

November 28, 2016

Meeting Notes

Indiana Pesticide Review Board

Work Group to Explore Regulatory Options for Dicamba Herbicides

Work Group Members: Steve Dlugosz, Bruce Bordelon, Joe Becovitz(OISC), Kevin Underwood, Fred Whitford(PPP), Ray Brinkmeyer, Mike Titus, Dave Scott (Board Secretary)

1. The work group met on October 28, 2016 to discuss possible regulatory mechanisms that may be appropriate for Indiana to help safeguard against:
 - a. Unintended consequences of dicamba containing herbicides on new dicamba tolerant crops (soybeans); and
 - b. Willful off-label misuse of dicamba containing herbicides resulting in off-target damage and conflicts.

NOTE: At the time of this meeting EPA had not yet made a registration decision on the pre-plant and post emergent dicamba uses on the new tolerant soybean technology. EPA announced the acceptance of product labels with these new uses of some dicamba product(s) on November 9, 2016.

2. Work group discussions included the following:
 - a. We do not wish to stand in the way of new technology that could be very useful/valuable to growers in controlling very problematic weeds that can significantly impact crop yields.
 - b. We are very concerned about the perception and reality of possible government overreach (over regulation) where it may not be warranted.
 - c. We are strong advocates of education and outreach to address safe and legal application of dicamba containing herbicides.
 - d. We are very concerned that the incentive to some growers and custom applicators to misuse dicamba containing herbicides, with or without a federal registration, may be too great to resist, especially in consideration of the very limited regulatory responses (i.e. small civil penalties). The 2015 and 2016 growing seasons in Arkansas and Missouri were cited as examples.

- e. We are concerned that the stewardship training for applicators and users that was to have accompanied this new technology may not have been very widespread or effective to date.
 - f. We are concerned that independent University researchers may not have adequate experience with the new technology to provide detailed input into the decision making process before us.
 - g. We are interested in providing safeguards to all potential stakeholders (soybean growers, custom applicators, sensitive crop producers, homeowners, etc.), but believe that any regulatory response should be based on science and be measured, in consideration of what we know to date.
 - h. We are concerned about any unintended negative consequences from any regulatory action.
3. Work group recommendations include:
- a. Make dicamba containing herbicides state Restricted Use Pesticides(RUPs) to create a mechanism to:
 - i. control and track distribution to certified applicators only; and
 - ii. Insure special handling and use training can be provided.
 - b. Limited state RUP classification to only those dicamba containing products that are labeled for or could reasonably be used/misused for agricultural purposes (i.e. new soybean technology).
 - c. Monitor dicamba use during 2017 to see if there is a need for additional regulatory safeguards such as buffers, use date restrictions, geographic restrictions, etc.
 - d. Notify directly impacted stakeholders immediately of any proposed regulatory action by the IPRB.
 - e. Ask OISC to focus some resources on regulatory compliance inspections of the dicamba herbicide distribution chain.
4. Request that registrants/manufacturers of the new use dicamba products be prepared to address questions including:
- a. Do you have a position on state RUP proposal for dicamba?
 - b. What is the current status of the non-target maximum residue level work being conducted and reviewed?
 - c. What is the status of the legality of tank mixing new dicamba product(s) with glyphosate or other products?
 - d. What are your plans and schedule for introducing the new product(s) in the channels of trade/distribution?
 - e. Will 2016/2017 products include just primary registrant brands or will licensing and sub-registration arrangements exist with other distributors/registrants?

- f. What adjuvants can legally be used with new product(s)?
- g. What outreach/stewardship is planned on what schedule and by what mechanism(s)?
- h. Have you supplied effective and plausible environmental residue testing methods to regulators?
- i. What are the latest label use restrictions/precautions intended to minimize off target impacts?
- j. Can you provide details or estimates of the number of Indiana acres that may be planted to new technology soybeans during 2017? 2016?
- k. What is your promotion plan/schedule for product distribution?
- l. What label/labeling will be on containers in channels of trade in Indiana during 2017?
- m. Has Xtendimax with Vapor Grip Technology (EPA Reg. No. 524-617) container label filed with OISC on 9-19-16 been distributed on any containers to date?
- n. What is the target date for incorporating the currently accepted label and the supplemental labeling recently accepted by EPA?
- o. What is the science behind the Xtendimax technology?
- p. What are other states doing relative to acceptance or state regulation of Xtendimax?

5. Review the rule making authority of the IPRB.
SEE ATTACHED.

As added by P.L.2-2008, SEC.7. Amended by P.L.120-2008, SEC.64.

IC 15-16-4-47

Board; per diem and travel expenses

Sec. 47. The following individuals appointed to the board shall serve without compensation but are entitled to receive per diem payments at rates and under conditions incident to these positions:

- (1) State officials.
- (2) Staff members of state offices.
- (3) Staff members of the Purdue University office of agricultural research programs.
- (4) Cooperative extension service staff members.

Other members are entitled to reimbursement for traveling and other expenses as provided in the Purdue University travel policies and procedures, established by the Purdue University department of transportation and approved by the Purdue University vice president of business services.

As added by P.L.2-2008, SEC.7. Amended by P.L.120-2008, SEC.65.

IC 15-16-4-48

Board; information concerning pesticides

Sec. 48. The board may:

- (1) collect;
- (2) analyze; and
- (3) interpret;

information on matters relating to the registration and use of pesticides.

As added by P.L.2-2008, SEC.7. Amended by P.L.99-2012, SEC.7.

IC 15-16-4-49

Declaration of injurious pests

Sec. 49. (a) The board may, after notice and public hearing as provided in IC 4-22-2, declare as a pest any form of:

- (1) plant;
- (2) animal life; or
- (3) virus;

that is injurious to plants, humans, domestic animals, articles, or substances.

(b) When a hearing is held by the board, the board may designate one (1) or more persons as the board's agent or representative to conduct the hearing.

As added by P.L.2-2008, SEC.7.

IC 15-16-4-50

Rules

Sec. 50. (a) The board may adopt rules under IC 4-22-2 to do the following:

- (1) Establish a list of restricted use pesticides and pesticides for use by prescription only for all of Indiana or designated areas within Indiana, if the board finds that the characteristics of a

pesticide require that rules restricting the:

- (A) sale;
- (B) distribution; or
- (C) use;

of the pesticide by any person are necessary to prevent undue hazards to persons, animals, wildlife, lands, or waters, other than the pests that they are intended to prevent, destroy, control, or mitigate.

(2) Provide for the safe:

- (A) handling;
- (B) transportation;
- (C) storage;
- (D) display;
- (E) distribution;
- (F) disposal; and
- (G) production;

of pesticide products and pesticide containers.

(3) Restrict or prohibit the use of certain types of containers or packages for specific pesticides. The restrictions may apply to the:

- (A) type of construction;
- (B) strength; or
- (C) size;

to alleviate danger of spillage, breakage, or misuse.

(b) The board may adopt by reference the restricted use classification of a pesticide that is maintained by the United States Environmental Protection Agency.

(c) The board may adopt rules to do the following:

(1) Determine the time and conditions of the:

- (A) sale;
- (B) distribution; or
- (C) use;

of pesticide products.

(2) Require that any or all pesticide products be purchased, possessed, or used only under:

- (A) permit;
- (B) certificate;
- (C) license; or
- (D) registration;

of the state chemist or under certain conditions or in certain quantities or concentrations.

(3) Require all persons issued:

- (A) permits;
- (B) certificates;
- (C) licenses; or
- (D) registrations;

under this subsection to maintain records as to the use of the pesticide products.

As added by P.L.2-2008, SEC.7. Amended by P.L.99-2012, SEC.8.