



INDIANA PESTICIDE REVIEW BOARD

November 30, 2016; 9:03 a.m-1:12 p.m. Meeting Minutes

Daniels Turf Research & Diagnostic Center

Cherry Lane (SR 126)

Purdue University

West Lafayette, Indiana

Members present:

Ray Brinkmeyer
Megan Abraham for Phil Marshall
Julia Tipton Hogan
John Bacone
Bob Andrews
Ronald Hellenthal (Chair)
Steve Dlugosz
Bruce Bordelon
Lee Green
Mike Titus
Kevin Underwood
Cyndi Wagner for Martha Clark Mettler
Ellen Jacquart

Ex officio

Dave Scott
Fred Whitford

Members absent:

Tim Gibb
Rick Foster

1. Approval of the meeting agenda...**MOTION** to approve by Steve Dlugosz & Kevin Underwood; **VOTE** was unanimous.
2. Approval of previous meeting minutes (August 18, 2016) ...**MOTION** to accept by Mike Titus & Ray Brinkmeyer; **VOTE** was unanimous.
3. Attorney General's opinion on ability of the IPRB to mitigate proposed penalties...reviewed 8-22-16 email from Deputy AG Kevin McDowell indicating that OISC does not have the legal authority to mitigate the amount of civil penalties so designated by rule, but that the IPRB does have the authority to modify any action of OISC...proposal for establishing protocol to bring mitigated penalties to IPRB for action before a formal appeal hearing; concern that excessive penalties may draw unwanted legal or legislative attention with the potential for unintended consequences; existing legal appeal process allows for preservation of the accused rights, why change that?; if process is changed now is that unfair to others handled under another process?; if IPRB is to mitigate, what criteria would we use?; appeals don't happen frequently, so current process is not over burdensome; regulated clients subject to other agency enforcement with much larger penalties; OISC coming to IPRB in advance of assessing penalty is consistent with the concept of the IPRB having the authority to modify OISC actions, as deemed appropriate...**MOTION** by Bob Andrews & Kevin Underwood to allow OISC to come to the IPRB with mitigated penalties for IPRB consideration; **VOTE** was one yes

and eleven no; motion did not pass...the three member IPRB administrative law judge panel designated to hear appeals volunteered to continue to serve to hear the three pending appeals; requested that all three appeal hearings be scheduled on the same day for expediency and convenience.

4. Discussion of individual and business liability /penalty for violation...OISC seeking input on whether to assess civil penalties to responsible individual or the commercial business/employer; business should not be able to pass on penalty assessment to employees; it is up to business to recoup penalty from employee if that is their position; similar to insurance coverage and liability, it is the business not the individual that settles that liability; OISC should send violation notice letters to both the business and the responsible applicator, but the penalty should go to the business; does accumulation of violation number 1st, 2nd, 3rd, etc. accumulate for the business or the individual applicator?; multiple violations for the same company suggests a systemic problem with the business operation, so the violation number should accumulate for the business, not the individual...**MOTION** by Steve Dlugosz & Ellen Jacquart to assess civil penalty and send letter of violation to the business, and copy the individual or applicator as needed; **VOTE** was unanimous.
5. Review of cases involving civil penalties since the last meeting...Case # 2016/1086; question why civil penalty appeared to be so heavily mitigated; OISC usually lists in the case summary the factors that were given consideration for any mitigation.
6. Bulk storage and containment rule revision to exempt some disinfectant users & discussion of regulatory intent of non-bulk activities at bulk storage facilities...if we exempt bulk disinfectant users from containment requirements, IDEM must be notified to address these locations, if needed; **MOTION** by Ellen Jacquart and Bruce Bordelon to initiate the rule revision process for this proposal with the language distributed to the IPRB prior to meeting; **VOTE** was unanimous...IPRB determined that the regulatory intent of the requirements for pesticide handling in the bulk storage & containment rules applied only to bulk pesticides and not pesticides stored in non-bulk quantities at the bulk facility.
7. IPRB work group report on dicamba regulatory response options for 2016/2017...discussion of 11-28-16 work group meeting notes distributed prior to this meeting; work group recommended: 1) make all ag use dicamba products state RUP to require certification of applicators to purchase and use them & require all dealers to be registered to sell them; 2) monitor dicamba use closely during 2017 to assess need to propose additional regulatory controls; 3) notify impacted regulated stakeholders of proposal; 4) request OISC to focus resources on compliance inspections of dicamba distribution chain...Monsanto does not support proposal of state RUP classification of dicamba products, but would support a Sec. 24C state registration to require training of applicators before use; OISC does not support the 24C proposal based on the inability to identify users prior to distribution and use; Purdue CES supports applicator training but does not on-line training as proposed on Monsanto Xtendimax label; IPRB concern about no tank mixes currently approved, history of common use of ammonium sulfate, not enough of the one label required nozzle available to growers/users, potential for misuse of older formulations of dicamba (i.e. MO during 2016 growing season); BASF supports

RUP classification to keep ag dicamba products out of untrained user hands...**MOTION** by Ellen Jacquart and Mike Titus to draft a rule based on work group recommendations for state RUP classification of all ag dicamba herbicides and then initiate the formal rule making process to create an opportunity for CES and OISC to initiate outreach to users; **VOTE** was unanimous.

8. Criteria for evaluation of on-line instruction or training for CCH approval...many other professions allow on-line training; ten years ago when this was discussed IPRB had concerns about ability to implement and monitor; CCAs and others have faced the same concerns about credibility, but prohibiting it may be penalizing the majority to address the cheaters; intent cheaters are going to find some way to cheat any system; face-to-face interactive training is more effective; need to be selective on what is approved; still need regulatory oversight and monitoring to lend credibility; current regulations do not prohibit it, so it is within OISC's prerogative to accept on-line training; limiting % of CCHs awarded for on-line training would require a rule change...**MOTION** by Cyndi Wagner and John Bacone to allow OISC to accept on-line training for CCH credit within the context of the existing rule; **VOTE** was unanimous.
9. Review and discussion of draft Pollinator Protection Plan (P³) for Indiana...Ellen Jacquart has been chairing a work group that has been developing a BMP for the P3 that targets property owners or managers who want to develop habitat and forage that are beneficial to managed and native pollinators; Purdue CES specialists Mindy Appold and Cliff Sadof are developing a less detailed BMP targeting home and garden landscapers who want to promote pollinators; Fred Whitford of PPP has offered to help the work group with editing and production of the BMPs so they will have the look and feel of other BMPs developed under the P3.
10. Next meeting...scheduled for March 2, 2017 at a location to be determined.