift

OISC: when EPA performs risk assessment, they are calculating based on 100% compliance with the pesticide label.

Fred Whitford: From a training perspective, based on how EPA has responded, it is not helpful information.

Scott Robbins: point 1 of EPA's response, the applicator has the most exposure. Christian Krupke

Dave Scott: correct, but that still assumes 100% compliance with all label direction; still does not address direct applications or exposures to bystanders; the label does not prohibit direct drifts or exposures to bystanders.

Lee Green: Baselines – permethrin is used on the skin for many pests (on people & pets); we do know that there is some direct exposure calculation/use; when/where do we get to this baseline Threshold? What's the level of concern? What's the actual risk?

Julia: The issue is that we have a rule that no drift is acceptable

Ron: We do have a drift rule; you can't drift in a way that causes harm... what constitutes harm?

Mark LeBlanc: if a homeowner grows organic vegetables; does that drift harm? what about a neighbor's pollinator garden? we can't solve the health part – what is a homeowner's right to not have chemical residues in their backyard?

Dave Scott: I think failure to address the legality or illegality of direct bystander exposure was an oversight when EPA was making standard/generic language for non-ag uses.

Comment/Question: mosquito mister; what about the person applying the product – the Ag product says you can't apply on any person? Does the applicator not count?

Dave Scott: the applicator is off label if he is not wearing label required PPE, but PPE requirements do not apply to the bystander.

John Bacone: different types of application (misterters) and support in training to utilize the correct training can minimize the drift. Training is very valuable.

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

Dave Scott: Public hearing scheduled for 2:00 pm this afternoon to take comment on proposed rule 355 IAC 4; several elements that were voted on in November 2021 and approved by the board were removed during the review and approval process with OMB; what remains in the proposed rule are the elements that are not more restrictive than federal requirements and have almost zero fiscal impact on business; what we were left with are largely new C&T provisions required by EPA.

Fred Whitford: training sessions to qualify as an RT are already scheduled for early 2023.

Rick Perdue: Why is new RT training only ½ day versus whole day for Core?

Fred Whitford: scope of requirements for GUP use only is more narrow than certification track candidates.

10. Revision of the IPRB Dicamba Highly Volatile Herbicide (HVH) Determination

OISC: It has been rumored that EPA might be in negotiations with dicamba OTT registrants to revise label restrictions again for the upcoming season; application cut-off date could be June 12th rather than June 20th; so the question is, if that happens, do we make any adjustments to our HVH permit for dicamba?

Bill Johnson: Enlist tolerant soybeans initially in market place since 2020, we had rapid adoption in Indiana; projections for 2023 suggest farmers will plant 60/75% Enlist soybeans and 30/35% Xtend soybeans; the issue of impact on non-target trees is huge in IL and IA; the exposure symptomology aligns with herbicide exposure.

OISC: does IPRB want to make any adjustments to HVH permit based on the potential for revision to cut-off date by EPA?

MOTION to change HVH cut-off date to coincide with any earlier EPA cut-off date by **Bruce Bordelon**; due to the lack of a second to the motion, there was no further discussion or action.

11. Development of residue guidance for prima facie evidence of drift

https://oisc.purdue.edu/pesticide/iprb/iprb_171_one_percent.pdf

Virtual Comment: Phil Marshall - Acetochlor herbicide were found causing white oak tatters and also can impact feeder roots of white oak

OISC: proposing to start using interpretative guidance for investigation samples that recognizes 1% or greater off-target residues, as compared to target residues, is likely prima facie evidence of drift; please advise OISC if you see any problems with the logic in establish this guidance; it may impact slightly alter the types of environmental samples collected, but won't change the scope of or processes OISC compliance investigations.

12. Status of OISC online licensing capabilities

Dave Scott: no tangible/milestone or progress to report;

Mark LeBlanc: OISC is close to releasing an RFI for new software development, but probably still a couple of years away from implementation; OISC did establish some internal processes for speeding up the current, largely manual, license renewal process.

Bob Andrews: for many reasons; these license renewal delays are problematic for industry, i.e. unpredictable timing of reviews and audits by insurance vendors, due diligence reviews by potential customers, etc. IPLLA will encourage lawn care businesses renewing to do so as early as possible.

Date for the next meeting: February 8, 2022, location TBD.

1:00pm Adjourn

This meeting was conducted both in-person and virtually.