



INDIANA PESTICIDE REVIEW BOARD

166th Meeting Minutes
August 10, 2021: 9:26 am – 12:40 pm
John S. Wright Forestry Center
1007 N 725 W
West Lafayette, Indiana, 47906-9286

<u>Members Present:</u>	<u>Members Present Virtually:</u>	<u>Ex officio</u>
Bill Johnson	John Bacone	David Scott
Bruce Bordelon	Martha Clark-Mettler	Mark LeBlanc, State Chemist
Bob Andrews	Mike Titus	Fred Whitford
Christian Krupke		
Jamey Thomas	<u>Members Absent:</u>	
Jim Hawbaker	Kevin Underwood	
Julia Tipton-Hogan		
Lee Green		
Megan Abraham		
Ron Hellenthal (Chair)		
Scott Robbins		
Stuart Orr		

1. **Approval of the meeting agenda... MOTION** to approve by Lee Green, seconded by Bruce Bordelon; **VOTE...** was unanimous
2. **Approval of previous meeting minutes June 3, 2021)**
 Lee Green: Pollinators – BROCK Harper (not Rob), end of page 2
 ... **MOTION** to approve with correction by Julia seconded by Bob; **VOTE** was unanimous
3. **Review of cases involving civil penalties since the last meeting. (guidance on searching OISC compliance data for case details).**
 It is possible to control bedbugs with heat, requires heating the room to 120 degrees Fahrenheit or more for an extended period of time. Works for small space, like apartment, but more complicated for larger houses, move furniture, etc. You have to have a lot of training, really know how to accomplish it. The likelihood of it working on the

first time is low. It's a serious problem in the industry. This company was fined because they weren't registered. There's also discussion of whether it's legal to rent out the equipment, let the homeowners do it themselves—but I think the likelihood of success then is almost nil. I think this is an area we're going to see more problems in the futures. I think it also has some relevance to our upcoming discussion concerning the mosquito adulticide spraying on individual properties— These are things that don't really belong to any category, there's a lack of sufficient training on how to do it right. How to do it without harming the neighbors and the environment. There've only been a relatively few complaints on these, but now a lot of places are starting to claim that they can get rid of the pests with only a few heat treatments. And that is of some concern to me.

Scott Robbins: We have used heat remediations for the last decade, but we don't do a heat only remediation. I'd refer the board to the national pest management association, we do utilize their best practice guidance for canine inspection, thermal remediation, and so on. So check them out for more information.

Ron: My concern especially is the companies that use heat exclusively, touting it as a non-chemical solution.

Dave: Ron, can I ask Leo to explain how credentialing fits into using non-traditional pesticides?

Leo Reed (OISC Pesticide Applicator Licensing): If someone is using a device that we regulate, then licensure is required. This was a device made to remediate bedbugs, it is an EPA regulated device. Jay, this was your case, correct? Can you say a little more?

Jay Kelley (OISC Investigator): In this case, the individual was advertising it as renting only, but we discovered that he wasn't just renting it—yes, they would rent the equipment but then he'd take the device to the house, set it up, set the monitors up, he would remotely watch the monitors and make adjustments based on the readings—he claimed that he was just renting the equipment, but he was actively involved in the application of heat.

Dave: But again, for us to have involvement, it has to be a product that we regulate, and our definition of pesticide product does include devices intended for mitigating a pest. So this guy should have had a license. He was making an application. We didn't evaluate the efficacy, but there is some regulatory oversight to those folks.

Ron: Do you recall having had this kind of issue in the past?

Leo: Not so much the past year or two, but before Covid, it wasn't uncommon to get at least a call a week asking if they need a license to apply heat, which would of course lead to me asking several other questions.

Dave: Most other states don't have the broad definition of pesticide that includes devices, as we do, so unless you're from one of the southern states that have structural pest control laws, before FIFRA was ever enacted, there's a good chance that folks in other states can

operate these without licensure, they're in our regulatory net because our definition of pesticides and pesticide devices is wider than most states.

Ron: And am I correct that, if someone wants to register a pesticide device in Indiana, they are required to show efficacy?

Dave: Yes.

Ron: So they do have to provide some kind of proof.

Dave: And it all comes down to claims. Back in the days of the electric bug zappers, they'd make claims like 'draws in pests from five acres, kills 'em all, you're never gonna get a mosquito bite again.' If that's your claim, you've gotta have data to support it. If your claim is nothing more than "any bug that stumbles into this zapper will be killed," that's a pretty easy claim to support. If all comes down to labeling.

Courtney: We have a question online as to which case number this is discussing.

Ron: The bedbug control was PS21 – 0038. If there are no more questions, we'll move on to the policy on private property mosquito control applications

4. Draft policy on private property mosquito control applications

Dave Scott: This is a continuation of our discussion from the last meeting, whether that's community wide or control on private property. We've looked at this a little more in depth this time. I'll be walking us through how OISC is looking to address this. I do want to give Lee and Fred the opportunity to discuss... Eastern Equine Encephalitis.

Lee: There's several things going on with EEE. First there's enhanced surveillance, seeing what's out there, we are specifically targeting surveillance in the Northern tier of the state, where there is the habitat (bogs) to allow transmission of EEE, as well as to try to improve information and communication, I was told this morning that, this week, our updated website should be approved. That will go live, as well as working on an alert system. Our goal is, if we do have to do some aerial applications for mosquito control, we will use Bee Check to send an email notification to all of the registered apiarists in that area, so they can use Dr. Krupke's information to mitigate the impact to their hives. As of now, we have no cases.

Dave: So, Lee, if I understand—increased surveillance, you guys are still looking, trying to figure out if adulticiding or any mitigation measures will be necessary. Right now you're seeing none, but that could change overnight?

Lee: That's correct... Because that disease can be such a problem at such a small number. But we don't do the treatments as preventive, only in response to detected positives of EEE.

Ron: Lee, do you know, have there been any cases in Barry county, Michigan?

Lee: I'm in close contact with the entomologist in Michigan and the one that does surveillance out of Michigan state, and thus far, no positives. The only place so far in the States is Florida.

Dave: Dr. Whitford, Dr. Krupke, anything to add to that?

Fred: We followed up with the new publication that Chris and I did, mailed that to 180 people in the area, gave them a physical copy of it. Offered the free publication to Apiarist, to distribute at their meetings and they took advantage of that, they gave away several copies. Now that might not be in those northern counties, but that concept is getting out there in the hands of the educators. Lee, just keep us updated on that, so we can get it into the hands of extension, and up on the websites and so on, so people are aware that you're in charge of those applications, not us, that way everyone can be as informed as possible.

Lee: And that's what we want to encourage, utilizing Drift Watch and Bee Check as a way to communicate with the interested stakeholders so they can be alerted and take the measures to mitigate the impact to their hives. We also sent out notification to the National Organic program certifiers, so they can alert their members to contact us and make us aware.

Fred: Now, there seems to be an understanding with beekeepers that, if I'm spraying next to someone with bees, I'm required to notify them—but that's not true, correct? There's no legal requirement for that, right Dave?

Dave: No, there's no legal need for notification.

Fred: So that's just something we're doing voluntarily, that's not required.

Dave: Reference was made to using Bee Check. Bob or Beth – anything to add to that?

Beth Carter (OISC Investigator): There is a belief that prior notification is required, but that isn't the case.

Dave: If there are subsequent communications with this audience, is there any value of raising awareness of that point?

Beth: I think if we have people not doing something because they don't know, that's a problem. In my opinion, there should be as much education as possible, so the people understand that that is not how it's going to work. If they have a misconception of how it works, we should at least try to educate them

Dave: Maybe we have some discussions, Fred?

Fred: Sure. I like telling people how it is. I think we could do something to help educate people.

Christian: In my experience of pushing Drift Watch/Bee Check, I think we're meeting the maximum of the people that will register. Those that are holdouts are (not likely to change their minds). Last year we had some bees being lost, a particular beekeeper, two communications that came from that are relaying

The other issue we didn't get into, there are people that don't agree with adulticiding, saying it doesn't work, and so on. We can advocate whether these products work as intended, we didn't get into that.

It's a pervasive sentiment among the beekeepers, it'll come up again, especially if we have to spray again. They question the efficacy, in some quarters, they didn't even want us to work on the publication.

Dave: Other comments or questions? Great discussion and great segue into our discussion about adulticiding. Think about those comments we discussed, because we are going to distinguish between community wide mosquito adulticiding and private property adulticiding, regardless of your opinion on efficacy, it is currently legal. Why are we concerned and why are we talking about it? OISC is usually a reactive agency, reacting to complaints. That means we're not usually ahead of issues, issues come to us through complainants, or when this board brings it to our attention, that's when it winds up on our radar. And off-target mosquito adulticiding is one of those issues. We've seen an increase over the past five of years of complaints of consumers relative to this issue.

Keep in mind in this discussion the distinction between community-wide mosquito adulticiding versus private property type use. There are some legal differences and some differences in the products.

Off-target mosquito adulticiding private property versus community-wide.

Our view is, if the label says you can do it, it's legal—we rely on the label.

Our concern is non-target pesticide exposure to pollinators, wildlife, pets, humans.

The complaints and inquiries are on the rise, double the typical number this year (so far).

Fred: And those are private and community-wide numbers together?

Dave: That is correct, up until recently, the private applications

Distinguishing between the two—

Community-wide:

- Applied by government
- Requires certification in category 8
- Primarily when adult mosquitos are most active
- Objective is to mitigate public health disease transmission
- Objective to mitigate nuisance biters (public service)
- Public oversight and accountability is part of the process
- Pre-notification guidance, since 2008

Private Property:

- Applications by for-hire commercial applicators
- Requires certification in 7a or 8,

- NOT 3a, 3b—those are lawn and landscape folks. Their licenses were never intended to address mosquito adulticiding because mosquitoes are not a lawn or ornamental pest
- Many applications scheduled during daylight (business hours) NOT when mosquitos are most active
- Objective is to benefit individual property owner
- Applicator is accountable to the contracting property owner only
- No guidance regarding pre-notification with the non-target neighbor

Fred: I'd like to ask Scott, would you add anything.

Scott: No, only distinction I'd make is community-wide uses non-residual synergized compact pesticide, the reason our process works during the daytime is we use residual, usually pyrethroid based products, we're targeting the underside of leaves or other surfaces, resting sites.

Bob: Do we have any idea of how many of these applications are being made?

Dave: Not a clue

Bob: So this could be miniscule?

Dave: Could be.

Ron: I think that this is not true, I think there are several companies that advertise for this service...Mosquito Joe's, based out of Michigan, I think, but targeting different areas in Indiana. The complaint I became aware of, the neighbor was upset that they were out there spraying. They were spraying, I think, during a mayfly emergence. The cars, trucks, they're conspicuous—they present themselves as being this kind of mosquito control. They use the disease as a reason why people would want to spray their property. I let them know they should contact OISC to express their concerns and they said, no, they just don't want to do that, they don't want to have a war with their neighbor. So I think this is more pervasive than the complaints indicate and I think this is worth investigation, and it's becoming even more so.

Julia: My take is that, the ease with which someone can start this sort of company, get a license, get a truck... That formulation, the pyrethroid, the point is that it's going to sit and wait for a mosquito to come into contact with it,

Bruce: I think Bob's point is that maybe we're seeing the tip of the iceberg—5 or 6 doesn't seem like much but...

Bob: No, no, my point is that it's been presented as if it was out of control, but 5 or 6 isn't that bad.

Fred: Scott, can you tell me, to balance things, I'm thinking of weddings, kids getting eaten up, what are the benefits of these kinds of treatments?

Scott: One thing, we don't push the public health aspect, we're targeting bite production, it's not guaranteed that you're not going to have mosquitos not even every house is a candidate for the service. If you don't have a lot of greenery, resting sites around your home, but the neighbor has a rainforest, for example, or you're up against a right of way, for instance, it's not going to do you a lot of good. We really try for more of a bite reduction program, applying a residual product to the resting sites.

Fred: Which a lot of cities have quit doing—treat for the bites.

Lee: That's it exactly—the split between community-wide and private property. We control public health vectors, we control disease. If people call in and complain about nuisance biting, (private application) is their option. We are strictly in the business of applying for health reasons.

Jim: So the complaints that are coming in, are they about the chemical or because the application was off-target?

Dave: Off-target. Firstly, I'm getting sprayed, is that legal? Surely it can't be legal because I didn't ask for it, I don't want it. Secondly, what are you going to do about it.

Julia: That's straight up drift.

Courtney: Question online- what if the label does not specify the time of day?

Dave: If your question is, "what about the labels," you've got to wait a couple of slides. You're ahead of me, hang on. What do the labels say about off target drift?

(From the slide)

PRN 2001-X Draft: Spray and Dust Drift Label Statements for Pesticide Products

This Notice sets forth the EPA guidance for labeling statements for controlling spray drift and dust drift from application sites and for implementing these statements for risk mitigation. The purpose of this new labeling guidance is to provide pesticide registrants, applicators, and other individuals responsible for pesticide applications with improved and more consistent product label statements for controlling pesticide drift in order to be protective of human health and the environment.

This PR Notice applies to all pesticide products labeled for use outdoors that can be applied as sprays or dusts, including applications with ground hydraulic, airblast, aerial, chemigation, handheld, or backpack equipment, except for products stated below. Application sites for affected products include, but are not limited to, agricultural crops, forestry, rights-of-way, recreational areas, lawns, and home gardens.

(Second Slide)

PRN 2001-X Draft:

Spray and Dust Drift Label Statements for Pesticide Products

This notice does not to apply to:

1. Products labeled solely for indoor use;
2. Products labeled for outdoor use which are applied in a form other than spray or dust, such as a granular formulation;
3. Fumigant products, due to their different physical state and behavior (vapor rather than liquid or solid particles); and
4. Mosquito adulticide products labeled solely for use in public health programs. These and certain other products will require special consideration for appropriate labeling.

The intent in 2001 was that EPA was going to address this drift inequity across pesticide labels, and establish some baselines, so that everyone has a common understanding, and so we'd stop getting manufacturers against one another, if you have light drift language on your label, your product becomes more popular, if you have heavy drift language your product is immediately less popular, you've given the regulators something to enforce.

Dave: This is intended for Lee and his group, different risk benefit analysis, if there's a public health concern, people are going to die, they said, that's a different risk-benefit situation, they say "save the people, sorry about any collateral damage," that's why they exempted those types of products specifically.

Again, most importantly, this PR Notice for labeling improvement was never finalized.

So here we are today, so we've got the products being used, I'll say the homeowner market, private market, that don't have any drift language on them. We've got ag labels that do have drift language on them. So there's a bit of a difference.

So looking at several language from some of the products intended for community-wide applications, you'll see language very similar to this on every one of those products:

Community-wide adulticiding product labels:

"For use only by federal, state, tribal or local government officials responsible for public health or vector control, or persons certified in the appropriate category or otherwise authorized by the state or tribal lead pesticide regulatory agency or perform adult mosquito control applications, or by persons under their direct supervision."

And that allows those agencies to hire a private company to go out and spray these chemicals, for this EEE, for instance. Language exists on all those labels that would allow for that application.

Bob: And that's the same language that will allow Scott to make that application—you said vector control would all category 8 to do that work?

Dave: Our interpretation would be that, for one homeowner, that has nothing do with transmission of West Nile virus, Scott is not covered for the use of this product, this is intended for Lee and his group, that are making these decisions—that's one of the

reasons the 2001 proposal was going to exempt that use, because that's a different risk-benefit analysis than that one for the private applicator.

Scott: It's specific that the person is certified in the appropriate category and authorized by, so we as a company can do those applications when we are hired by those communities/agencies to do so. That's important

Lee: The way it's written, that's an "or," so as long as you're licensed, it don't matter who hired you...

Bob: That's how I read it.

Lee: Anyone certified in the appropriate category, anyone with the 7a or 8, ect

Dave: We can push EPA to clarify... I think the intent was to allow you to hire Scott or aerial applicators to do the applications, not just, you pass the exams in the right way so now you can apply. That wasn't the intent that everything before, the risk assessment ... not as a decision ...

Ron: The important term is "vector," implies the potential for spread of disease.

Dave: We also looked at products that are not the community wide products, looking for mosquito language / prohibitions:

Private property adulticiding product labels

"For prevention and control of termites, carpenter ants, and other pests in structures."

"To control adult mosquitoes outdoors on residential, institutional, public, commercial and industrial buildings, and lawns, ornamentals, parks, recreational areas and athletic fields."

"For use as a spot treatment and perimeter treatment for the control of listed pests in, on, and around residential, institutional, public, commercial, and industrial buildings."

"For adult mosquitoes...yards or other frequented areas enclosed by landscaping can benefit from banded treatment to reduce invading adult mosquitoes by treatment of perimeter vegetation.

Doesn't say anything specifically about mosquitos, but it's legal to use. You can use it for that and it's being used for that.

Community-wide adulticiding product labels

"Do not apply to or allow drift onto blooming crops or weeds when bees are visiting the treatment area, except when applications are made to prevent or control a threat to public and/or animal health determined by

state, tribal, or local health or vector control agency on the basis of documented evidence of disease-causing agents in vector mosquitoes or the occurrence of mosquito-borne disease in animal or human populations, or if specifically approved by the state or tribe during a natural disaster recovery effort.”

Private property adulticiding product labels

“Do not apply this product or allow it to drift to blooming crops or weeds if bees are visiting the treatment area.”

“Do not apply this product or allow it to drift to blooming plants or weeds if bees are foraging.”

Foraging bees are protected (sort of), but what about neighbors and their pets? The only protective language I could find in a mosquito section is the following, on one label:

“Do not apply when wind speed exceeds 10 MPH.”

Fred: When (the federals?) uses the word, drift, they have their own definition, that’s a federal wording, do we fall back on our definition, or do we use theirs? We have our own, right?

Dave: We do have our own definition, but it matches EPA’s. It’s not runoff, it’s any kind of movement through the air that isn’t windblown dust, not from volatilization. We do have our own definition, but it matches the EPA definition.

Fred: So, if the bees aren’t visiting, I can drift?

Dave: Yep.

Julia: Pyrethroids do have a problem with runoff...

Dave: If we focus on the private property adulticiding service claims:

A trained technician will treat your yard with an effective barrier spray that eliminates biters for 21 days.

Using a backpack sprayer designed for precise application, your technician targets shrubs and plants with a barrier spray that kills mosquitoes on contact and bonds to foliage, where it acts as a mosquito repellent for weeks to come.

I don’t know if that’s true, but they’re telling people it’s true.

Within 30 minutes of spraying, your yard is ready for family and pets to come out and play.

Most labels will say, “Do not allow contact with treated surfaces by people or pets before the spray has dried.” We assume, during the middle of the day in the summer, 30 minutes is probably going to get it done, but we don’t know that for a

fact, especially if the application was made closer to the evening, so that's something we may have to look at in the future.

All of the barrier spray chemicals we use are synthetic forms of pyrethrins called pyrethroids. Pyrethrins are insecticides that are derived from a naturally occurring compound called pyrethrum found in the chrysanthemum flower.

I don't know about you, but what that says to me is, "we get our stuff from a synthetic product that comes from plants anyway, so it's gotta be safe." If not, why else would you mention it?

Pyrethroids are used in numerous commercial products that consumers use to control insects such as household pest insecticides, pet shampoos and sprays, and even lice shampoos applied directly to the scalp.

That is true, but I'm not sure why we're telling people that.

The standard barrier spray treatment is effective on other pests such as fleas, ticks and some flies as well which makes it ideal for not only kids but pets as well.

Honestly, I don't know why, if this product will kill mosquitos, ticks, and fleas, why it makes it ideal for your kids. I don't know what the link is there? I guess it means it's ideal to spray your kids and your pets, I don't know.

We take pollinator protection seriously. Our certified technicians are all trained on our Pollinator Protection Management Program which incorporates three key focus areas:

- *deep familiarity with each customer's property*
- *professional application procedures, and*
- *the type of products we use.*

What I don't see on this list is deep familiarity with the neighbor's property, that's what we're a little more concerned with.

Mosquitoes are not particularly mobile and often stay within a few hundred feet of where they originally hatched.

Is that true, Lee?

Lee: Depending. Some types.

Dave: Okay.

After the application, adult mosquitoes carry the chemicals back to their breeding grounds until breeding sites are completely eliminated.

It's sort of the transfer effect. We have some insecticides that work as baits, for social insects, where you actually transfer it, it's fed by one ant or one termite to the others—that is a design strategy and that is effective. I don't know if a mosquito are social like that, but it completely eliminates their breeding sites...

Ron: That's absolutely incorrect.

Julia: When I read about it, I wanted to know, what happens if people go out and dump treated water sites? Is it larviciding?

Ron: That is patently ridiculous.

Dave: The point I'm trying to make is that it's an emerging issue—

Here are some challenges associated with this industry, this type of application.

Other than product label protections for foraging bees, are there any other protections for neighbors under the pesticide law?

When investigating complaints of off-target movement of adulticides, OISC will consider the following in evaluating whether the applicator violated the law:

1. Was the application a community-wide public health/vector control application or was it an application to a private property for private benefit?
2. Were measurable insecticide residues resulting from either direct application or drift detected on samples collected from off-target (off-property) sites considered to be common touch or potential exposure surfaces for pets or humans?

Bruce: What about the homeowner that hired the applicator—do you examine their high touch items? If there's residue there, is that a violation?

Dave: Yes. It's rare that the homeowner that hired the applicator will call and complain. If you've called and hired them, you've already decided you're okay with the pesticide on your property, if they get some on the swingset, that's a negotiation between me and who I hired to make the application.

But, to your question, if they hired them and it ends up on the swingset, and they call and complain about it, then yes, that's a label violation. I don't see "swingset" as an application site on this label, and that's the point of off target sites. The risk-assessment evaluation has NOT been done by EPA, I think their plan is to address it over time, through the re-registration process. Pyrethroids are going through a re-registration process. EPA says they're going to put drift language on the labels, but that's product by product, every thirteen years. So if there's any fixing that needs to be done, if there's a risk-benefit that needs to be done, it may not be done for awhile.

(Unidentified Speaker): But wouldn't you consider a swingset, an arbor, whatever—a structure?

Dave: A swingset absolutely not. No.

(Unidentified Speaker) I've seen clubhouses built on swingsets and mosquitos get up in there...

Dave: We're going to argue that one with you—if you have a swingset, kids are expected to play on swingsets. Application to the side of a building—most of these pyrethrins have restrictions on them of when you can and cannot apply them to the side of a building—EPA is concerned about runoff with these products, they're concerned with it killing the invertebrates in the water table.

Do we expect kids/people, to go up to a side of a building, touch it, lick it? We don't, and I think that's a risk-benefit EPA has made. Yeah, there's probably not large exposure, but if you're trying to convince me that a swingset or a pool or a deck is a structure, I'd argue against it. And if you appeal that, it's coming before this board to make that decision. But I consider that a non-target area.

So, what types of surfaces does OISC consider to be common touch or potential exposure surfaces for pets or humans?

Examples include, but are not limited to:

- NOT vegetation immediately within a foot of the property line
- Playground equipment
- Children & pet toys
- Lawn & patio furniture
- Deck railings & door handles
- Garden tool handles
- Pool surfaces
- Pet resting areas
- Bird baths
- Beehives
- Blooming pollinator plants

Jamey: Have you focused on those sites historically?

Dave: No-- historically we are trained to focus on the label, what does the label say you can and cannot do? Part of this discussion is to inform, to let you know where OISC is going moving forward. We honestly believe that you should not be forced to be exposed to pesticides if you don't want them, except for when Lee says it's in the benefit of public health to do that.

So the question is, what protection do I have, as a neighbor, if this guy is out spraying the vegetation between our two properties and I see the stuff just blowing over on my dog, my swingset, maybe on my kids. We believe it should be illegal to spray people, regardless of what the labels say. And on every ag product, you'll find that stock language that says "do not apply this product in a manner that allows it to come into contact, or drift into contact with, people or agricultural workers. That was snuck in there under worker protection, but it's on every label. You can't drift onto people, and we apply that standard when we're doing ag investigations.

Now we're switching, doing urban, residential applications, that language doesn't exist, go back to 2001, because they never finalized that, EPA never got around to doing that. But we still believe people deserve not to be sprayed/ drifted on, if we think there is a scenario where unintended, unasked for exposure is occurring, we feel we have an obligation to address that.

Our plan, moving forward is, is there a risk of exposure here? And so we're letting everyone know, here's the kind of evidence we're going to be looking for, here are the areas we're going to be sampling.

Unless this body (the board), because we take this action, this investigation scheme, if this Board says, "Don't do that," if the Board disagrees with the policy, because you're going to be the final authority once our action is appealed, we're going to bring it before you and if you say "nah, nah, we don't agree with what State Chemist on this one."

So if the board disagrees with our intention, with our policy going forward, we'd like to know it now, so we don't waste a lot of our time bringing cases before you that you fundamentally disagree with. So it's a question for you all as well.

Fred: Dave, some of the comments that I heard earlier. So... I can make my application, you're giving me a one-foot buffer, and the people are upset because it moved onto their yard, but it doesn't hit anything, that would be a violation? Are you considering that?

Dave: It's a case-by-case situation, if it's a place the pet obviously rests, the pet rests there every day...keep in mind, that you need to know more about the neighbor's property, whether the neighbor has beehives, vegetation attractive to bees—you need to know a lot about the neighbor if you think your material is going to wind up on the neighbor's property. You need to know a lot about the neighbor's property, maybe more than you need to now.

Fred: I'm thinking of all the neighbor feuds y'all get involved in...

Dave: Huge percentage of what we do is neighbor feuds.

Fred: So that depends on the rest of the facts that you collect.

Dave: Yeah, that's correct, a lot of it comes down to what the investigator's best judgment of the situation is. What samples do I take to discover if the complainant's allegations are true? Whether or not they've crossed a legal line. We're trying to determine what that legal line is, what guidance we give our investigators, to go out and respond to these things.

Courtney: We have an online question--Aren't swingsets playgrounds? Playgrounds are sites listed on many of the products.

Dave: When a label says for application to playgrounds and athletic fields, I don't see the swingset, they're talking about the target is the vegetation, the soil, not the human contact sites sitting on a playground. is where the pest lives, not the human contact sites...My opinion is, I view those things as completely different. I believe that if you ask the registrant, if you ask EPA, when playgrounds were added to the label, did that mean we could spray down

playground equipment? I believe the answer would be, was that part of the risk assessment? Jamey, I'm putting you on the spot...

Jamey: The only kind of labels that I'm aware of that have that kind of language are herbicides.

Dave: I believe the answer is no. I believe that EPA has not done that kind of risk-assessment. I believe EPA expects the product to be kept to where it was intended to be, where it can control the pest. If the Board thinks differently, please tell us now, so you don't have to take it back in some kind of appeal hearing.

Lastly, what would an applicator be charged with?

- IC 15-16-5-65(5) "Operated in a careless or negligent manner."
- Probably reserved for direct exposure to humans
- \$1000 penalty, not able to be mitigated by OISC
- IC 15-16-5-65(2) "...use a pesticide in a manner inconsistent with its labeling..."
- Application or residues on non-labeled sites (see examples on previous slide)
- GUP with no adverse effect, Warning/\$250 penalty
- GUP with adverse effect, \$500 penalty
- RUP with no adverse effect, \$500 penalty
- RUP with adverse effect, \$1000 penalty

Dave: So that's what we think, the question being, what do you all think about it?

Ron: So, would you clarify for everyone, the changes you're suggesting already exist in the rules, you just want the Board to endorse or reject the interpretation by OISC.

Dave: Yes, this is our belief, this is how we interpret it. We're asking if you interpret it similarly or differently than we do.

Fred: So that previous slide, that's your opinion?

Dave: Yes. If it winds up somewhere it's not supposed to be, we considered that a use inconsistent with the label.

Christian: So I have a question, mostly about the second half. I am familiar with the detection measures—they can detect incredibly small amounts. How do you get away from constant detections? What level of detection, what is that threshold?

Dave: I don't know how you get away from that. I know that when EPA is evaluating for runoff, for drift, they calculate it, and have done a risk assessment, as Fred said, everything drifts, because that drift language is completely absent, my understanding is that risk assessment has not been done. They would determine at what point the level is not acceptable.

I figure they probably work backwards, figure out the real harm is, what real risk is, based on the deposits. I don't know that anyone's been able to do that., as you well know, that's

impacted by how long ago the application was made, what the kinds of surface is... that's one of the reasons we elected not to address this using the drift language, because our state language includes moves off target in sufficient quantities to cause harm / adverse effect—that's easier with herbicides, you can see the harm done to neighboring plants. You can't see that with insecticides, we're not going to see immediate harm. We're going to struggle to document, unequivocally, the harm, so that's one of the reasons we're not proposing using the state drift law, because we don't know what the number, that threshold is.

Christian: So you might wind up with a lot of “No adverse effects, warning, \$250 fine?”

Dave: Most of them are going to be “no adverse effect,” we have complainants all the time that say, “we feel sick, we have headaches.” We ask, “did you go to the doctor. Did the doctor confirm that it was the result of the exposure” We've had that happen never in the last 40 years. At best, they reported to the doctor and the doctor treated them for symptomology. The doctor doesn't say cause and effect or assess that. Under current technology, that's going to be very difficult to prove.

Christian: Under neighbor disputes, you guys get bogged down, running pesticide testing and adjudicating these things and I don't know where that leads.

Dave: And the tough thing for us is, we've got complainants, they've got video of the mist just blowing all over their property, and they ask, “Are you telling me that's okay? You telling me there's no recourse for me?” And the simple thing for us would be to say, “Yep, that's okay, the law doesn't prohibit it. Sorry, can't help you.” But we don't do that. We go out there, take the samples, try to figure out the risks... a couple of days ago, we thought one of our complainants was going to show up, she's an 80-year-old lady, a cancer survivor, and she says, “can you guarantee me that exposure to whatever it is they're applying, someday, we're not going to find out it's a contributor to cancer?”

No, we don't know that. We know what we know, and it's not well studied, can we reflect what's going to happen with multiple exposure or long-term exposure? Only if it's something that's been studied.

Mark LeBlanc (State Chemist): I just wanted to comment on the levels—sure, we can see the levels. Our investigators are very good at collecting samples...they've been dealing with figuring out, you can find positives on all your samples, but one of them's going to be way different than the one that's collected right near the drift site. I agree, the detection levels improve, go down, you rarely get a negative from a product like this, but the investigators work that out way before we bring that case to this group.

Dave: That's a really important point I didn't mention. We really go out of our way to acquire control samples, to make sure that this isn't a background levels occurring in the area. And when we identify the levels, we ask our lab supervisor, “do these appear to be direct application, drift, or environmental?” That all is part of our internal determination.

Fred: For the conscientious applicator, does that one foot seem reasonable? Would that be worthy of discussion. Should that be a bigger width, to take care of the people that are trying to do a good job?

Dave: We tell our people, don't measure within that one foot or near, you're going to find positives, but the risk is low to the (drift) homeowner.

Bruce: Can I ask Scott, how do you deal with that one foot on a property line? Do you stay back six feet, something like that? How do you deal with that?

Scott: We're not trying to drift onto the greenery, we're trying to get the underside of the leaves. Even though we're using the backpack applicator, we're trying to do a direct application. We use an application pattern to move the leaves to get the undersides. If there's a shrub on the edge of the property line, so long as it's on our client's property, yes, we're going to treat it.

Bob: We understand what the concern is, we just don't want a knee-jerk reaction, responding out of line to something that isn't going on. I participate in 8 or 9 educational programs around the state each year. The pest control association has its own education program. What I decided to do here was to organize a group of people from various areas of interest to meet on September 28, we'll meet at Hendricks county, in Danville, to look at residential, commercial mosquito control applications from a variety of different standpoints. The people that have agreed to participate in this group are Fred Whitford (Purdue Pest Programs), Joe Becovitz (OISC), Lee Green (Indiana Dept. Health), Reggie Cornet (Site One, Landscape Supply)—very knowledgeable on product use, Scott Robbins (Action Pest Control), Nicki Hendrickson (Advanced Pest Solutions) knowledgeable on labels, is an entomologist, Bob Areneas (True Green), and Cody Duncan (regional technical manager for Bryan equipment, distributor of STIHL equipment), that's one of the pieces of equipment that's very popular to use in mosquito control application, backpack unit, disperses water and insecticide. This group is going to look at the products that are available to use, application equipment, various methods, and customer communication, also PPE for the applicator, and other issues that come up. I look to it to be an ongoing group of people, and to give you some background on it, there are nine individuals on the committee, seven of whom are in this room, so they are as up to speed as any of us are.

We'll be taking a look at this from an industry standpoint. I have been involved in education in the lawn and landscape industry for a lot longer than I probably should have been, but I have not seen, Lee Green spoke to our group many times, Fred Whitford on many occasions, we have not seen any educational programs that address the uniformity of such sprays. If you go out in the field and watch people make these applications, they're kind of all over the board. We think that by adding a best practices type of educational program available to the industry, that we may make a dent in some of the off-target movement product complaints and provide better method of education.

You're quite right that this is a ballooning industry, the number of people getting involved in it and using application equipment that isn't usually involved in lawn care application, some type of pest control, so I think that this is a good shot in the right direction. We'll probably have an initial report for the next meeting, and some guidance from the industry.

Ron: That would be great. Can I ask one favor? So, one thing that does seem to be an issue is the certification, right now, if your company is doing this, you can be certified in 7a—there's confusion—but my understanding is that coverage of adulticiding in 7a is miniscule at best, so one of the potential recommendations, one of the things we might want

to consider, would be whether or not those applying this kind of application need certification under category 8, or if the 7a training should be broadened. A lot of people that do this think that they are trained, but they are not sufficiently trained to do this.

Bob: Yes, that's something we're reviewing. We are finding that there's not a uniformity in the way the product is applied—there are things that are lacking across the board. We're assessing what kind of training would be useful to address these deficits. One thing that comes up a lot is the uniformity, there's a lot of education lacking across the board.

Fred: Mosquitos are covered very little in 7a, category 8 is the mosquito focused training. Maybe we can add a component from whatever comes out of this committee, but could we somehow propose that the people coming into this category should be category 8.

Scott: We do category 8, to cover residential as well as commercial sites. We double up...

Fred: It seems to me that, if we're trying to improve the system, we get the people to take the Category 8

Ron: If we want to include companies that do applications, that they'd have to be registered under Category 8, can we do that without changing the rule?

Dave: No, but the next thing agenda item is adjusting the rules—the Board can address that today.

Lee: The whole theory behind mosquito adulticiding, the cost of the fine droplets to address mosquitos is drift. So if we come up with best practices to minimize drift, we're still going to have drift.

Some amount of drift that will happen—we have to determine some kind threshold.

Ron: It seems to me that...I know there are some people in the audience that would like to comment, I want to make sure you have that opportunity.

Bob Avenius: Category 8 just makes sense. The other thing that is that you have someone focusing on mosquitos, give them proficiency in that area. Threshold is going to be important. The other thing is, many of these yards, not easy decisions that the applicators are making. It becomes gray very quickly. I think Bob's idea of best practices, will go far, makes sense to me. You've got to get to the people making the applications.

Terry (Lawn Pride): I want to address some points that have been made. I think a zero tolerance policy is draconian, deviates from the current ag. policy, let me read it, "sufficient quantity to cause injury."

Not a for ...

Unreasonable by definition

CDC "Is spray harmful to... spray is safe, you do not need to leave the area"

Makes it nearly impossible to make a lawful application.

We want clarity, we want training, we want to make sure that the quantities are applied avoid harm.

One other point, when you set up this distinction, we're not insensitive to people's property rights, when you set up this dichotomy, there's an equal protection element that you're going to get into.

If you send a truck in for community-wide and then our applicators make a treatment afterwards, how can you distinguish who is responsible? ... the greater good trumps the private property rights.

Our concern is that this is overcompensating for a non-problem.

If the goal is to make applications like this illegal, then it needs to go through legislation...

Ron: Sir, I want to interrupt to say that the legislature has delegated this body as the sole body to make those regulation, so, that's off the table. If there is a decision to change the regulations, it has to go through the whole process, public hearings, to approval by the attorney general, to economic impact analysis—but it is this body, not the legislature that will make the changes.

Terry: My point was that the complaints are few and far between, but I can tell you that there are thousands of applications being made across the state and only 5 or 6 complaints. What we want is a reasonable standard, a fair standard, ability to apply the products by label and proper care, that by going out and providing this service we aren't breaking the law. We believe that the proposed changes are out of proportion to the service we provide, by and large.

Julia: I haven't heard anyone discuss the consumer—from the training and work that we did on the community-wide mosquito rule, I don't think that the consumer knows enough about mosquitos to know what they're buying. I'm concerned that adulticiding is not the most effective way to control mosquitos—we all know that, it's larviciding and getting rid of the sites where they breed, standing water, and so on.

I want to know how the consumers are going to be considered. If the efficacy of adulticiding... These claims just don't sound true. They don't sound true. For 21 days, you're not going to have any mosquitos come in your yard because someone sprayed a perimeter, and we know that stuff sticks and whatever...

Ron: That's only if it doesn't rain.

Julia: If it doesn't rain. I mean... I wanna know, when you're dealing in this, Bob, I just want to know that you're not selling people a pig in a poke (garbage). Just because we can spray it around the perimeter, doesn't mean it's going to do a damn thing to knock down mosquitos, other than the ones that were right there, and it touches them and they die.

This is all old news, we did this ten years ago. This kind of irritates me, I don't think... We've written a rule about this. Why isn't this the same thing? It is the same thing.

Scott: I disagree, this is not the same thing. You are referencing the products that the department of health uses, for public health—synergized non-residuals and we're applying residual products, on the underside of the leaf, that's gonna last, we're it's going to be more rain fast.

Julia: I haven't seen any... where does it say that? I want to know where the data is for the products. The other thing I want to talk about, is if we're requiring notice for lawn spraying,

because we want to make sure the spray is dry, I think we need the same thing for mosquito applications. There should be paper notices about mosquito spraying, because it's the same thing. This is not a new thing.

Ron: I think that the point of Bob's group is to try to find those sorts of things, to bring them to the group at our next meeting. Everyone has had an opportunity to express their concerns, and they're all legitimate. Ultimately, we need more information to act on to recommend to the Office of Indiana State Chemist, how they should act on this matter. That's the purpose of this meeting, to collect those voices and then synthesize something that can inform discussions of what the real alternatives are, and what recommendations we want to put forward to the State Chemist in terms of enforcement. I think that...

Bob Avenius: One thing is coming from the State Chemist, but the other is coming from the person, the neighbor, who didn't want their property drifted on. I get what the State Chemist is saying, because this certainly is an industry that is growing, there are certainly going to be more applications. The other thing that happens, you drift on to someone's property, it's pretty easy to do so, and that person calls the State Chemist, they come out and investigate, they do a very nice job—I can't complain about the State Chemist's Office, parts per million, etc. But it doesn't matter, the neighbor, as soon as they see that—"you got it on my property" then the company has to pay compensation to the neighbor as well as to the State Chemist.

Lawn Pride: I have a question. You're right, so, I spray, and the neighbor on the other side sprays, how are we going to distinguish who gets the penalty? We all agree that it drifts.

Dave: Just a second to say, we do this every single day in agriculture—and sometimes it's inconclusive evidence. If there are people on all four sides spraying, and they're all spraying the same exact same thing, and it could have come from any source—we deal with that every day. Now, if we find high levels residues in places we shouldn't find it, and our finding in this is "no violation could be documented," how long does that phone conversation last, Joe? How do explain to someone, "you found this crap all over my property and you're not doing a thing about it!" So it sorta cuts both ways. If multiple angles are being treated, with the same product, same date, different dates, four different applicators, we're aware that finding who is responsible for the drift is a challenge. We have strategies, but yes, it's a real challenge.

Ron: It's important to understand that it's not just presence, but the relative amounts. Oftentimes it is possible to determine, if there are applications going on on both sides, but one side is much much higher than the other. Also wind speed and direction—all of that is taken into account for consideration before assessing some kind of a penalty. It's not arbitrary at all.

Mark LeBlanc: I want to make a final statement to reiterate what Dave is saying. I'm Mark LeBlanc, the State Chemist. I've worked with two states, I worked with Louisiana for ten years doing similar work, I've seen the analyses, the parts per trillion, and these guys, I'm telling you, you've got the best team, probably, in the country. They do a great job. They know what they're doing, they know how to tell the difference between parts per trillion—these guys are working hard to not bring a case before the Board unless they know they've got the evidence. And you mentioned manpower—we don't have a lot of options, to say

“sorry, we can’t help you” and hang up the phone, we get a reasonable complaint, we’re going to have to follow up on it. I think that the proposal that Dave’s put together is to create a way to not have to bring it before the board. It’s to say, when do we stick up for the homeowner, when is it reasonable drift on the part of the applicator? I just want to make that point clear, that this team is very professional about that.

Ron: I think it’s time for a break—let’s take a ten-minute break and we’ll resume. Only one more item on the agenda.

5. Draft rule revisions

Ron: We’re going to continue. Agenda item number five is draft rule revisions. And, as I think many of you know, this is further complicated as two sets of, batches of rule revisions, one initiated by changes in state law that legislature recently passed, largely impacting the fine structure, that is used by the State Chemist’s Office, and the second are a series of changes that are required to meet changes in EPA’s requirements.

As I think everybody understands, what we’ll be asked to do is see whether or not that the rule making process should begin, then review the wording, ultimately this will have to go to public hearings, has to be evaluated for its economic impact, has to be approved by the attorney general’s office, so this is a fairly extensive process that only begins with our approving or disapproving of it, and there’s some time on this as well, it needs to be completed within a reasonable time frame as well. With that, Dave’s gonna try to carry us through this, pretty complicated, actually.

Dave: Thank you, Ron. By way of discussion, there are two documents that have been shared with you—one other, storage and containment hasn’t been completed yet—we’re moving things around, consolidating them when it makes sense, where it makes sense for the requirements an applicator group, we’ve lumped those together. So you’ll see things moving one rule to this rule, sometimes it will be verbatim, from this rule putting them into the category they fit better. Sometimes it’s just tweaking the language, sometimes it’s introducing brand new language, brand new concepts that didn’t exist in the rule before.

As Ron indicated, there are two reasons for this—one, we changed the civil penalty rules, we’ve done away with that now and it’s all covered under legislation and we also have, EPA has new federal certification and training requirements that are forcing us to change our state rules so that they are still acceptable, still allows us to certify folks and not to turn it back over to EPA, so there’s a variety of things going on.

The only one you don’t have in front of you today is the one that deals with storage and containment, we’ve taken all the stuff—you remember the school rule, for example, there’s some storage requirements in the school rule—those will all be in the storage and containment section now. There’s storage requirements, we have a well-hidden section, a rule, that restricts certain storage practices, that’s all going to be in the same rule now. We’ve moved things around where they make sense.

For purposes of describing the changes we’ve made to the documents in front of you—you’re going to see some stuff printed in red, we’re trying to make a cross-walk, if we’re pulling a definition from here and we’re now putting it in this rule or set of rules, because this is where

it make sense, because this is where it needs to be, that's what we've done. If we've moved something from one place to another, we've tried to draw you a road map, to give you a sense of whether we're eliminate something altogether or moving it to another section.

The digest at the front over every one of these sets of rules tells you every section where we made a change. Whether it's repealed, amends, adds so on.

The first section is purely definitions. We aren't redefining anything, we're using the definitions already established. If there are terms that need definition, then we are drafting them here.

Bruce: Is the definition of categories in this?

Dave: Yes, the definition of categories is in this rule.

As you know, we currently have separate requirements --- that will not withstand EPA's new requirements. We propose that general use applicators and restricted use applicators will be handled separately.

We're proposing a second option to become a registered technician (applies ONLY general use pesticides)—going through a Fred Whitford training.

Bruce: Are all your groups okay with that?

Bob: We're in favor of it. To find and retain employees and that a full day of training is far more valuable than a test only. I think it's a very good option that helps the industry and will lead to better employees in the field.

Scott: IPMA supports the change, I personally will require the training and certification, but appreciate that there is an option for those that are just not good test takers but are good employees. This is not unlike a lot of other State Lead Agencies.

Julia: I think this is a smart move to meet industry and I think having a hands-on day beats reading a book 100 times.

Bob: We also, we have enough training opportunities around state, that we'll work with Fred to make sure people have a chance to attend.

Bob Avenius: I really like this, and it also gives new employees exposure to the Office of Indiana State Chemist, who they are, their mission and so on.

Jim Hawbaker: This doesn't impact me personally, but I was talking to some melon and pumpkin farmers, and they have people that migrate north to apply these things, part of the food safety process, Fred, are you going to come out to that farm for those two days to teach them?

Fred: For two or three people, no. We are going to have an online training which is what they need to pass the test. They'll have access to that almost immediately. Ivy Tech is back up and running, right Leo?

Leo: Yes, they'll test as many people as 800 a month.

Fred: If those people are going to be applicators, then they'll need to take the test online.

Ron: I believe this comes from EPA...

Dave: Not exactly—it's more like, "if you don't do this, then you have to do all these other things." We haven't seen that, we used to use a fairly general FAQ, we'd have to write a rule for site-specific directions.

We have to decide, do we want to write the rule that specifies how to implement the supervision.

Our proposal is, to avoid all that other baggage, if you want to use restricted use pesticides, you have to be registered.

EPA has already made the cut, differentiated between the general and restricted use, because there's stuff that could go wrong, you can kill yourself or really screw up the environment. What we're saying is we're going to recognize that, we're going to treat users differently based on the products they're using.

Julia: So in your mind, the migrant sprayers, for those particular crops...

Dave: These are your employees, you're not hiring a company from out of state?

Jim: That's correct.

Dave: And you're saying they do the same thing in other states?

Jim: Right.

Dave: Under these new Federal rules, if they come from a state where they already have to be certified, then they're already certified, we can give them a pass for Indiana, right Leo? If they've passed exams in another state?

Leo: If it is comparable to ours, then yes. But if is not, then no.

Dave: But theoretically, Tennessee, Florida, Georgia has to deal with this... wherever they're coming from. So for the example before, the migrant sprayers, we're not screwing around with all that supervision stuff. They're gonna have to be registered somewhere.

Jim: So would Indiana recognize another state's certification?

Dave: Leo is suggesting probably not.

Leo: The answer is maybe. It depends on what the other state requires. There are some states that have similar requirements to ours, there are some states that have little to nothing in the way of requirements.

Jim: Is there a way to do this training online, do it before they show up? Is it bilingual?

Fred: Not currently. We have a core manual that's bilingual, but the test is in English.

Ron: So are we talking about one specific test that would cover your needs?

Jim: I don't personally have any need.

Ron: Okay, so, the industry. Is it one specific type of certification that we're talking about?

Fred: The core, for farmers, didn't change.

Dave: Are we talking about general use pesticides?

Jim: No.

Dave: Then they've gotta pass the core, Ron.

Ron: Okay, so what resources would it take to make a bilingual version of the test?

Fred: It takes us a whole year just to get the course up.

Dave: Ron, this is one EPA has already choked up on. EPA doesn't recognize bilingual languages. This is an issue far beyond Indiana. Nobody in EPA has bitten off on it yet, have any states, Leo?

Leo: There are a couple of states that offer a Spanish exam, what they've found is that, statistically, if you can't pass the English exam, you're not going to pass the Spanish exam. This is documented research. These folks have a very low passing number for written test exam, whether in English or in Spanish.

Julia: Is there a way to verbally take the test?

Leo: They have to be able to read that—we've had an ADA request from time to time, but we do not fulfill those requests.

Dave: The challenge is, the whole system is reading and interpreting labels. If you can't read and interpret an exam question, you aren't going to be able to read the labels that come with these products.

Fred: Dave, the training program has nothing to do with EPA. So the training component- I don't care what EPA does—but for my training component, I've been trying to make it more accessible.

Bruce: Closed captioning...

Fred: That's right, closed captioning, is probably the closest we could get that would be the easiest.

Bruce: they do some bilingual training, don't they, at Green Expo?

Julia: They do some classes in Spanish, there are several they offer and track, but that's all the farther it goes.

Bruce: No category testing.

Jim: So, question—you guys show up for an audit and the applicator doesn't speak English, but he has a card that shows he was helped through course with a translator, are you okay with that?

Dave: Helped through the training course, or through the exam?

Jim: Through the training course and pass the exam.

Dave: We don't allow translators to help pass the exam.

Ron: I don't think that was the question, the question was just translator to...

Jim: He had a translator translate the test to him.

Leo: No, for the exam he'd have to be able to understand English on his own. The training course, how they get that, who translates it for them, that's up to you all. Again, going back to—they can do general use pesticide all day long. With nothing from us, other than WPS. Our only concern is the restricted use pesticide products, of which I'm sure you're using a few... the problem I see, is if we go down a different path, there are going to be a lot of challenges, the inspections and record-keeping, daily, is all use, makes it difficult to apply.

Jim: How can we, what can I tell a grower from southern Indiana, this is what you can do to comply.

Leo: The way our proposal is, if you want to apply restricted use pesticides, whoever is making that application, they need to be a private applicator. In Indiana that means passing the core exam.

Jim: Someone made a comment that we can, we have a spray program that we can print off spray directions, that have PHI's, RAI's, all that in it, bilingual, and they can read that.

Bruce: A lot of them are general use products too...

Fred: They're forced to get certified because of products... they have to pass the core.

Dave: I'd rather not say this, but I'll say this, so far we've talked to user groups, we've talked to the commercial ag group, and they haven't said much about this proposal. It will impact

them some, but we haven't had any pushback yet. Theoretically, we could treat private applicators and commercial applicators differently, but if we made an accommodation that allows supervision for private applicators, you're going to get a lot of those other regulations from EPA, it will be so complex, us to find you not in compliance with them will not be hard. So rather than relying on a bunch of technical violations for stuff, that maybe are unimportant... regardless, we've got a long way to go on this.

Jim: I'm not trying to take offense to this, I'm just trying to find a way to make it work, to address it, to get through it together to help these farmers and the sprayers.

Dave: Trying to put it into historical context, because our old system was one we were treated all products the same, we were probably more relaxed on supervision than we should have been, now EPA has tightened it up. And that's one reason we want to get the general use users out of that system. Either way we go with this, it's going to hurt to some degree. Unless you just use general use pesticides.

Leo: Off the top of your head, do you know what restricted use pesticides you use?

Jim: I could send you a list.

Bruce: 3A's, Warrior, Command... there's several.

Fred: When these groups come through, do most of them show up at about the same time. Maybe we can do something, get the farmers, get some of the seasoned bilingual applicators, get them to come help with the training.

Ron: I think this is about as much as we can do for now, once we have more information, we can revisit it.

Dave: We don't have any changes to categories at the moment, but do we need to-- Do we need to change category 8?

Ron: That was the question from earlier...

Bruce: I notice that it specifically says "for community-wide mosquito," does NOT include applications made solely to a private residence, so that definition would have to change if you're going to put those guys into category 8, because, section 7, Dave, page three...

Ron: You'd just need to add a few words...

Bruce: Or strike that last sentence...

Julia: That tells you what's changed.

Bruce: Category 8 does not cover that—

Dave: When we wrote the rule, it was to distinguish it from Scott's folks, to say, these people are adequately trained, adequately credentialed. The question is, have things changed—do we

need to make anyone who deals with controlling mosquitos, do we need to put them into category 8?

Bruce: Maybe that's a question for that committee.

Julia: If they're dealing with mosquitos... what's the difference?

Ron: What I got from the discussion and also talking with Bob, is that may be the recommendation we make to them.

Fred: In the category 8 training, we focus on mosquitos. Here are the major ones, this is how you sample, this is how you make the decisions, how to communicate the public. Everything is focused on mosquitos. Whereas, in 7a, general pest, we have a paragraph on mosquitos and move on, because we were focused on bedbugs, cockroaches... putting them all in 8, when you spray, how to spray, the droplet size...

Bruce: But that's still going to be different between community wide and private property applications, the training is going to be different.

Fred: I don't know if, I'm going to refer to Leo, if category 8 would then if that training would have an additional piece, about backpack sprayers, about misters, which is the only thing missing from mosquito biology, sampling, larviciding, you're probably doing all of that now... their businesses are expanding...

Bruce: It makes sense to me to make a minor change to the definition here and under other categories as well.

Leo: The reason that sentence, the exemption for a single-family dwelling was in there—was to allow those 7a folks to be able make those applications. Nothing more. Those 7a folks cannot make any application besides single-family dwellings. Most of the folks had 7a anyway and wanted to be able to do those services to their customers. Anyone that's trying to get in the business now—I recommend 8 to anyone who has called about it. You want to do mosquitos? Do category 8. And most of them are. They would much rather be able to focus on what Mosquito Joe is trying to do, as opposed to roaches and rodents.

Fred: I would assume, Dave or Leo, that the question will come up, in terms of Scott's group, probably Bob's group, that I will be grandfathered in—if I already have the 7a, will I get a category 8, will you grandfather me in?

Leo: I would say no for two reasons. One, everything we just said- 7a has nothing to do with 8 anyway and, without question, the new Federal C&T rule, you've got to show that the individual has competency in that category, by virtue of the fact that you're a 7a guy, you have not shown any in competency in mosquito control.

Fred: But we do grandfather people in, isn't that right, in other kinds of activities, right? So when guys are asked, "I already have a 7a, is this going to require for me to get a category 8," the answer is, yes, is that correct? So as you move this forward, so people understand, they may have to take another test.

Dave: As I hear it now—Scott, do you object?

Scott: If that's the decision of IPMA—as I said, my business is already set up both ways. Professionally, I would see the benefit of knowing mosquito biology and habit, to be able to communicate those things to my customer, or to train my employees to communicate those things, in the case of a registered technician. In that case, I think there is some value to that because there are certain things that I can't do, I can't take care of that dripping tree hole there, that water, or the water dripping from your gutters. There's nothing in the 7a program that addresses anything like that.

Dave: Alright, I'm going to strike it. I'm going to say that if you want to do mosquitos, get a category 8. Anyone who wants to object, show up at the public hearing.

Ron: We've been talking about making a few minor changes, both in the IDEM and in the description for category 8?

Dave: Oh, absolutely, there would be a change in the definition and this requirement...

Ron: I think that a little bit of history is called for here. In our original rules, anyone working for a public health office was exempt from certification and testing, in the old law. But we started having problems, everyone got a truck and started spraying for mosquitos, every municipality, we had a lot of problems and complaints about the people doing it, the lowest person in the rungs out there on the truck. Because of that, we changed the law, we required that these people have some amount of basic testing, some understanding of what they were doing. We tended to be pretty specific when we formulated that original administrative law, I think, to try to get it through. I think making it a little broader is perfectly reasonable and makes a lot sense, given the problems we're seeing now.

Fred: Leo, again, that means Scott would need a category 8, and all of my employees, since they're not restricted products, they can all be registered technicians. Nothing's changed there. Those registered technicians can either take the test or pass the training class when that takes place. Is that correct?

Leo: They'd need to report to a fully certified category 8 person in order to be righteous.

(Audience) So what kind of a time frame are you going to give someone doing business with a 7a to get their 8 before you shut them down? A year? Before you implement this rule? One month?

Dave: We haven't established an effective date for any of these changes. Historically, the way that's been dealt with, you can write it an effective date "you've got six months, you've got a year," to comply and you can do this regulatorily or just by gentleman's agreement. Year one, on all this, sometimes it goes beyond year one, you guys would be doing the compliance assistance in the field, to get people converted over. There's two ways we could go about it, but we have not proposed any effective dates for any of these rule changes- cause there are a lot of things that are gonna change, and the question is how quickly does it need to get done.

Ron: It'll probably take be 8-9 months just to get the rule, so it's probably a matter of years.

Dave: From a policy perspective, historically, whether it's a federal rule that we're responsible for implementing or a state rule that's new, there's always a time period and a compliance assistance period—it's never been a "gotcha" period, we don't think that'd be right. We'd rather give people assistance to bring them into compliance. Now, we can formulate it, put it into the rule, compliance will be effective on this day, but the downside of that is that everyone waits til the last minute to do so—we give you a year, you wait 11 months to take your test. But that's okay, we can do it either way.

Okay, other comments on that? Okay, I'll fast forward, since we're short on time.

The next thing is to reiterate, we've already discussed supervision, and what changes are being made there. If you look there, you'll see we've stripped down what supervision is going to be required. Keeping in mind, it's been stripped down because we're no longer talking about using restricted use products, we're only concerned with general use products. So you can be using a general use pesticide, you can be a registered technician and supervision is nothing more than having a copy of the label with you at the worksite, you have the ability to contact your supervisor by phone or text, and you have all the equipment required by the product label to be used safely and effectively. If you've got complicated machinery, and you need the instruction booklet to use it, you've provided that to your non-certified applicators, your registered technicians. There is no more site-specific use directions, there is no more minutes away, or anything like that. We're talking only about general use pesticides, so it's been stripped down. No limit on the number—under the current system you can only supervise 10 non-certified people per one certified applicator, we're eliminating that as well. Supervision has been stripped down. Questions or comments about that?

Scott: It says there, direct voice or text communication with the supervisor, but I thought that in the earlier meeting, we were talking about any certified applicator at your business location, not just who would be appointed your supervisor, or could it be, say, a supervisory individual. But I thought it was just going to be any certified applicator operating at that business location.

Dave: Yes, that's the intent, and supervisor could be interpreted to mean that, and that's what we meant, but we need to review that for clarification. The way it is right now, if you're going out today, you need to know who your supervisor is—not that we have three certified people working for us, and I can get a hold of any of the three of them—no, we need to know who's supervising you today. The intent was, yes, thank you for that, we will make that clear. Other questions or comments? We've got tons of stuff... again, we've already talked about how you become a registered technician, you pass the core exam or you attend one of Fred's trainings. Let's see there's more than that... financial responsibility, no proposed changes to that, record keeping, there are some changes to that and we need some input. Right now the only folks required to keep records are the folks that use restricted use pesticides, people who make applications to golf course, termiticide applicators, and people who make applications in schools. Everybody else, if all you're using is general use pesticides, you don't have to keep records. Our suggestion is that, if you are regulated by this set of rules, meaning you're one of those user groups that needs to be certified, we believe you should be keeping application records for those uses. That's a change. I'm interested in feedback on that. And

we're also proposing, we have to expand what records are being kept—our hand is being forced by the federal regulations and some of the things have been added to certification number, things such as that. The other biggest addition is start and stop time of your application and wind speed and direction, for outside applicators. That's new. Even though it's not a requirement now for restricted use record keeping, we are dead in the water if we can't document that in drift investigations today. Fortunately, most people in the ag industry keep those kinds of records, even though they're not required to keep those kinds of records, but we stand little chance of doing meaningful investigations without access to that information, so that's one reason. As we discussed today, when we're talking about outdoor mosquito adulticiding, wind direction is going to come into play in some of those investigations, without a doubt, in assessing where'd it come from, who might be responsible for it. So for outdoor applications, for right of way applications, trying to figure out, did the application for the right of way impact this farmer over here, we think it's a requirement. In addition we think... Yes, Scott?

Scott: Windspeed has been brought up before the board before, with complications from dicamba and everything else. So, in an urban environment, where there's going to be a lot of funneling, the information that I get from the app on my phone is going to be a lot different than actual field conditions. So what is going to be the acceptable data then? I think we have to define what we're going to call acceptable, concerning wind data.

Julia: I completely agree with you, given all this stuff we've talked about with dicamba.

Dave: You're suggesting regulating where the information comes from or how it's collected?

Scott: Yeah, we have to take wind direction and speed from one side, and how are we doing that? For a large application site, I walk around the side of the building and that could change.

Julia: Yeah, what's fair?

Scott: Is it acceptable for me to just pull something from the phone, so at least you know I'm looking? What am I going to be held accountable for?

Dave: Fair point, how about "to be determined?"

Scott: I agree. It's probably time we should determine.

Dave: There is no standard, even though we've asked ag applicators for 40 years, what was the wind speed on this date, at the time of your application, we get a response... and dicamba really shone a spotlight on this, it's all over the board. This anemometer that I've never calibrated in 40 years, here's the app, which is an algorithm that uses information from several different sites, puts it together, and estimates what it was for your particular location on that date—it's all over the board. I'm not aware of any other states that have clarified where you should get your data, acceptable sources of that data. It's an important, fair question. We can probably start with, is it a fair thing to ask, even though we don't know how you're going to collect it yet?

Fred: Or how reliable is it. I mean, I'm in the field and the wind turns, it just turns—I understand you need it, Dave, but it's so unpredictable.

Dave: The difference I see, Fred, is if you require it be kept in the records, you've gotta put something in the record before...

Fred: If you require it...

Dave: You'll never know when a complaint's going to be filed. If we ask, a month later, when we get the complaint, they're probably making it up on that day. Maybe they go back and look, maybe they do take that measurement, they did check the newspaper or local news station or their own methodology, we have no confidence that it's always unmanipulated data.

Ron: One possible solution, then, would be requiring wind speed and direction and the source of that information, whatever it was, at the time that they took it. So if they have an anemometer, they can use that, or they took it from local news—but at least it would show one thing—that they bothered to check. And I think a lot of it is, did they even bother to check, did they bother to see what the windspeed and direction was, and given that we don't really have a specific way we can require, that seems like a fair request.

Scott: It at least demonstrates a situational awareness.

Julia: Are there standards on these products? I don't understand why we're looking at this—I mean, on dicamba there are very specific use directions/restrictions... but if there are not real restrictions on these, can't do it when the wind is more than 10 miles per hour, then I'm not sure why we're requiring this?

Fred: There's nothing on it, most of the time there's nothing like that on the labels...

Dave: This is coming, directly extracted from a dicamba label, I hate to say that, but EPA, overnight, decided, "you've gotta keep records when you apply dicamba. You've gotta have your start time, your stop time, wind direction and wind speed," EPA already did that with no further explanation. So we struggled from then til now, answering that question, is there a good way to measure that stuff, and I hate to take things out of context—it's all the evidence together that makes a determination, it's never just wind direction or wind speed, or "the label says not to apply in winds greater than 10 miles per hour, we found a source that said it was 11 miles per hour that day, so gotcha" but there's no evidence that it moved off target—that's never the situation. We're just trying to standardize some stuff, you've gotta keep wind data—point well taken, in an urban environment, the wind acts differently—and if we need to adjust something to address that, so be it. Bottom line, we're suggesting that record keeping be expanded as a requirement to include applications made by any credentialed group that we've talked about today.

Scott: In an urban environment, you've also got a lot of bait use, granules, for which that could really be useful.

Lee Green: That's my question—could we add some language—for instance, if you're applying a charcoal briquette to catch basins, I don't care if it's a hurricane. But you don't want it to be in record keeping violation.

Dave: Absolutely.

Bob: Aaron, we've done this for dicamba, how well do people who try for wind speed and direction, overall, are they doing a good job with it?

Aaron Kreider (OISC Investigator): Yeah, I think so. If they don't answer that question, it's a violation in itself. So they have to answer, either with a number or a "not applicable" or an "I don't know." I give them a spiel, I tell them I'm going to send you this questionnaire, there's a lot of questions on it, answer in as much detail as possible, do not leave anything blank. Very rarely do I get anything back blank, there might be some where they looked it up that day, but actually quite a few farmers, surprisingly, that have anemometers, and they'll send me a picture of their anemometer. So they're coming around, and some of the new equipment has it right on board.

Jim: Yeah, there are programs that have all that data, automatically pulls it, you guys okay with that for the investigations?

Dave: The answer is yes; we're not proposing any form. Our belief is that, now, there are electronic systems, you're collecting the information for your own reasons, you've got it, and you can dump that to us, that's okay. It doesn't have to be on a special form, it's just as long as you include these ten items in your report, that's all we care about. However you want to keep it. We're going to be okay with that. In my mind, the biggest question for this part of the discussion, and we're sort of at the end of this rule on it, is "do we apply this record keeping requirement for all credentialed folks," assuming we do address those differences in user groups, it doesn't make sense for baits or moles or stuff that can't blow or are not impacted by wind direction and speed, are we okay extending this record keeping requirement to all of those user groups? Some states have already done that—if you're licensed, you're keeping records.

I hear no objection, so I say that's a resounding approval.

Scott: If you can work it out, there's a lot of technical...

Dave: Yes, I think we can address that. Ron, this group is free to do whatever they want, we're not going to be able to touch that second group of rules today, we've identified some things that we need to try to address before moving forward on this. I've made notes to incorporate those things and develop another draft, so we're probably not going to move forward on this until the next meeting.

Ron: Everyone okay with putting in the revisions that were suggested today and then saving the second rule for next meeting?

Bob: I'm fine with that. Is that meeting on the books?

Ron: No, that's the next thing on the agenda. ... Okay, Wednesday, November 17^h

MOTION to adjourn by Ron; **VOTE** was unanimous

DRAFT