



INDIANA PESTICIDE REVIEW BOARD

156th Meeting Minutes
January 22, 2019; 9:09 am - 1:25 pm
Daniel Turf Research and Diagnostic Center
1340 Cherry Lane
West Lafayette, IN 47907

Members Present:

Bruce Bordelon
Mike Titus
Cyndi Wagner
Martha Clark-Mettler
Ronald Hellenthal (Chair)
Rick Foster
Kevin Underwood
Megan Abraham
Julia Tipton-Hogan
Tim Gibb
Steve Dlugosz
Lee Green

Ex officio

David Scott
Fred Whitford

Members Absent

Robert Andrews
John Bacone
Bob Waltz

- 1. Approval of the meeting agenda.** It was voted to add “Appointing an IPRB hearing appeal panel” to the agenda. **MOTION...** to approve by Bruce Bordelon and Steve Dlugosz; **VOTE...** was unanimous.
- 2. Approval of the previous meeting minutes (January 22, 2019).** **MOTION...** to accept by Kevin Underwood and Mike Titus; **VOTE...** was unanimous
- 3. Review of cases involving civil penalties since the last meeting...** Bruce Bordelon stated that he noticed that there were a significant number of businesses doing operating without a license. He asked if many companies just plead ignorance of the legal requirements. George Saxton commented that a lot of feedback and information from others in the industries has led to an increase in such cases. There are also seasonal fluctuations and cycles.

Julia Tipton-Hogan asked about the age of some of the cases. George Saxton commented that much of the delay and backlog in 2017 and 2018 comes from the excessive number of dicamba investigations to be processed and that some respondents do not pay civil penalties upon first notice requiring extra time for OISC to execute the follow-up and finalize cases.

Ron Hellenthal commented that Rural King is on the list again. His concern is with the stores refusal to pay the fine. If one store won't pay, do we contact the corporate office to try to get assistance in receiving payment? George Saxton commented that he believes from previous experience that the corporate office is notified when a store receives an investigation or penalty. If a penalty is under \$1000 and the respondent will not pay, it is sent to Purdue Collections. If a penalty is over \$1000, it is sent to the Attorney General's office. If an unpaid civil penalty is linked to a license or OISC-issued credential, then the license can be suspended until the penalty is paid.

Julia Tipton-Hogan expressed concern about drift violations assessed to private applicators but that only a \$100 penalty being assessed, particularly during the current dicamba drift crisis. George Saxton commented that by law the \$100 fine is all that OISC can legally assess but that OISC has started to suspend and revoke applicator licenses for repeat documented drift offenses. Fred Whitford commented that once OISC levies a penalty, this signals that it is a serious offense. In addition, complainants can pursue civil action on their own, based on OISC findings of violation, if they wish. Julia commented that she does not think that the public, in general, is aware of this option.

Ron Hellenthal commented about two cases 2017/0425 and 2017/0426, both for violators with the same last name, asking if they were related. In each case the business and applicant were not licensed and both failed to pay the fines. Is this a pattern? George Saxton commented that if a business refuses to obtain proper licensing or to stop operating without a license, the penalty can be elevated by law to a Class A misdemeanor, and that OISC can file criminal charges with the local prosecutor.

Ron Hellenthal commented that there were multiple cases of unregistered pesticides being sold or marketed by stores. Does OISC go after the manufacturer for not registering? Once the product is removed from the store shelves, if the store restocks and continues to sell, are there penalties assessed to the retail facility for knowingly selling unregistered products? George Saxton commented that OISC hired Garrett Greason as a Pesticide Product Investigation Specialist for the specific purpose of detecting and then following up on such violations. An action order is issued to the store to hold the products until they receive written notification from OISC that the product can be sold again. The stop sale action order will not be lifted until the registrant properly registers the product. If the store fails comply with the action order, they are assessed a fine. OISC does hold them accountable.

- 4. Appointing an IPRB hearing appeal panel...** The current panel was appointed over a year ago with the intent of one year obligation of service. The current panel is Julia Tipton-Hogan, Bob Andrews and Tim Gibb. It is asked that we have a few additional volunteers so that each member does not have to commit to every hearing, which consists of 3 members per appeal. The new panel consists of Bob Andrews, Tim Gibb, Julia Tipton-Hogan, Bruce Bordelon and Ron Hellenthal (as a backup as needed). It was noted that there is one appeal hearing coming up. George Saxton is working on a timeframe and will get responses from the panel in order to schedule this hearing.
- 5. Pollinator protection activities update...** Scott Minor with the White River Alliance/Clear Choices provided a presentation about the successes of the partnership program. Per Fred Whitford, some of the civil penalty funds that go to the Purdue

Pesticide Programs have been used for this project. Pollinator pamphlets and information are available in the extension stores. The presentation was posted at https://www.oisc.purdue.edu/pesticide/iprb/iprb_156_pollinator_protection_update.pdf.

- 6. Dicamba status report & development of measurement of success for 2019 use season.**...Dave Scott gave a presentation on the objectives of the process to develop a measure of success for the safe and effective use of agricultural herbicides in Indiana in 2019 and beyond, and to identify the data set(s) that may be used in the evaluation and measurement process. The presentation was posted at https://www.oisc.purdue.edu/pesticide/iprb/iprb_156_dicamba_discussion.pdf. The presentation outlined relevant regulatory provisions such as misbranding and misuse, off-target incident investigation data from 2017 and 2018, activities and recommendations of the IPRB Dicamba Work Group, and reactions to those recommendations by agricultural industry leaders and farmers. Related Board and audience discussion included:

Julia Tipton-Hogan - Concerned and thought the work group was going to come back and give their info and input to the IPRB as has been done in the past. Feels like we skipped a step by not voting today. Bruce Bordelon - Agrees and feels workgroup was not given any heads up that their recommendations were not going to be taken into consideration. Steve Dlugosz – The marketplace spoke that they are comfortable with puckered soybeans. The farmers spoke and are comfortable. Let the marketplace take care of this. Marketplace wants neighbors to work with neighbors to resolve issues. Julia Tipton-Hogan – Questions what happened to the IPRB work group process? The public does not know Dicamba the way this Board does, so they have not really been able to input into the process. Dave Scott – I take responsibility for that misstep on process. OISC reacted to industry leaders and a dicamba support letter writing campaign from farmers. Message was that we need to evaluate another full year of use off-target incidents to determine if the 2019 label revisions are adequate to resolve the unacceptable number of off-target incidents. Julia Tipton-Hogan – Wants someone to say out loud that we jumped the step of the work group recommendations. A vote was not taken by the full IPRB. Dave Scott – Again the procedural misstep was my responsibility in an effort to provide a definitive and timely path forward in 2019, in spite of the late labeling decision by U.S. EPA. There were some other legislative and regulatory considerations beyond dicamba. Applicator training and outreach for next growing season has already started and there is a timing issue. Bruce Bordelon – Very disappointing to go through the process and have it circumvented. Dave Scott – OISC decision included the concept that if we can cut off-target incidents by only 50% from 2017 and 2018 levels by implementing work group recommendations, this level may still be is still too high. Expending too much political capital for such modest potential gains may not be worth it.

Question 1. Do off-target exposure symptoms to non-DT soybeans without documentation of negative yield impacts qualify as “adverse effects” under federal misbranding standards?

Question 2. Do exposure symptoms without yield impact qualify as “harm” under state drift rule or stat misbranding standards?

Rick Foster – This is putting the burden back on the person drifted on to prove yield loss. Dave Scott – Can we live with crinkled beans with no yield impact? What is the definition of harm? If farmers suggest that they can accept crinkled leaves on their crop with no documentable yield impact, should we concern ourselves with it? Can we adopt a position that crinkled leaves are an adverse effect? Bruce Bordelon – I believe off-target crinkled leaves does meet the definition of an adverse effect. Steve Smith – Red Gold – Soybean yield impact cannot be measured. You cannot tell if it is 1 or 2 bushels. If you are on a thin string, 1 or 2 bushels is very important to you. If a plant is showing symptomology, there is potential impact. There is no way to prove yield impact on beans. If the 50% is one of my fields, then it is a 100% loss as is vineyards, etc. Why do manufacturers have a higher voice than the silent farmer getting hit? The working group was made up of individuals from all areas. We don't need more data. All state have plenty of data. It is time to fix this illness. Fred Whitford – The decision has already been made by OISC. This debate is not to/or not take the recommendation. For this year, that is not an option. Dave Scott – This year, we have decided to take the recommendation off of the table. The only decision is to prepare for the 2019 application season. Fred Whitford – Ultimately, we are an advisory board. They can decide to not take our recommendation. Bruce – Is this an adverse effect? Therefore, if there is not adequate labeling to prevent these adverse effects, the product is misbranded? Dave Scott – Yes. That is what I am getting at. Are puckered beans an adverse effect? If not, why are we bringing this together? Or does no one care? Steve Dlugosz – The data is not there on gardens. There was only a small percentage of complaints that did not involve non-DT soybeans. Julia Tipton-Hogan – That only represents the small amount of public that knows that there is a potential impact to their property from dicamba exposure. Dave Scott – Do people not know to complain and do people want to document that the problem is occurring? Mike Titus – Within our company, the numbers that we have do not match OISC numbers. Our company had complaints and we take care of these issues internally. There are about 40 or 50 cases last year. These folks did not call OISC. We buy the garden or take the soybeans to yield and write a check for losses. The industry in Indiana has enough integrity and ethics to take care of things. Bruce Bordelon – We only see the tip of the iceberg. Complaints filed with OISC don't actually reflect all of the incidents that are occurring in the state. Tom Schmidt - Bayer – Clearly a lot of questions and topics. Steve Smith – Are there any plans for coverage of damage resulting from applications occurring after June 20th? Would Bayer cover any losses? Tom Schmidt - We will field calls of off target complaints and we will help to understand what happened. We do investigations and take care of issues. We have replaced crops when needed. We are here to work with growers and applicators, and partner to find the cause as best as we can. Fred Whitford – Do we need a vote? Bruce Bordelon - Yes on Question 1 and 2. Ron Hellenthal – Summarized the comments. The points from question 1 connect with question 2. Steve Dlugosz – As an example, Imprelis. The reaction and impact is different. OISC did an emergency stop sale and the EPA followed suit. Mike Titus – 3000 farmers in Indiana and we got 20 letters. Half look like form letters. Bruce Bordelon – We have a responsibility to make sure the adverse effects don't effect anyone. Julia Tipton-Hogan – There is an enormous group of people that are not growers. The list goes on. My representation is not for the farmers. If there is harm on non-DT soybeans, there is going to be harm to other susceptible plants as well. Dave

Scott – Illinois has info on Nature Reserves being damaged. They are discussing the impacts. Tennessee also. Indiana has conversations contained in the ag world with the data information from the last 2 years. Indiana has no control over where the conversation goes next. Arkansas has a different conversation. Julia Tipton-Hogan – I am really confused about what was just said. Dave – We just don't have much firsthand data for the impacts on anything other than non-DT soybeans. If Red Gold had 5 cases of impact then we would have something more concrete. Austin Ferguson – Dulcius Vineyards – Crinkled leaves on non-DT soybeans is like a canary in the coal mines. We have to worry about any adverse effect of off-target issues.

Question 3. Does drift include off-target movement from application during an inversion?

Dave Scott – The EPA recently indicated to us that they didn't know the answer to this question. Bruce Bordelon – Yes if during the application. Steve Dlugosz – That makes sense. Lee Green – The applicator is responsible for the particle until it hits the ground. Dave Scott – The EPA accepted the label language but apparently is unclear whether movement from drift and from inversion both violate the performance standard regarding off-target movement.

Question 4. Should data other than off-target incident data be considered?

Dave Scott – Should we use different measures? Other data sets? Should we start accepting tips and reports with confirmation that yes, that is exposure but not a misuse investigation? Data counted as incident but not a complaint? Reports without samples? Bruce Bordelon – Samples thru PPPDL provide data not used by OISC. Fred Whitford – A lot of third party information but OISC did not see it or collect it. Dave Scott – The proposal is to confirm but no samples, not asking farmers what or when, just documenting exposure. Even with samples, OISC has had only limited success in making legal cause and effect determinations from investigations. Bruce Bordelon – Would you share data? Would you take incident information from Mike? Mike Titus – Concerned about citations and would want immunity. If we share good solid factual data, it should be considered. Ron Hellenthal – Do you agree that verified data should be included in their data? **Vote...** Steve Dlugosz, Yes; Bruce Bordelon, Yes; Objection; no objection. Ron Hellenthal – Agreement to not limit the data for evaluation of a problem to just OISC misuse enforcement investigation data. We do want OISC to verify and confirm the data is not just hearsay. Steve Smith – Red Gold – Yes. I believe that is important.

Question 5. Should incident data for exposure to non-DT soybeans be considered independently from exposure data to other crops or plants?

Dave Scott – Should we have two different data sets or should we combine the data sets from enforcement complaints and verification? Bruce Bordelon – Keep them separate but be able to be combined. Lee Green – Agree. Ron Hellenthal – We can have another line but people are going to want to know or be able to separate the information. Steve Dlugosz – Soybeans have a very specific crinkle from Dicamba. There are lots of things that cause leaves to pucker. Other crops have different things that can make that symptom. Bruce Bordelon – PPPDL looks at different chemistry, nutrition, mites, etc.

Steve Dlugosz – If I am doing my job right, OISC never hears about the complaint.

Ron Hellenthal – So to summarize, we have decided yes, to collect other data, but be able to keep them separate and know where that information came from.

Question 6. Should violation rate be considered?

Bruce Bordelon – No. More data is better. If you know of the violation, it should be considered to be able to improve in the future. The more we know the better we can manage. Ron Hellenthal – Does anyone disagree? No one disagreed.

Question 7. Is there a number or percentage of incidents that should define success?

Dave Scott - If OISC has the same number of complaints in 2019, something has to be done. Have to take into consideration what the weather is like and its effect on drift. What is our target goal that if we don't meet it, then do we make that decision at the conclusion of the application season or do we make that agreement now? What is fair and acceptable? Should it be similar to the number of off-target incidents caused by other commonly ground-applied herbicides or some number or percentage above or below other herbicides? What do we look for as a goal to try to meet for 2019? Our expressed hope is that the 2019 EPA label restrictions and the continued stewardship education and training by the product registrants will achieve the goal. Ron Hellenthal – If application doubles and complaints stay the same... The problem is that we have no idea of the percentage of increase in acreage or volume of actual use of this or any other herbicide in Indiana. Tom Schmidt – Bayer – How much traded seed sold information is available. We can get the data. There are a lot of pieces that factor in. How much chemistry was sold... We can't tell how much was applied and when... We don't know if people are using as pre or post emergent... How much is bought in bulk and sitting in a warehouse... We can give estimates but not hard data. Ron Hellenthal – Is Bayer willing to provide such information for 2018 and 2019? Tom Schmidt – Bayer – Yes. I think we can. Let me check. Will not over promise but we will attempt to provide such information. Dave Scott – That would be useful, but my concern is that suggesting a 4X increase in acreage or use justifies a 4X increase in incidents would be no real reduction in the actual problem. Therefore, the number of incidents would be destined to go up when our goal is to normalize the number of dicamba incidents relative to other problem-causing herbicides. Ron Hellenthal – Not for industry to give comment and use as justification, but for us to use as a tool to evaluate regulatory need. Bruce Bordelon – We need more data. Austin Ferguson – Dulcius Vineyards – To answer this question, is there is a number of dead people, that is OK? Is there is X amount of impacted Red Gold tomatoes that would be considered successful use of these products? Ron Hellenthal – We are not suggesting that is ok. We are just obtaining information for the evaluation matrix. We can't have too much data as long as it is used effectively. We agree 150 incidents is still too many (½ of 2018). The problem is that we don't have a measure for what is working and what is not. The more information we have the more opportunity we have to see what is and what is not working. We need to understand the source of the data. Austin Ferguson – Dulcius Vineyards – What is success really? Dave Scott - Yes. We are looking a specific level of “acceptable dead bodies” to cause an agreed upon regulatory response. We have normalized about 50 complaints a year across all other herbicide chemistries combined. So what is acceptable for Dicamba? Yes. I am looking

for a number. Do we just have to be willing to accept 150 or 250 or 350 dicamba complaints as expected or normal? Steve Smith – Red Gold – When you analyze the data, what if incidents go down 50% and DT usage went up, but what about other areas? Dave Scott – It is important to analyze data independently. If we have no complaints this year but 2 next year is a jump. Mike Titus – Do we not have the same data from past years on Roundup or 2,4-D complaints? Dave Scott – Not currently for glyphosate, but for 2,4-D, yes. It exists in the data but it's a manual search. My thought is, for the highest use products – how many complaints do they generate? Fred Whitford – We need to see trends with other high use products. Cyndi Wagner – The answer is yes, but we just don't have a number. Dave Scott – Not unless someone throws a number out for consideration. Fred Whitford – How many Dicamba complaint last year? 146? You want the board to give a number to say X number is unacceptable? Dave Scott – Yes. Steve Dlugosz – Work group suggested 50%. Certain stakeholders are against limitations. Fred Whitford – Now can we say that the label did not work if we do not see success? Steve Dlugosz – We do not have stakeholders yelling for more Dicamba restrictions. Start talking about the state cancelling the registration and you will see something. Julia Tipton-Hogan – We cannot make decisions based on what people will get upset about. Bruce Bordelon – The board did not make the decision to not follow the work group recommendation. Steve Dlugosz – This will not be going away quietly. What ramps up? Pros or Cons? Fred Whitford – There comes a point when OISC has to consider what is acceptable and what we are willing to fight for because of XYZ. If you have a number, share it with Dave. Dave Scott – My recommendation is to give 10% over whatever the #2 chemistry complaint is. Bruce Bordelon – That is the right approach to take. Dave Scott – Even the cut off date might not do that. To get that number and chemistry, OISC will need to manually find that information. 2,4-D had like 10 complaints a year over the last 10 years.

Ron Hellenthal – On a related note, John Bacone requested prior to this meeting any additional information on Drift Watch and if they are considering to include nature preserves as a protected data layer. Steve Smith – Red Gold and current President of the DriftWatch Board, – We continue to not want to include nature preserves on Drift Watch. It is built as an avenue for sensitive crops. It does not include non-crop areas. Dave Scott – I agree with the philosophy of not including every wooded or forested area in the state, but I think John is asking about nature preserves that are managed by a government agency and considered as environmentally sensitive. Steve Smith – The discussion is not closed. The board is waiting on a decision on a vetting process. Bruce Bordelon – Originally DriftWatch had data layers for environmentally sensitive areas available, but they got stripped out and went to crops instead of environment. Ron Hellenthal – Steve, You can see the need to include this kind of thing. Ultimately including this kind of thing will help your case with Dicamba, it will help document movement. Steve Smith – Will take this information to the board. Julia Tipton-Hogan – They are designated as reserves. Steve Smith – It just isn't within our current scope. Ron Hellenthal – John's proposal is a good test case. Fred indicated that there might be some funds available. There is a strong demand for this on DriftWatch and it is something to consider.

More discussion on these topics will be taken during the next meeting.

- 7. Next Meeting...** Scheduled for April 8, 2019 at the William H Daniel Turf Center, 1340 Cherry Lane, West Lafayette, IN 47907

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