



INDIANA PESTICIDE REVIEW BOARD

DRAFT 163rd Meeting Minutes

November 18, 2020; 9:00 am – 12:30 pm
Office of Indiana State Chemist, Room A151
175 S University St.
West Lafayette, IN 47907

Members Present:

Bruce Bordelon
Lee Green
Ron Hellenthal (Chair)

Members Present Virtually:

Jamey Thomas
Stuart Orr
John Bacone
Julia Tipton-Hogan
Kevin Underwood
Martha Clark-Mettler
Megan Abraham
Mike Titus
Rick Foster
Scott Robbins

Ex officio

David Scott
Mark LeBlanc, State Chemist
Fred Whitford

Members Absent:

Bob Andrews
Jim Hawbaker

1. Approval of the meeting agenda...MOTION... to approve by Bruce Bordelon and Lee Green; **VOTE...** was unanimous

2. Approval of the previous meeting minutes...

Dave Scott: On the first page, minutes should reflect that members present at the meeting were Bruce Bordelon, Ron Hellenthal, and Rick Foster. Rick needs to be moved to the members present column.

Dave: On third page, $\frac{3}{4}$ of the way down the page, under motion, indicates Bruce and Ron made the motion, but my notes indicate it was Bruce and Rick. I suggest we change Ron to Rick. Also, the last item, with John Baugh speaking, it should be Representative Lehe and Senator Leising.

Dave: On page 5, insert "be," in "could be due to a more advanced stage"

Dave: On page 7, Again should be Rick and Bruce that made the motion, not Ron and Bruce.

MOTION... to approve as corrected by Ron, seconded Bruce; **VOTE...** was unanimous

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

Ron Hellenthal: Third item is to review any civil penalties since the last meeting, this should have been available to members of the board. Any questions or concerns on the enforcement actions?

Julia Tipton-Hogan: I was concerned about the number of personal exposures, with fly-over pesticide applications. It seemed high, so I wondered if that is the case?

Ron: Is this out of line for what we're used to seeing?

George Saxton: It is just a little bit high, and it's being monitored since OISC tracks aerial applications separately. I'll pull the numbers once they're finalized to give an exact count.

Ron: I had a question—on PS19-0047 and 0053- is the reason that the state is not taking direct action, is it because the company is based in MI and not IN? Both were referred to the EPA criminal division, but is there a reason why the state can't take direct action?

George- IN can take action, but the state hammer is smaller than the federal enforcement hammer. Plus this alleged violator resides somewhere back and forth between MI and Israel, Dave will not allow us to go to Israel to investigate and follow-up. It made sense to send to refer it for federal enforcement.

Ron: What is the likelihood EPA will take action?

George: I think it's pretty good. They usually follow through, it takes a little bit of time for them to turn around cases, but ultimately they bring these referrals to fruition.

Ron: I just know it was very egregious.

Bruce Bordelon: Are they using a product that's not registered? Or was it that they treated without approval from the apartment complex?

Ron: They didn't follow label requirements for respiratory precautions and people got sick.

George: Any time there is potential for human harm, we take a real close look at that. A lot of civil penalties would probably otherwise be warnings, except for that potential for human harm, which will ratchet that up to a civil penalty.

Melissa Rosch: OISC has 5 total cases with this company "No More Bites Tonight" and 5 separate incidents where this guy from Michigan, came to Indiana, using the food grade version of diatomaceous earth and not the pesticide-labeled product. That made it a little more complicated. In a case like this, where there might be "better" charges coming from the feds, we run it by EPA first to see if it's something they are interested in prior to writing it up and sending it to them. The guy was also offering online products for a "do it yourself" kit, the postal inspector was interested in pursuing that one.

Ron: Does anyone else have other questions, comments about any of the other enforcement actions?

Megan Abraham: On PS20-0071, the guy with the cell phone during the exam, will any other action be taken besides the five-year suspension?

George: No other action besides the 5-year suspension

Ron: If no other comments, we'll move on.

4. Civil penalty legislation under consideration during 2021

Dave: We did take a vote on this at our August meeting, to send that report to legislature, as reflected in the minutes already discussed. Our sponsors are in receipt of those, legislative services has drafted a preliminary draft #3383, that is posted with the meeting documents for today's meeting. I've looked at it very closely, and it mimics exactly the recommendation from the work group. A few things were changed in terms of formatting to fit in legislative service's

style, but as far as the contents go, all recommendations from the workgroup are reflected in the draft. I'll be happy to address any questions.

Ron: Have you gotten any response back from sponsors?

Dave: Yes, from Senator Leising—Leising's aid presented the preliminary draft to me, asked if it looked like what we were recommending, so I looked at it and confirmed that it was exactly what we recommended. I have not spoken to Representative Lehe, I don't know if John Baugh has an update on that.

John Baugh: I have not talked to Representative Lehe yet, There is a draft being made for the house version but I do not know if that will mimic or not. I'll will talk to Lehe to provide a copy.

Dave: One other thing of note, to date OISC has already received letters of support from IN lawn and landscape association and National Aquatic Pest Management Association for the workgroup's proposal as well. That being said, if there are other stakeholders or groups who want to provide written support of the proposal, OISC is still receiving. I will post those letters of support from those two groups. Any questions about the process or the draft?

Julia Tipton: Hogan: Do you think we will be asked to testify? We have in the past...

John Baugh: If this was a normal year, I'd say yes, we'd want to have a small group, but this not being a normal year, I'm not sure how they're going to handle committees. There may need to be a few, but the letters will help tremendously, and we'll work to get more of those. The other thing is, this may end up as one bill and they may not even allow duplicates to go through the process. They're going to abbreviate the process as much as they can. It behooves us to make sure everyone is on board, it seems like everyone is, so we can march in there holding hands saying this is the support we have and no one says "I'm opposed to it," and I think we can move it pretty easily. Can't say for sure whether anyone will be asked to testify, but we'll probably have to have a few.

Mark LeBlanc: Dave and John have discussed and reviewed and I'm in full support the bill and will do what he can to help get it moved forward and get it adopted.

Dave: Thank you for that, Dr. LeBlanc. Since this is your first meeting, if there's anything you want to comment on or correct me on, please feel free to do so.

Ron: Anything else? If not, the next item is review and comment on U.S EPA's recent Dicamba registration decision.

5. Review and comment on U.S EPA's recent Dicamba registration decision

Dave: As a reminder, every document discussed today has been posted with the documents for this meeting on the Pesticide Review Board website.

Finalized numbers for the 2020 use season. Total number of Ag Ground 198. Well over 50% 2017-2019 were dicamba, 2020, only 41% are dicamba. Application cutoff date of June 20 in 2020, believe the 82 of the 198 involved dicamba in 2020 and the June 20 cutoff date was successful, at least somewhat, in mitigating dicamba cases.

Data from the last 12 years to 2008 for the top 6 active ingredients in terms of complaints generated. Glyphosate led the way every year until dicamba and the glyphosate numbers went up in 2017 due to the fact every dicamba was tank mixed with glyphosate. Historically dicamba never reached above 13 complaints (in 2015) prior to 2017. June 3rd Ninth Circuit Court of Appeals issued an order for vacating EPA registrations for Xtendimax with Vaporgrip, Engenia, FeXapan but not Tavium. June 8, EPA issued a cancelation order that did allow use through July 31 if it was already in the hands of the user. After July 31, previous registrations were no longer allowed under federal law. Oct. 27 EPA issued new or extended registration for Xtendimax with Vaporgrip, Engenia, Tavium plus Vaporgrip.

2021 Dicamba label revisions: use of crops is limited to Dicamba-Tolerant soybeans and cotton only. Changed applicators to users, not to be used by uncertified persons working under the

supervision of a certified applicator, except that uncertified persons may transport container. Changed the 45-day post planting application restriction to universal June 30th application cutoff date and R1 growth stage (Xtendimax only), but we aren't sure of how practical the enforceability of that is.

Tank mix **must** include an approved pH buffering adjuvant or volatility reduction adjuvant (VRA), drift reduction adjuvant (DRA) unless web site indicates otherwise, for the Xtendimax label. Replaced application rates ranges with one specific required rate.

Julia Tipton Hogan: Question- I didn't even know there was such a thing as a drift reduction adjuvant.

Dave- they've been around for a while, but have never been mandated on labels, just recommended. They operate on a variety of technologies, some make spray particles bigger and bigger particles are less likely to move, but bigger particles are also less likely to get the job done due to size. There are a variety of technologies to add, and probably not added to all due to reduction in efficacy. It has been up to applicator to decide whether to add the DRA or not. Changed neighboring to adjacent, however adjacent is still not defined by EPA or registrant. OISC will be interpreting adjacent as anything located wholly or in part within 240 feet of target field.

Bruce: does that impact the ½ mile restriction we had before?

Dave: it does, the ½ mile does not appear on a label, it was OISCs interpretation. Did not appear in label or rule or statute.

Other changes, always maintain a 240' downwind spray buffer from the last treated row to the nearest downwind sensitive field, crop or area, that is up from 110' in 2019. Downwind buffers can be reduced to 110' if using a hooded sprayer. Not sure if many hooded sprayers are used in IN.

To protect federally listed threatened and endangered species, both 310' in-field wind directional spray drift buffer and a 57' omnidirectional in-field buffer are required. On U.S. EPA's endangered species website. IN counties, Lake, Porter, Lagrange, Greene, Posey, Harrison Counties are listed as having additional dicamba restrictions.

John Bacone: I do know we have white French prairie orchid listed as an endangered species in White County.

Dave: the EPA website is not our website. Don't know if White County can be added.

Seth Dibblee (EPA R5): I will follow up EPA Endangered Species contact on the question.

Dave: Any comments or questions to the label data provided?

Martha Clark Mettler: Did OISC see draft language, have any opportunity to offer guidance before they issued these new label restrictions?

Dave: No, OISC did extend the offer to EPA, but we were not afforded that opportunity to review or comment in advance of publication. We also made the same offer to registrants, and we were not afforded the opportunity either. Registration decisions for these products are currently in multiple litigation actions, and EPA has gotten sued, and is getting sued, so there may be reasons EPA did not want to share.

Martha: Will OISC be supplying guidance or recommendations for threatened/endangered species? I advise checking the DNR database if EPA site not up to date? Also wanted to confirm cutoff date was what was recommended.

Dave: The June 30th application cutoff date was not what IN recommended. IL, IN and MN all had state-mandated June 20th application cutoff dates last year. EPA chose June 30th. SD and ND had June 30th application cutoff dates last year, but they are farther north and have a later planting season. We recognize that one date does not fit every geographic location. IN gave suggestions on how to address that, and EPA they did not take the advice. OISC certainly should coordinate with DNR and fish and wildlife for endangered species restriction purposes. EPA

made the registration decision and was required to take endangered species into consideration. This also requires a consultation with other federal agencies, such as U.S. FWS. Sometimes there are political motivations when it comes to the endangered species consultation process, but OISC will try to clarify with partner agencies first and communicate what we learn with to end users. Old-labeled dicamba products may not have the same endangered species restrictions on the label. I doesn't make any practical sense, but that's the way it is.

Martha: We have to do those kind of consults on some of our permits, we just found working with DNR way easier, and set up an agreement that that satisfies federal requirements.

I'll circle back to you (Martha) for the right contacts if OSIC doesn't have them, just to start a dialog. Any other questions on label changes?

Bruce Bordelon: what happened to Fexapan? It was vacated but not re-registered?

Dave: Not sure if they wanted to reregister or not.

Jamey Thomas: Corteva expects to have the Fexapan registration in the near future, although it has not been approved yet. Our application will be submitted to IN soon.

Dave: Will it be a copy/paste of the Xtendimax label?

Jamey: Yes, correct.

Dave: The application date data suggest a June 30th application cutoff date could result in a 52% reduction in dicamba drift complaints.

Bruce: After cutoff date we still had 37, was that on beans?

Dave: Yes. There could be a difference in data due to the documentary cases which would not include an application date. Either way, the numbers have been fairly consistent over the life of the product.

Bruce: looks like moving to June 30th will increase it about 14% but will still be about half.

Mike Titus: But those days could be 10 hot days.

Dave: That's the thing with picking a day-- our numbers went down last year, IL numbers went way down in 2020 as compared to 2019. IA and MN, their numbers went up in 2020.

Temperature increases the likelihood this will move off target. June 20th, June 30th OISC feels good about knocking out half the complaints.

Mike Titus- Looking at trends, it's not a perfect system, there's a lot of room for interpretation, but the trends are probably correct. We picked that number, whether it's magic or not, seems to do well for us, so why would we change it? I think we should leave it at June 20th and move on. I think the industry in general can live with that. In my own company, we had some boo-boos due to the weather getting crappy. But we should leave it at the 20th, the rest of all those rules, the industry can live with them. Looking at all the number changes, it would be nice if somewhere, with the buffers, if somebody could simplify, give us one or two numbers to use. My biggest comment is, I like the June 20th application cutoff date. I think we should stay with it.

Dave: Thanks for that, Mike. If OSIC is asked what the appropriate cutoff date would be, based on everything we know, June 20th. That is with the recognition that is still a cost-benefit decision. Without a doubt, there is benefit for the use of the products because there are weeds you can't control without them. We think the cost gets unacceptably high after June 20th. Realistically, if we were trying to normalize dicamba applications, and resulting off target movement incidents, we would probably pick June 5th or June 10th, to make safe regulation of dicamba like every other agricultural herbicide. But dicamba isn't like everything else, it does control some weeds other products won't. But our opinion is June 20th is helpful as a cutoff date, and we would recommend it again.

Lee Green: Scientifically, soybeans are supposed to bloom on the summer solstice, correct? One of the labels actually still has that cutoff date, at R1.

Bruce: It's easier to enforce a date than a flowering stage.

Dave: If we had access—if everybody had access—the grower, the applicator, the regulator, if we had access to documentable data that charted every one of those variables, temperature, wind,

growth stage... a whole bunch of different things in a dynamic, undocumentable system. We don't have that data, so the date on the calendar is the default.

Lee Green: June 20th seems to be a data-driven, scientific date.

Dave: That would be our recommendation going forward, and, if we do decide that's something we'd like to pursue, I'd like to discuss what the path moving forward might look like.

In the past, we were able to add state specific restriction(s) thru FIFRA Sec. 24c, but we've heard that EPA may be changing that provision, at least in part, as it has been allowed to be used in the past, to add further state restrictions. In conversation on Monday with EPA, we asked, and they confirmed that a 24c with an additional restriction on it will not be approved by EPA.

Bruce: Not just for dicamba, but for all products?

Dave: Theoretically, yes.

Bruce: That's a huge issue.

Dave: Yes, that's more complicated than just dicamba. Dicamba is just the most widespread and most visible and most public, and the one that has forced them to look at this decision of policy change. This is a change from the last 30 years; there are some states that maybe have 100 24c's to add state-specific restrictions that aren't on the label, because they need those to protect whatever it is they're trying to protect in their state.

Bruce: The other way to use the 24c if a crop isn't on a label, it can be used to get a state specific label.

Dave: Bruce just described where a 24c label allows more expansive uses of a product, EPA says that is still allowable, still in play, if we have the data to support it, but 24c is not the process intended for restrictions. About five years ago, our association of state pesticide regulators recommended to EPA to add an earlier cut-off date on label, and if states think they can control it, states could use the 24c process to expand those uses. EPA or the registrants did not want to go that way. That was a way to account for geographic differences, but, again, they elected not to go that way. 24c is not an option for use this year. EPA keeps indicating under FIFRA Sec.24a- a state may regulate the sale or use of a federally registered pesticide or device in the state, state can write a rule to be more restrictive, but can't be less restrictive.

If we should pursue an application date through a rule, the Board does have the authority to write these rules. The issue is that, practically speaking, rulemaking takes about 1-2 years to accomplish, and that's if it's generally supported. If there is opposition, it can actually lengthen that process. If you're talking about the 2021 season, rulemaking just isn't an option. One challenge to using rulemaking, once the rule is established, it's a legal requirement. So even if a registrant comes out with great formulation that doesn't move at all, we still have a state mandated cutoff date, and we can't be flexible with respect to that. It would remain a requirement until amended or deleted (1-2 years) or expires through sunset after 7 years, if not readopted. You're still talking about inflexible long periods of time that don't help for the 2021 season.

So, what other options do we have available to us?

IC 15-16-4-17 - "Highly volatile herbicide"

As used in this chapter, "highly volatile herbicide" means a herbicide that the board has determined to be capable of emitting vapors that may cause serious injury to desired plants by reason of movement of the vapors from the area of application of the herbicide to areas inhabited by the desired plants.

Now, we probably have to extract the drift portion of this discussion from that definition, but I believe we are left with, any off-target movement that is not the result of drift is without a doubt,

I believe, the result of vapor movement. Dicamba fits this definition of highly volatile herbicide to a T, and the board may determine that that is what this is, and if it does, then what? Then you look to a different part of the same statute that says:

IC 15-16-4-59 Prohibited acts; use

Sec. 59. A person may not:

(5) use a highly volatile herbicide except on written permission by the state chemist

If the board determines that dicamba is a highly volatile herbicide, then it would require written permission or a permit from OISC to use the product legally in Indiana.

How would we implement that? Obviously not with thousands of written letters to applicators, but would look to things that we as a state are already doing for written permissions.

Ron Hellenthal: One clarification, so the board, in declaring it a highly volatile herbicide, is this simply by majority vote? Or does it have to go through the AG? Is there any other requirement for this determination by the board?

Dave: That's a great question. There is nothing in that provision that says the board must make this determination by rule or regulation. The law is pretty specific. When the legislature intended the board to do something by rule, they tell you in statute, "we want you to do this by rule."

Ron: So, a simple motion that is approved by the board will suffice?

Dave: If the board determines it is a highly volatile herbicide, then it would rest with OISC how to ensure the legal use of it. It would need to be broad in scope and all agricultural dicamba containing products would fall into that category, not just the newer formulations of dicamba.

Bruce: Also, your 2,4 D esters as well?

Dave: 2,4 D esters as well, but that discussion is for another day, but that's a possibility as well.

Martha Clark-Mettler: For IDEM, and we have very specific and elaborate requirements, but the concept could be useful in this case; when we make interpretations of law, we put together non rule policy document. The board might consider making a written affirmation that we've evaluated this and therefore believe this is a highly volatile pesticide. To have that captured in writing and then use that as a reference that can be used to build the general permit.

Dave: Thank you, Martha, I'll follow up to get details on how to do that and share with the board.

Ron: Martha, with IDEM, is there a standard on how what evidence or data needs to meet certain characteristics?

Martha: The only requirement is public noticing or informing.

Ron: The proposal is presented for public comment then approval of the board afterwards is all that's required for adoption?

Martha: IDEM does not require the board approve, just that they hear it. I just think it would be helpful to lay out the policy in writing.

Dave: The concept of public notice and public input is a good thing. So, again, the thought process being to use the Indiana NPDES Pesticide General Permit for the protection of water as a model. Under the water protection, there is a statute that anyone, who applies anything that might get into any body of water, including pesticides, they have to get a permit to do that. We could create a process like that as well. Qualification for legal use under the statewide general permit could be something like application by a certified applicator only, applicator must comply with all label requirements and restrictions, the product may be applied only up to and including June 20, 2021. If it was decided June 20th was not the right date for some reason, this could afford some flexibility to make changes as needed that rulemaking does not.

Julia: With a change of administration, what changes might happen at EPA that could reframe these barriers?

Dave: We asked that question, and EPA doesn't know. With a federal administration change, their position could be different. I'm not an attorney, just the straightforward reading of FIFRA, it indicates an expansion of the label through 24c as opposed to further restriction, but they haven't changed that provision in 40 years. The statute has always said the same thing; they just have a different attorney with a different policy, just how they change and implement that part of FIFRA, they could change it again, but EPA cannot predict or commit to that and do not have an inside track on whether that will happen. EPA plans to publicize their new interpretation and policy, as of today.

Ron: I have the feeling there will be a lot on their plate that they will be reconsidering, and this may not be at the top of the list with the administration change.

Elisha Kemp: Are you hearing what other states are doing?

Dave: They're waiting on results of this meeting, and then they're going to ask us. In IL and MN, the preliminary thoughts of the regulatory program people at my level is that they support the June 20th application cutoff date. Last year IL bumped the June 20th date to June 25th to account for EPA indecision on what was going on. We haven't asked ND or SD, since they've been at June 30th for a couple of years now. Arkansas has done everything by emergency state rule and had much earlier cutoff dates and will probably follow the process they already had in place.

Tom Schmidt: How will this change in classification to highly volatile herbicide potentially effect use in other crops, corn, pastureland, golf courses, sod or turf post June 20th.

Dave: Great question, we would have to consult with grower groups and the Cooperative Extension Service for input. I don't know how deep into the season dicamba is used in agricultural purposes such as for corn, past June 20th or not. We would need some input on that. With respect to the use on turf, I think we have already exempted those low concentration dicamba products through our state RUP dicamba rule. They are not restricted use products today, it's just the higher concentration agricultural products that are RUPs. If restricted to agricultural use dicambas, we may already be targeting the right active ingredient. We don't have lots of data that suggests movement from golf courses or lawn and turf uses. We would have look closely at other ag uses after June 20th. The risk is still the same, late season use regardless of crop, will still be an issue when it comes to risk of off-target movement.

Tom: But the rule would say "over the top," so it wouldn't eliminate things like fall burn down?

Dave: No, but you raise a good point, after fall, when there are not sensitive or susceptible leaves or crops out there for it to impact, we would have to make sure late season use would be allowed in the fall for fall burn down. We could have that language in there, June 20th until whatever date deemed safe.

Ron: All that can be built into the statement that its highly volatile? Could still add qualifiers as part of that?

Dave: There could be written permission.

Bruce: That could be done annually. Is that what you want to do 2021?

Dave: We believe the June 20th cutoff date, as Mike Titus has indicated, isn't perfect and may be more or less perfect one year to the next, but we know what it is and can build around it and adjust for it. The benefits we've seen for the June 20th cutoff date for 2020 suggest that we should implement that again in 2021.

Ron: Is this where we need to go now?

Dave: This is where the board would decide, in the context of what was discussed today, again, we don't have to decide on a cutoff date today, if they determine dicamba to be a highly volatile herbicide. The board can then direct OISC to pursue, whether a policy document as Martha described or not, but for planning purposes, the intent of the board so the user community would be aware of what the board is thinking and building towards. We can't leave them in limbo forever.

Ron: So what would be necessary here, if it would be the will of the board, would be to entertain a motion designating the dicamba products, in high concentrations, as highly volatile herbicide, which then would allow additional restrictions to be put in place? So, you would need board approval for that designation, is that correct?

Dave: Yes, the board is the only one who can determine that dicamba is a highly volatile herbicide, then turn it over to the state chemist to decide how to address the written permissions.

Bruce: Do we have any other highly volatile herbicides on the list, registered today?

Dave: There used to be such products that were considered prescription use only. Those provisions have been in the statute since it was written in 1970's. We did have several other products out there, the cousins of dicamba, the 2, 4, 5Ts, some of those other things that were wider-use and older more volatile formulations of 2,4 D. However, the industry has moved away from those, for the most part. Dicamba was sort of a straggler. We've moved away from those, and with good reason. I don't know that we have any others right now. But if there is wider adoption with other herbicides like Enlist, 2,4 D products, and we learned at some point it starts moving and wiping out grapes, it could be looked at and added to the list. Right now, above and beyond dicamba we don't know if any others need that determination as highly volatile herbicides.

Bruce: Yeah, it's being used in the summer, over the top, that's where the issue is.

Dave: Correct. I will say the complaints we've had from Enlist use, maybe two or three, and that's in the normal range.

Ron: I guess the question is, is someone on the board willing to move that the restricted use dicamba products be classed by the IPRB be classified as highly volatile herbicides, which then would allow them to be further regulated.

Jamey Thomas: I think it's important to get feedback, from the industry. We have a ways to go before next season, so I think getting some feedback and more information that could be shared more broadly before the motion is taken forward might be useful, to allow some time for consideration.

Ron: Realistically, when would this have to be adopted by the board before it could be implemented by the next growing seasons. Could it wait for approval till the next meeting?

Dave: For us, all the way up to first application, for the user, waiting all the way up to the first application date isn't a good thing. My opinion is IPRB could give OISC direction now to start the process to explore what the impacts might be and potential written policy.

Bruce: Without, right now, stating that dicamba is a highly volatile herbicide. That makes the most sense to me, for you to pursue how the permitting process would work and get input from the industry, then the next meeting make a motion.

Dave: it would be helpful to OISC if IPRB would take a vote to give us the directive to start that process, rather than me just doing it on my own, so that if anybody asks, and the other states and EPA are going to ask, I can tell them that OISC has been directed to do this and bring it back to the board, so it's out there, it's public, all the applicators in the state know it's a possibility. It's probably too late now for growers to make decisions to swap out this technology for something else, but we didn't get the EPA decision until Oct. 27, so we're doing our best, we're giving them the notice that this is a possibility. We may do the research and decide it doesn't make sense, but giving the users specific directions would be helpful.

Martha: I'm willing to attempt a motion. I move that the Indiana State Chemist prepare a policy statement to identify Indiana-specific directions for using dicamba in Indiana.

Dave: Did your motion include collecting data that may or may not support classifying dicamba as a highly volatile herbicide?

Martha: Yeah, didn't you hear me say that?

Ron: So, the motion is for OISC to investigate ramification of declaring RUP product as a highly volatile herbicide?

Mike Titus: Do we have to specifically say dicamba, or is it just volatile products at this time.

Dave: Based on historic data we would have no reason to investigate any other herbicide. The numbers for OISC wouldn't support doing the investigation.

Mike T: But doing this motion doesn't necessarily make action towards dicamba at this time, we're just setting up the ability for rulemaking or policy.

Dave: Yes, based on Martha's motion, yes.

Jamey Thomas: Ron stated that the motion would be to investigate the ramifications?

Dave: Ron, can you make a motion, as the chair?

Ron: I try not to.

Elisha: What happened to FIFRA section 24a idea? Is it not feasible?

Ron: 24c's won't get approved by EPA.

Elisha: But the 24 a concept?

Dave: In a nutshell, FIFRA Sec. 24(a) says that a state can add use restrictions above and beyond FIFRA, but that must be through state regulatory processes. In Indiana, that means doing that through rule or the other regulatory option we have discussed today. Rulemaking does not help us for the 2021 season.

Martha motion from chat: OISC review data to determine impact of establishing a policy that dicamba is highly volatile pesticide that may need Indiana specific requirements. Any policy developed will be circulated for stakeholder review, feedback, and input.

Bruce: Motion seconded.

Fred Whitford: If this is voted on or agreed to today, can we mention to people that the cutoff date being explored is June 20th, as we do our winter outreach to growers and pesticide users? It would give us consistency in message from last year.

Ron: As a possibility, it is being considered?

Dave: Fred, this is a public board, this is a public agency, it will be submitted for public review and input. There's no reason not to tell people what we're working on. The mechanism is something that is imposed upon us, whether 24c or this mechanism, the bottom line is Indiana is looking at a June 20th cutoff date for the use of dicamba in 2021. I don't think the rest of the world much cares how we're getting there, but I think it's very fair that you all can tell people that it's something we're pursuing.

Bruce: Could they include how an applicator will go about getting permission, should dicamba be defined as being highly volatile?

Dave: The same way under the NPDES permit. If you are complying with all of the conditions, you are in compliance with that written permission, you have not violated that statute. You don't have to declare it, don't have to submit anything, don't have to put your name on a list; if you're a certified applicator, you're in. If you follow the label directions, you're in. If you don't apply it between June 20th and the date for fall burn down, you're in. Doing all those puts you into compliance with the written permission process. That happens every day under the NPDES Pesticide General Permit process, without notice.

Bruce: So, there is no action required by the applicator to be in compliance.

Dave: Correct, no action required. If you're in compliance with certification, label, keeping records, if you're doing all that, you're in compliance with the written permission. Applicators don't really have to do anything.

Ron: Okay, are there any other comments? No? The motion has been made and seconded. All those in favor?

Dave: Can we do this by roll call?

Ron: Oh, yes, we do have to do this by roll call. Those in favor indicate when your name is called.

Bruce Bordelon: aye

Bob Andrews: (absent)

Scott Robbins: aye

Mike Titus: aye

Lee Green: aye

Martha Clark: aye

Megan Abrams: aye

Julia Hogan: aye

Jamey Thomas: aye

John Bacone: aye

Kevin Underwood: aye

Jim Hawbaker: (absent)

Rick Foster: aye

Stewart Orr: aye

Ron Hellenthal: Chair makes it unanimous. The motion carries. Thank you very much.

Dave: Five minute break?

Ron: Yes, let's.

Dave: Okay, everyone, let's take a break and try to be back in about five minutes.

Ron- anyone interested in being involved in the process of developing the dicamba proposal for the next meeting, let Dave know and he will include you.

With that, we'll move to the sixth item, the future of certification pencil and paper exams.

6. The future of certification pencil and paper exam

Leo Reed: Exams Post on PPP PREP Sessions. Give paper and pencil exams only following PPP exam prep sessions. Currently do 1500-1600 paper and pencil exams following exam prep sessions. 4200-4500 exams are currently taken without prep sessions via remote exam vendor. This model has been unchanged for 45 years in IN. Initially the training was done over two days. Day one was core, second was any number of category exams to get large numbers of people through state and federal requirement. Something that is continued to today with PPP. It did not address the educational concerns. Exams are no longer built on a classroom model. OISC uses a credentialing test validation strategy, doing a job analysis and identifying required knowledge and skills needed to perform the job. OISC relies specifically on judgement of a committee of subject matter experts (SMEs). The SMEs guide exam content, test question review and set passing score. An exam is not an educational tool. OISC spends between \$70K-100K to develop an exam. OISC has concern about security of paper and pencil administered exams. Effects on test scores, exam administration and program costs. Scores are higher when given immediately post exam prep. Is this actual achievement or is this short-term memory effect. "practicing the retrieval of the information is key to long-term retention" Same day or next day recall does work. However, students quickly forget the content. Cramming leads to forgetting the material. New business inspections routinely conducted by OISC show that exam content issues raised during these inspections had been forgotten. 20% of examinees show up for paper and pencil core training and examining sessions without a manual or without having studied the manual prior to arrival. 15% or so for category sessions. Paper and pencil exams are full of distractions, such as examinees turning in exam materials while others are still testing, background noise, questions for proctor. At one time 80 examinees were crammed into Daniels Turf Center, very difficult to proctor that number of people. By contrast, computer based exams offer a quiet room,

standardized administration, exams are secure, proctor does not need to watch 30-80 people simultaneously. Program costs, for each paper-based exam costs one full day for a FTE, including Leo and person grading exam for 30 PPP exam prep sessions a year. Grading equipment is expensive and won't last forever. Grading bubble sheets and grading equipment won't exist anymore. Not everyone could be excited about computer-based exam. Disassociating exam from prep sessions would allow for greater numbers to sit in prep/training sessions, with no concern of exam overcrowding. 65 is the max number of people that can be in the turf center for security. When other states offer CCH's in addition to the prep, individuals chose to take the CCH. OISC will continue to participate in the CCH training process. If PPP decided to travel the state to do it, OISC would continue to participate in every session like it does now. A number of field staff enjoy being in front of groups and are capable of presenting the regulatory portion if Leo or Joe Becovitz are not available. Real learning and retention from repetition (CCH offerings) and self-study. Force individuals to study before and after prep session. Leo is personally a huge proponent of PPP. It has nothing to do with OISC being at odds with Fred and his staff. Hopefully IPRB can understand why this is being considered. Not considering any process or policy changes for 2021. It is too close to the 2021 training season for such significant changes. We would target January 2022 for any significant changes. Offering remotely proctored exams in addition to exams offered at Ivy Tech. Leo has been working with exam vendor for over a year to iron out a few technical difficulties, but would like to have that widely available by first of the year 2021. Objective would be to offer individual CBT at an examinee's home or at his/her corporate office.

Ron: what is required for this change to occur, other than approval by OISC? Does it require board approval?

Leo: Does not need approval by the board, but because it is a big change in direction, neither Dave nor Leo would be comfortable making that blanket decision without public discussion.

7. Funding Purdue Pesticide Program activities

Fred Whitford: General Comments- Nothing personal, but Fred disagrees with Leo's comments. It's learning for the people there, but some are scared of taking exams. Leo has been working on it a couple of years to move it away. Fred believes the test is valuable to him and others in the state. When Fred started his charge was to create an extension pesticide specialist position. Costs \$450k a year to run the program. The only thing directly coming from Purdue is Fred's salary. All other salaries and program expenses paid for by money generated by sale of products and services, and the receipt of gifts (speaking fees. Program managed as a business, PPP is responsible for all debt. PPP wants repeat customers. Fred has not seen the tests and does not know what they are. Fred uses the manuals. Be responsible to those who have spent decades helping program move forward. Manuals have been improved, Cheri Janssen does this. Jeff Stoupe is the eLearning expert, new in the past 3 years. When OISC develops a new test PPP will develop a manual to match it. The idea of eLearning, will the 4500 people be interested in buying the eLearning module? Cindy Myers does person to person discussion, website, client communication, social media, printing. Fred Whitford, extension publications, Outreach, YouTube videos and history books. PPP is in a sound financial position at the current time. Class size has been reduced due to COVID Restrictions, 30 people due to 60. In 2022 OISC may no longer provide paper exams. Changing fine structure. Sourced of Income: Initial Certification Training Registration may reduce 50-90%, Registration cost \$103. Raised the price of the manuals from \$30 to \$40. E-learning is \$110, too early to tell whether it is a potential income stream. Private Applicators pay \$20 for a 5 year permit. Half of this to extension educations in the county. OISC Fines, assume it will go down 50% based on proposed regulations. Fine money only goes to publications not salary. Product Registration \$10/ registration. Gift account for Fred

to come speak places is unstable. Solving anticipated problems without resorting to drastic proctoring measures. The drop in registration not as severe as planned. Online training is accepted. Possible selling paper manuals as electronic manuals to save printing costs, change in refund policy to 5 days or no refund within 5 days, part of the money will be refunded. E-learning registration, 3A eLearning course shows popularity and leads the way for developing more courses. Hoping OSIC fine money will only go down slightly. Product registration is consistent. Worst case scenarios- Work with Indiana Farm Bureau to raise private applicator 5-year permit from \$20 to \$30, \$2 a year. OISC would then take \$10 out of the permit back to PPP. Ask pesticide manufacturers to support increase in product annual registration fees from \$10 to \$15. Ask businesses to support a \$5 increase on annual certification from \$40 to \$45. Ask the OISC to partially support salary to write manuals and/or program. Request CCHs for initial training programs- want to focus initial training on program for people who have not gone through the system. Would not need all of these worst case scenarios, but 1 or 2 of them. Use fine money for partially pay for salaries and manuals. This could mean stopping the publication of PPP extension publications and cancel special projects like pollinator project. Charge county extension programs for PPP publications and for providing presentations. Staff reduction along with reduction in program output.

Ron: which of the fees and fines are under legislative control? And which laws would have to be changed in order for PPP to raise fee? Fred- not sure which IC, but all he looked up would require a change in the law except for what is charged for manuals and initial training. Ron- are they one law or a bunch of different? Dave- IC 15-16-4 is the registration provision within it same law, different chapters. Not proposing any change to civil penalty provision, did not touch the portion of the law that says all the money going to PPP. Licensing fees and registration fees would require a change.

Bruce: private applicator permit would require a legislative change. Money from the 5-year permit would require a change. How long since the product registration fees changed?

Dave: about 20 years. One of the more novel changes made was specifically giving PPP a chunk of the registration fees, not the licensing fees. There was considerable industry support for it at the time. They made it very clear they wanted that money designated to PPP for educational purposes.

Bruce: where is the biggest bang for the buck to make rule changes.

Fred: you would only need one or two if my predictions come true.

Julia: For Leo, what are other states doing for testing?

Leo: The majority do not follow the same model. Educating entry level folks into the categories feel connected to Purdue when coming in to be tested. It's concerning to look at the student isn't doing enough that they shouldn't be tested right after training. You have to genuinely parse out those two things. Not talking about the college student or high school student, but talking about licensing people from the state to do their job, and we want them to genuinely learn. College students or high school students are training, but trying to obtain licensure for an occupation. There is a wonderful correlation with Purdue and is not suggesting Fred should stop. Hopefully by reducing paper and pencil, people will study before and after and there will be greater retention. People who just took the exam call the office and ask Leo and his staff the same questions over and over.

Fred: We see a lot of immigrants. In agreement that they hold the programs but if no one comes it's not cost affective. He finds people that come to his program need a pat on the back and some encouragement. He wants to help them become minimally qualified. But will numbers drop without the test? What is the pass fail rate on examinees with the prep vs. without.

Leo: for core its 95% pass with prep and round 85% without the prep session. It's a little early to determine anything about that. A new core exam was just instituted. For categories the pass rate is pretty similar for cat 1 it is around 60% with or without training.

Fred: the fail rate would be higher if the people would do it without the prep.

Leo: I would have to look at the data.

Martha: her operator certification which is somewhat similar and does not have the pre-prep the passing rate is around 50%. Talking about this in an all or nothing way. Is there opportunity for a hybrid solution? Could it be scheduled with Ivy Tech where you have the regular class and then opt to take the test there or at a computer lab.

Leo- computer labs on campus is not a possibility. If you compete against yourself, people are going to elect to do the paper and pencil exam if it's available.

Martha- could encourage quickly after prep, go take the test. At IDEM, there are certain people who need that tangible approach, they offer one paper test a year.

Dave question from room- If the legislation with per day penalties, will that have an impact on PPP,

Dave: if the cap is eliminated for private applicator, that income to PPP might go up. The ultimate impact is unknown, but PPP doesn't use it for salaries since you can't predict them for year to year. If PPP is successful then technically penalties will go down.

Ron: If everyone got to choose, most people would choose pencil and paper over electronic? Are there certain types of Ag workers that intrinsically have an easier time than paper and pencil rather than electronic and would we be discriminating against certain types of workers if eliminated.

Leo: if people have a choice to take a free paper or pencil exam immediately an exam prep rather than pay later, they're going to go with the free exam. The vast majority of clients are pretty decent with computers. If you're not computer literate, you're not bubble sheet literate. The older population that are not on computers are not familiar with bubble sheets either and need to be guided through. There are Amish that are expressly prohibited for touching a computer. For those folks, we will make allowances. Most Amish are not prohibited to use a computer but to own one, and Leo has figured out a way to deal with that.

Bruce: is there bar code technology that could be used?

Fred: need to defer to Leo but test security is always an issue.

Leo: Fred gave a perfect answer.

Leo sat down with Fred right before COVID to discuss laptops but couldn't figure out a way to make that work.

Scott Robbins: is the vendor ready for an increase?

Leo: yes they are. At some point vendors may shut down due to COVID. In previous years they could easily handle the extra people. Moving forward look for more people to take it at home, or organizations to set aside dedicated rooms for people to take it at the shop.

Leo: Amish producers have taken tests at computer labs (Cherri Janson had in the chat that they did not).

Fred: the bottom line the OISC will make whatever appropriate decision, but PPP stream of money could be altered due to COVID and changes. There could be ramifications if the money is not made up quickly. Fred believes service is a good thing.

Ron: speaking for the board, we feel that both programs are part of what makes the system work. Both programs need to exist and flourish. Not sure what the final model will be, but cannot conceive of a program that doesn't have support without PPP and PPP doesn't function without OISC. Both need to coexist and work together. To some degree it is a wait and see what the ramifications are with current trends and changes in fine structures.

Leo: couldn't agree more, and no other SLAs speak as highly as their PSEP coordinators than OISC does of PPP.

Next meeting may be virtual or in-person. To get some of the things talked about today concluded need a meeting in about 3 months, mid-February or mid-March. Best way to accomplish this is check everyone's schedules to come up with the exact date at a later time as long as everyone agrees mid-February or mid-March is reasonable. Then I believe we have a movement for adjournment? No objections.

Dave: Thank you all for your attendance.