



INDIANA PESTICIDE REVIEW BOARD

165th Meeting Minutes
June 3, 2021: 9:26 am – 12:40 pm
Beck Agricultural Center
4550 U.S. Highway 52 West
West Lafayette, Indiana, 47906-9286

Members Present:

Bob Andrews
Bruce Bordelon
Christian Krupke
Jim Hawbaker
Kevin Underwood
Lee Green
Mike Titus
Ron Hellenthal (Chair)
Scott Robbins

Members Present Virtually:

Bill Johnson
Jamey Thomas
John Bacone
Julia Tipton-Hogan
Martha Clark-Mettler
Megan Abraham
Stuart Orr

Ex officio

David Scott
Mark LeBlanc, State Chemist
Fred Whitford

Members Absent:

(None)

- 1. Approval of the meeting agenda... MOTION** to approve by Mike Titus, seconded by Bruce Bordelon; **VOTE...** was unanimous
- 2. Approval of previous meeting minutes... MOTION** to approve by Kevin Underwood, seconded by Christian Krupke; **VOTE** was unanimous
- 3. Review of cases involving civil penalties since the last meeting**

The board reviewed and discussed the following civil penalty summary

https://www.oisc.purdue.edu/pesticide/iprb/iprb_165_case_summaries.pdf Mike Titus asked whether the format for reporting on finalized cases had changed recently. Dave Scott explained that the OISC format for writing case summaries had changed within the last year and that the process for reporting to the IPRB may change too. The OISC IT group is working to automate the process reporting process in the evolving OISC Case Management (OCM) software. If there are comments on any of the changes, OISC is interested in hearing them. If there is ever a question about the details of the case, the final case reports can always be accessed through the OISC web site

<https://www.oisc.purdue.edu/oiscweb/#!/publicrecords/pesticide/investigations> .

Ron Hellenthal asked whether a case like PS20-0218 (contamination of drinking water) has involvement with other agency investigations such as IDEM. Joe Becovitz explained that this case involved a community lake that has a campground around it, then there's a single residence that has a small pond off of the main lake, and they use that as their drinking water, so it's not a community drinking water supply, so I don't believe IDEM would get involved with that. Dave Scott added that if it ever involves a drinking water source that IDEM clearly regulates, OISC always asks that they become involved. If it's a private drinking water source, one well, one person, one family, IDEM may not have any legal responsibility for it, but OISC coordinates with them anyway.

Ron asked about case PS20-033 which involved illegal use of a pesticide to kill raccoons. Does the IDNR get involved in this kind of case as well? And if so, is there some cross communication between the IDNR and OISC? Dave responded the short answer is yes, but the level of interest by a conservation officer may vary from location to location. Back when the IPRB and OISC state-restricted Golden Malrin (methomyl), we did that in coordination with IDNR. OISC does communicate with IDNR any time we document a taking of wildlife, an illegal taking of wildlife. Chemically poisoning wildlife is illegal in IN. Bruce Bordelon asked if this is the same as product documented coming into the state from Illinois? Dave responded this was not a new product. It is the same, methomyl, Golden Malrin. Violators are still following the same recipe from the internet.

4. Status of CES publication on aerial mosquito spraying and pollinator Best Management Practices (BMPs)

Fred Whitford shared with the board a copy of the Purdue CES publication PPP-139 "Protecting Honey Bees from Area-wide Insecticide Applications" to address issues raised at the last IPRB meeting regarding communicating with the beekeepers about ISDH aerial applications to control mosquito vectors of with Eastern Equine Encephalitis. Purdue CES was working in conjunction with Lee Green, ISDH. Lee is currently developing a website so that, when the inquiring public comes to CES with questions about application timing and protecting pollinators, CES can direct them to the ISDH website. There are roughly 750 plus registered beekeepers on the BeeCheck site and there are an estimated 75,000 beehives statewide. Providing a direct mail copy of PPP-139 to each beekeeper would be cost prohibitive. Lee agreed that CES should focus on the EEE counties targeted on the ISDH website. Lee: What we hope to do at ISDH is update our website with more information on EEE and the mitigation steps. And the goal of this publication was to reference beekeepers and concerned people with pollinators to this document, so the experts, Dr. Krupke and Rob Harper can guide them on how to protect their beehives. We do highly encourage people to register on BeeCheck, cause our plan is to upload all that information from BeeCheck into our Indiana Health Alert network so that as soon as the decision is made to do aerial application, a phone call or email will go out to everyone on BeeCheck in that area.

Megan Abraham: Regarding IDNR sponsored area wide Gypsy Moth control efforts, the IDNR use the pheromone Btk for control, but we do go into BeeCheck to look for beekeepers in the area just to let them know, so they can cover their hives if they choose.

<https://ppp.purdue.edu/wp-content/uploads/2021/06/PPP-139.pdf>

Dave Scott raised an issue about mosquito control applications, not related to honeybee exposure. The issue pertains to potential human exposure and exposure to non-target areas, such as neighboring properties. Specifically, the focus is commercial for-hire applications to adult mosquito resting places on one to two private properties through ground misting or aerosol applications. Community wide applications are usually done under the direction of a public agency that's making a decision for the state or county. They're making a decision for either public health reasons or for community nuisance reasons. But that's a public process and a decision made by public officials who are accountable to the public. Mosquito control applications made to individual private property should be required to consider the potential impacts neighbors. We investigated an incident like that last year involving an elderly cancer survivor, who just did not want this adulticide on her property. The OISC investigation found the commercial applicator's insecticide well onto the complainant's property. However, the meager mosquito application language on the multi-purpose product label used contained no enforceable label language. If you look at the labels intended for area-wide adulticiding, they sort of encourage drifting and dispersing spray particles over wide areas to contact adult mosquitos. The problem appears to be that when the insecticide is applied a mister or a fogger, it causes this stuff to travel to non-target sites. This is becoming a larger and larger business practice in our state and others. OISC is asking the IPRB to consider endorsing a policy to be distributed at the next meeting that identifies it to be careless and negligent for such off-target movement to occur.

Lee Green asked if individuals installing and filling hard-plumbed mosquito insecticide application devices are required to be licensed to do so. Leo Reed responded that if they are performing that service for hire, they must have a license from OISC.

Ron asked if restrictions can be placed on the method of application if the product label is silent on that issue or if the label does not specifically prohibit it. Dave responded that the IPRB does have the authority to develop rules on method of application.

Scott Robbins suggested that these products are probably applied with some sort of backpack sprayer/mister that results in spray droplets slightly larger than an aerosol, which would be preferable for keeping it on target. Community-wide adulticide applications, on the other hand, are usually made with an ultra-low volume (ULV) applicator, resulting in residues that are very short-lived relative to the residual pyrethroids being used for private property applications. Scott considers off-target movement to be violative.

Dave indicated that the issue is being raised because we feel we're potentially on a collision course with this industry practice and the issue will be added to the next meeting agenda.

5. Office of Inspector General report on 2018 dicamba registration decision

Dave Scott discussed as an FYI the following recently publicized U.S. Inspector General report https://www.oisc.purdue.edu/pesticide/iprb/iprb_165_oig_report.pdf. The report identifies that EPA did not follow their own science policy in making the re-registration decision for the new dicamba products in 2018. Instead, EPA focused on the use of product registrant incident data instead of data from other sources such as pesticide state agencies. Dave suggested that the IPRB decision on dicamba over the last year seem to be supported by the report findings.

6. New civil penalty legislation & Enforcement Response Policy revision

Dave Scott made a summary presentation using the following https://www.oisc.purdue.edu/pesticide/iprb/iprb_165_new_civil_penalty_leg.pdf. He again recognized the good work of the IPRB Work Group on Civil Penalty language drafting, noting that the work of the work group was adopted in total and almost verbatim. The legislature then passed State Enrolled Act #227 almost unanimously. The legislation becomes effective July 1, 2021. He pointed out that OISC pesticide enforcement response policy has been developed to add consistency and detail to the enforcement program where the legislation is directive or specific. Primarily the ERP tries to address the point in an applicator's violation history or the severity of a violation where something more than a monetary penalty may be deemed appropriate by OISC. OISC has already circulated the draft ERP to several industry groups, but has received minimal, if any, constructive feedback to date.

Ron asked if OISC had done any kind of analysis or evaluation as to how the new penalty legislation might affect Purdue Pesticide Programs in terms of applying dollars that they're likely to receive based on this versus the previous fine structure? Dave responded that a detailed analysis had not been done. It is difficult to determine if smaller penalties or warning letters for some violations will be offset by larger penalties for private applicators and some more serious violations. But the overwhelming largest number of violations year in and year out are for drift, and those penalty dollars have the potential to increase, especially where RUPs are involved.

Fred Whitford assumed that the penalty dollars to his program would go down because big fine checks for multiple days of minibulk containers stored out of containment will be eliminated. If penalty funds go down then PPP will reduce the number of printed publications. It shouldn't impact PPP personnel because Fred has made a historic calculated decision not to use fine money for salaries.

Ron: One thing to note, is that, all of those really massive fines for bulk storage violations, and so forth, always ended up getting appealed, and oftentimes, reduced amounts were awarded. So hopefully this will reduce that amount of red tape.

Dave pointed out that the multi-day violation penalties were already eliminated by 2020 legislation changes.

7. Report on rules revision process

Dave Scott made a presentation using the following https://www.oisc.purdue.edu/pesticide/iprb/iprb_165_pest_rule_revision_proposal.pdf. For some of the rules, we're proposing only very minor consolidation, clarification, and modernization edits. For others, there are more significant noticeable revisions under consideration. Those include changes to the applicator certification and training rules necessary to make state rules and requirements equal or comparable to recent federal regulation changes. Those changes will be necessary for Indiana to maintain our approved

certification and training state plan status and avoid the program defaulting to the federal regulations administered by U.S. EPA. The proposal being supported by OISC would limit the use of RUPs to fully certified applicators only, would avoid the necessity of incorporating some additional burdensome federal supervision requirements into our rules, and would relax many of the current state and federal supervision requirements for commercial use of GUPs. Most significant among them would be eliminate the need for annual federal training and record keeping for registered technicians/noncertified applicators, eliminate the need for daily equipment inspection and record keeping for registered technicians/noncertified applicators, eliminate the need for daily written site/field/condition specific instructions for registered technicians/noncertified applicators, and add an option for registered technician qualification by passing the core exam (current requirement) or attending a Purdue Pesticide Program core training session (new). allowances for those in our rule relay.

Fred Whitford asked commercial applicator representatives if they currently have more RUP users that are fully certified or supervised registered technicians. The best guess was more certified applicators than registered technicians.

Dave Scott added that there is already an RUP product registration trend that requires use of some RUPs by fully certified applicators only. Dicamba, paraquat, and fumigants are the most notable examples. That risk mitigation registration requirement has been viewed by both U.S. EPA and product registrants as a mechanism to avoid other more application restrictions.

Scott Robbins asked if the proposal for requiring all applicators to have a copy of the label at the use site could be satisfied electronically. Dave suggested that was the current thinking of OISC.

Ron Hellenthal asked if the intent of OISC was for a single rule by rule process or for a multi rule package approach. Dave indicated that a packaged approach was preferred. Consolidation of some requirements and timing would require a comprehensive approach.

Some IPRB members expressed concern about the perception or reality of lowering the certification and licensing requirements. It was pointed out that lowering or altering the certification and licensing requirements was not currently being considered, just adding an entry requirement option for registered technicians using GUPs commercially. Regarding private applicators (farmers) that use only GUPs (no RUPs) none of these proposals change anything. Private applicator GUP users are outside of the regulatory requirement now and they would be under the proposed changes.

Regarding registered technician candidates and entry requirements, Leo Reed shared that the option of training only or pass the exam to become a registered technician, that individual can only use general use pesticides, can only use those things that are available to anyone. They still have to be supervised by a fully certified applicator. One of the reasons we considered going down this path is that every single week, from January through summer OISC gets calls from commercial business owners, that say last year the RT requirements were relaxed out of necessity due to COVID, and I was able to hire some amazing technicians, but hey may stumble at passing the core exam whether it be dyslexia or any

other number of exam aversion issues. The training option for commercial GUP use is just a recognition of that for lower hazard products.

Bob Andrews stated that from a lawn and landscape standpoint, we support this idea of a training option for RTs 100%. I think having the option of taking the test only is good as well as the option of going through Purdue Pesticide Program's training. In fact, if I had my druthers, we would have any new employee go through the training as opposed to simply taking a test. A test proves they can take a test, training day exposes them to a whole a variety of other things including face-to-face time with a representative of OISC, backed with some knowledge. We also are, as many of you know, fighting an incredible battle for qualified employees. There isn't an industry in this nation that is working at full capacity, that isn't being restricted in its growth by lack of available employees, and that was going on before COVID, and now it's gotten worse. So we have far more available jobs and positions than we do those individuals to hire and our industry, in a lot of landscape industry, we are a seasonal business, so if you come to work for us, we are going to work you hard and then lay you off in the off-season. For our industry it is a dual-edged sword. We have never appealed to an older group of Americans, the people you see working at Menard's or Lowe's or someplace like that, simply cannot do the physical work, the lifting and pushing and pulling that's required on a daily basis, 8-10 months a year, in the lawn and landscape industry. For whatever reason, we have never appealed to a female workforce. We require the individual to drive. Our employees are subject to periodic screening by an insurance carrier, and that screening is getting tougher and tougher all the time. We're a seasonal industry, and it is getting tougher and tougher to get people to apply. And now throw in, what we've all heard about, the Walmart's, the Fed-Ex's, the Amazon's—they're literally throwing money at people to drive. So we have a shrinking employee pool but also have a growing industry. And I think this option doesn't lower standards, and in fact it may improve training qualification of those entering the industry, and they are using general use—our industry does not use restricted use pesticides, we avoid them—and it gives us an opportunity to be competitive in the workforce. Dave indicated that some outreach has already occurred with some industry groups, but more was still needed.

Dave covered other proposed rule changes including, expanding storage requirements to small package (non-bulk) pesticide containers and adjusting some bulk storage requirements to address some things we have learned after 30 years of rule implementation. Martha Clark Mettler stated the need to reconcile any storage and containment requirement adjustments with protective water quality rules and policies at IDEM.

Regarding the process moving forward the IPRB requested that OISC develop a crosswalk to help track sections in the rules that may be added, deleted, or moved around. Ron Hellenthal noted that with potentially so many changes, this effort will require some IPRB advance study. Based on federal certification and training rule compliance requirements, Indiana will need to have a solid indication of regulatory proposals by March, 2022. Regarding the need for a work group to help draft the rule changes, it was thought that that might not be productive until we have initial drafts of language to consider.

MOTION to adjourn by Mike Titus, Seconded by Bob Andrews; **VOTE...** was unanimous