



INDIANA PESTICIDE REVIEW BOARD

157^h Meeting Minutes
April 8, 2019; 9:06am – 12:31pm
Daniel Turf Research and Diagnostic Center
1340 Cherry Lane
West Lafayette, IN 47907

Members Present:

Megan Abraham
John Bacone
Martha Clark-Mettler
Steve Dlugosz
Rick Foster
Lee Green
Jim Hawbaker
Ron Hellenthal (Chair)
Stuart Orr
Scott Robbins
Julia Tipton-Hogan
Mike Titus
Kevin Underwood

Ex officio

David Scott
Bob Waltz
Fred Whitford

Members Absent

Robert Andrews
Bruce Bordelon
Tim Gibb

- 1. Approval of the meeting agenda.** The new board members and reappointments were welcomed to the meeting. It was voted to add “Update on sensitive areas inclusion to DriftWatch” to the agenda. **MOTION...** to approve by Steve Dlugosz and Rick Foster; **VOTE...** was unanimous
- 2. Approval of the previous meeting minutes (January 22, 2019).** **MOTION...** to accept by Mike Titus and Julia Tipton-Hogan; **VOTE...** was unanimous
- 3. Review of cases involving civil penalties since the last meeting...**
Fred Whitford- For the new board members information- Civil penalty funds go to the Purdue Pesticide Program
Mike Titus-There were a few hefty fines. Do we expect them to be challenged? Couple were \$10-12,000.
Ron Hellenthal– One was \$36000 reduced to \$500. Only two incidences represent violations in Indiana.
Melissa Rosch- This was an advertising case from an Illinois company that would not return my calls or emails. They have decided not do business in Indiana any more.

Lee Green – 2018/690 and 2018/1029 seem to be the same or a duplication. Could be same applicator and two complainants or two fields?

Dave Scott- They would have only been charged once, as respondents are charged for acts and would not have been charged twice for one application that drifted to two separate complainants.

Steve Dlugosz and Dave Scott– Talked about the time frames and length of time to process a case

Martha Clark Mettler – To the new board members, the board spends a lot of time discussing penalty fees.

Dave Scott– Discussed fines and other enforcement remedies for the new board members.

Ron Hellenthal– Discussed criminal remedies and consequences for the new board members.

Fred Whitford- About \$70,000 a year average is collected and from civil penalties assessed by OISC, and this money goes to the Purdue Pesticide Program for education about pesticides.

4. Update on sensitive areas inclusion to DriftWatch...

Ron Hellenthal- Nature preserves, endangered species areas and such areas have fallen out of the formal inclusion. Indiana and Illinois have tried to get these areas to be included.

Dave Scott- This has been a request of DriftWatch for a year now – group of environmental areas identified by the Department of Natural Resources. The idea is to get these sites added to DriftWatch and be protected from pesticides. It has been the policy of the DriftWatch board to include sensitive crops only. Illinois has requested same or similar thing that we are asking. Illinois has documented exposure to some of their areas by Dicamba and other chemicals. Illinois has identified and documented these sites.

Bob Walters – DriftWatch board – Crops are commercially grown and you can connect a value to them. In these areas a person can be contacted. Concern in Indiana with a state property there is no one to contact.

Illinois has well over 100,000 acres and their scope is different. This is a scope issue for DriftWatch. We want to be methodical in the method of what can and cannot be added to the site. If not clear, then it creates confusion.

Steve Dlugosz – Can each state have different parameters?

Bob Walters– All states need to be the same and be consistent. North Carolina added tobacco as an example, but this product is not in all states.

John Bacone – In Indiana when we made the proposal, the properties are adjacent to commercial properties of sensitive crops. So this listing will not change from year to year unless adjacent fields are taken out of production.

Bob Walters – That is not necessarily the case in Illinois (adjacency)

Ron Hellenthal– We have talked about a pilot program in the past.

Elisha Kemp – The board is trying to get Illinois to talk about the parameters that Indiana has proposed. Monetary funds are necessary to make the pilot program.

Ron Hellenthal– We have discussed the possibility of Indiana being able to put in monetary funds.

Bob Walters – The next board meeting is the first week of June and this will be on the agenda.

John Bacone–Is there a chance of this being implemented for this season?

Elisha Kemp – Probably not for this season. We could put a hyperlink onto our site to the DNR site that has this listing of the properties being discussed.

5. Finalizing private applicator permit suspension appeal process (2018/0813)...

Julia Tipton-Hogan provided a summary of the hearing held on Friday, April 8, 2019.

Greg Comer appealed the case and the IPRB hearing appeal panel included Ron Hellenthal, Bob Andrews and Julia Tipton-Hogan

Julia Tipton-Hogan –The hearing was straightforward with 8 complaints of drift over a 2 year period. These complaints and penalties led OISC to want to suspend Mr Comer’s license for one year. He appealed that suspension. In the end, his issue was that he felt the label was poorly written and he missed the do not spray instructions that appear after the buffer information on the label. It was clear that he did not end up changing his application behavior after he had the opportunity to do so. He had been cited in 2017 and 2018. The IPRB hearing appeal panel upheld the decision by OISC.

Ron Hellenthal– The board must now approve or disapprove this decision.

Martha Clark-Mettler and Steve Dlugosz made motions to approve the recommendation to suspend.

Mike Titus – Were they multiple incidences or what are the particulars?

Julia Tipton-Hogan – Several citations have several items in the same event.

Dave Scott– Mr. Comer had made at least 8 separate applications each with citations.

Fred Whitford –Had he taken the mandatory dicamba training?

Julia Tipton-Hogan – Yes. He had attended the training.

Ron Hellenthal– Greg had acknowledged that he had done wrong.

Fred Whitford– He cannot buy RUP this year.

Dave Scott – He can use general use product. He had paid the fines previously

Ron Hellenthal – He is an employee of the farm. The suspension did get his attention.

Julia Tipton-Hogan – Dicamba is a hard product to apply to not have it done right.

Ron Hellenthal – Of the 8 complaints and citations he previously had, he had never challenged them. He was challenging the one-year suspension along with the fine.

Dave Scott– Had he not been to training, I would have a lot more sympathy for him.

Greg stated that the labels are way too complicated to understand and comply with. He said he left a 100 foot buffer and then thought did not have to be concerned with downwind movement? Indiana identified and publicized a definition of adjacent and neighboring and clarified these items with the mandatory training.

Martha Clark-Mettler– Thanked the board for their time.

Ron Hellenthal– Mr. Comer made it clear he did not intend to appeal

Vote to approve – Unanimous approved

6. Finalizing the measurement standard for evaluating the success of the 2019 federal Dicamba labels in reducing the off-target movement incidents to acceptable and protective levels...

Dave Scott - Have had discussions with multiple stakeholders. Asking the board to reevaluate the definition of adverse effects. The State Chemist office does not have way to determine economic impact.

Ron Hellenthal– Proving a yield impact, without setting it up as an experiment is virtually impossible. Every year is different. That is the problem in proving economic impact.

Martha Clark-Mettler – What are the changes in the playing field?

Dave Scott –In 2018 and 2019, EPA did amend the labels for the 3rd time in 2 years; changing the times of application; cannot apply more than 45 days after the planting date of target crop or R1 (1st flower). We have to rely on the honesty of the applicator. Last year was normal application and supervision rules and this year every applicator has to be fully certified to use dicamba.

Fred Whitford - Extension did not do training this year. The industry sponsored training was relied on this year.

Austin Ferguson - With perennial crops it is possible to do this. We are now seeing an impact the second year and can demonstrate economic loss.

Dave Scott– Thank you for discussing the perennial crop vs annual crops. Second year loss had not been considered before. We are just now learning of this issue.

Dave Scott - The way OISC responds to complaints... OISC historically responds to a complaint with intent to evaluate if the applicator complied with the rule and regulations of applying the product. Compliance vs non-compliance. In 2019. We are considering documenting only for documentation purposes. Example – If the complainant does not want to file a complaint but wants the issue documented so that at the end of the season, there is a record of the issue. OISC is not going to evaluate how it moved off target. We will just say yes, it appears to be Dicamba exposure, take pictures, not evaluate wind data, document where and when the instance happened. OISC will only accept the complaint by the property owner. Shifting gears from soybean to non-soybean – vineyards, ornamentals, tomatoes, sensitive crops – we will go out and evaluate with the full set of forensics we currently use now. Look at adjacent (next to the issue) and evaluate compliance and non-compliance. We will do what we have done historically. That will be our approach in 2019. If the issue occurs in a public area and the public wants to report Dicamba exposure on edges, then does not have to be the property manager to complain.

Fred Whitford – When you go out and make the report and take the pictures, then it is all public records? The information is available?

Dave Scott – Yes. There is a good chance we cannot tell you how or why it moved off target. If the farmer says this has now happened for the 3rd year, will do the full investigation. Plan is to create another option.

Julia Tipton-Hogan – Concern is that the public will not know what it would look like and to make a complaint.

Fred Whitford – The extension office is still doing training to the public. Some of the people Julia is talking about we do not have contact with those people.

Ron Hellenthal – If a homeowner has plants damaged- OISC will still find out the potential cause.

Dave Scott – We can work with Horticulture groups to provide information.

Kyle Daniels – My office works with extension, vegetable growers, grape, organic producers, etc.

Dave Scott- For complete awareness, I do not know how we can do it. But working with Horticulture and other groups, they help get education out.

Steve Dlugosz – Can get a pattern if it is self-inflicted. Our machinery just moves thru an area and our phone rings.

Julia – Maybe there is more awareness than I know of.

Kyle Daniel – Our office gets calls and we go out and evaluate an issue. We give them the OISC information. They say that is my neighbor and I do not want to complain. 90% of the time, it is something else like too much water, etc.

Fred Whitford – OISC has given up many other programs in order to take care of Dicamba. We are not gaining anything since we cannot prove a lot of the issues. We give up data, but there is only so much you can do.

Martha Clark-Mettler – The ones that are a true complaint, OISC will do full investigation?

Dave Scott – We will ask if they just want it documented or a full investigation.

Julia Tipton-Hogan – We will begin to lose track of what is happening to the numbers.

Dave Scott – We are not suggesting questioning off target and why? Inversion? Wind speed? Only looking for preponderance of evidence. The information we gather still does not tell you why it moved off target.

Fred Whitford – Is this the policy for 2019 or? Our office will need to talk to the extension educators. Bob Waltz –OISC has been talking about this for several months. As it is being used more in the environment, there probably will be more symptomology in the environment. The organic crops and more sensitive crops might be seen more evident. Will continue to monitor and investigate.

Austin Ferguson – Do you have the resources to increase the processes of evaluations.

Dave Scott – No. We have added 2 investigators and continue to add staffing. The current staff is taking on the challenge. We will be taking less samples as we are not finding out anything with these tests. Just streamlining, not eliminating. If, by example, there would be an increase of up to 300 dicamba complaints, then that would tax our office beyond the ability to cope.

Dave Scott - Data sets – Look at what is occurring in other states. If another state added cut off dates and had a drastic drop in complaints, that is maybe something we should look at. Look at what we would consider actionable for 2019. Last year the board proposed state restrictions above that of federal restrictions. Elected not to go in that direction. What would be considered a successful use of Dicamba in 2019? If the volume of use in 2018 is greater than in 2017, but the numbers stayed about the same, is that a good indication? Do we give Dicamba a 10% cushion above the number for the active ingredient that tops the list of agricultural ground applied herbicides associated with drift complaints? Are there are questions about the data or methodology?

Fred Whitford –Is the number that we are going to use 40 dicamba complaints for the season in 2019? We are saying training and the system is working based on traditional historical data? If above that 40, then not working?

Dave Scott - Looking at normalizing for all active ingredients. We don't have the numbers of how many acres have been planted and sprayed. The manufacturers have said they could possible help with such information.

Fred Whitford - Normalize the data, make a number for that year, then calculate if need to do something.

Steve Dlugosz - It is going to be what it is going to be. Have to wait to see what those numbers are. Let's see what unfolds.

Dave – The only challenge with that is we if we already have an agreement that the 2018 and 2017 numbers are not the norm and not acceptable for us. Is this what we should expect every year until the end of time? Do we have the resources? No. We become the office of Dicamba response. The only thing about waiting to see if the 2018 label revisions fix those issues, what are our options for 2019? Have to have a number in mind. If something goes haywire and makes no scientific sense, then we understand that. It is time to do something.

Julia Tipton Hogan – Do we have the will as a board to address this or is this a case of this product is too big to fail ?

Fred Whitford – It is not a hard and fast number. You are judging that product against every other product that is applied and drifts off-target.

Steve Dlugosz – We are on the same page.

Elisha Kemp – Does the 10% go on the 24c or the question on page 2?

Dave Scott – We will evaluate what other states did in 2018 and 2019.

Alicia Kemp– Will it be for 2020 or this year.

Dave Scott– 2020.

Martha Clark-Mettler – We look at the numbers for 2019 and then make the evaluation if we need to do something.

Fred Whitford – What is the 24c?

Dave Scott – FIFRA 24c is the section in FIFRA that allows states to modify pesticide label use directions to address local (state specific) issues and situations. Historically states were allowed to issue 24Cs that might lessen a restriction or expand use patterns, or can have a 24c that make it more restrictive. Many states have gotten 24c state labels for use of a product that only applies to that state only. We had a 24c on dicamba labels to mandate state training in the past. States have used the 24c to get state restrictions above and beyond for the use of a product. Now EPA is changing their policy and in 2020 may not allow these local situation restrictions.

Ron Hellenthal – Is any of this retroactive?

Dave Scott – EPA has said they will not pull the plug on 2018 and 2019 24Cs, but will apply the revised policy to new 24C requests.

Cyndi Wagner– Are the 24c regulations made in conjunction with the manufacturer?

Dave Scott– Yes.

Fred Whitford – EPA still has final approval?

Dave Scott – EPA has 90 days to object to it.

Martha Clark-Mettler- Eventually won't all soybeans be Dicamba tolerant?

Dave Scott– No. The weeds will eventually become tolerant to each chemical.

Martha Clark-Mettler - #4 is not realistic. Focus on things in our control.

Austin Ferguson – Like to speak to the 10% level or threshold level. If you bring a new product in, if you don't reach that level, you are golden. Why do we back off from the Dicamba? Why don't we look and say you can't make this kind of product that moves?

Martha Clark-Mettler – Trying to decide what is too much in complaints in Indiana. There are some that don't want us to do anything. There is always something that goes off target. These additional things the state might impose restrictions that might improve that. What did we learn from the results? On what you asked us to do last year, I feel we were successful. Whether a trigger does that or not. If someone does not do it right, then do something about it.

Kyle Daniel - You are always going to have operator error. A product should not malfunction. So I think we need to differentiate between operator error and product error.

Steve Dlugosz - Dicamba is not a new product. Just a new use of the product. Just now, the numbers have increased. It has been in use since 1962.

Julia Tipton Hogan - Spray time is completely new.

Dave Scott – I agree with Steve. It is not a new product. We have changed the volume and timing of use. Just a new use. If we can't count on EPA to come to our rescue, what do we do? Just kick the can down the road and hope EPA does something? How do you make that decision? If we don't have 24c as an option, and can't make agreements with the registrants, what are we going to do? It takes us a year to make a state rule and if we wait, we will not have it in time for the 2020 growing season. You can withdraw a rule at any time. As currently labeled, are there sufficient restrictions to prevent adverse effect. Then maybe we shouldn't register this product in Indiana.

Fred Whitford– These are 4 options?

Dave Scott – Yes. I would say this would be the proper order of action. As currently labeled, is it misbranded?

Lee Green – We have the date on the label for this year.

Dave Scott – Yes. Still relying on the farmer honesty to determine if it was applied more than 45 days after planting.

Fred Whitford – RUP, mandatory training, cut off time on the label- not much else we can do.

Steve Dlugosz – I am saying #2.

Fred Whitford – We have already had 3 label changes in 2 years.

Ron Hellenthal– OISC could basically refuse to register it. It would be appealed to this board. Would become a political issue in the state. Might not be successful.

Dave Scott – If you think we are going to need to start the rulemaking process that would put state restrictions for 2020?

Ron Hellenthal – Does not appear that we have developed an internal consensus.

Rick Foster – The workgroup made a set of recommendations. We don't have any more data now than when we had for that workgroup. The state said it was not acceptable.

Dave Scott – OISC made the decision that they have tweaked the label again this year and we are going to wait to see if that works. Everyone needs to agree that this is the evaluation year.

Rick Foster– Does anyone believe that those tweaks to the label are going to bring the numbers down?

Martha Clark-Mettler – There are a lot of steps for rulemaking. I would support you start the rulemaking option so that we have that option.

MOTION to starting the rulemaking process by Martha Clark-Mettler and Mike Titus

Dave Scott– Rulemaking we can be stopped at any time.

Martha Clark-Mettler – Just want it to be an available option.

Ron Hellenthal – Once we have a draft of the rule everyone will have the option of voting on it.

Rick Foster – Starting the process but not deciding the rules until later.

Martha Clark-Mettler –There are a lot of steps and a lot of bureaucracy and want to start the process.

Ron Hellenthal– OISC will start some preliminary wording. Then we will finalize the rule and have a vote.

VOTE... was unanimous.

7. Purdue Pesticide Programs E-learning update ... Deferred to a later date

8. Concept revisions to OISC Enforcement Response Policy (ERP)...

Dave Scott - Required to file this policy annually in order to obtain EPA pesticide enforcement grants. Proposing revision because of Dicamba. Violations are based on a last 5 year cycle . The focus of the ERP revision is off-target movement for which we documented a violation.

Mike Titus– Not in favor. We don't know the reason for off target movement. I think this is too harsh. We have been too soft, but Dicamba will probably be gone in 5 years and they still don't have their license back.

Dave – \$100, \$200, \$1000 does not change someone's behavior.

Mike Titus– I think we have to sort Dicamba out from everything else. What we know is that something is going on, but how do we sort everything else from Dicamba. And this is too harsh. How do we do 5 years?

Steve Dlugosz– So, would failure to visit a web site before use be a violation that counted as one of the three leading to license suspension?

Dave Scott– Would you suggest a two-tier system? One for violations that cause drift and another for violators that do not clearly cause drift?

Steve Dlugosz - We have to enforce all legal requirements.

Ron Hellenthal– One issue that is not properly addressed – if you drift onto someone – then 3 days later you do it again. It is one month before you are cited. One thing that should be in here is that you do not cite and suspend a license for someone unless they have been previously cited for the same violation. Have to have some guidelines and standards. When OISC assesses a penalty, they have to use reasonable judgement. What we really trying to do here is eliminating the mindset of this is just a part of doing business. The thing not currently addressed is making sure the individual or business has received notice and have been advised of the offense before going to the next step. The person has the right to appeal and this board has the final say so.

Steve Dlugosz - Documented civil penalty like Ron discussed, proposed change. Reasonable people around the table today acting in good faith, but the current board make-up is not how this table might in 10 years.

John Bacone – Looking at a time table, would this be like 3 years.

Ron Hellenthal– No. Probably 2 years with the time of the investigation and all processes.

Steve Dlugosz - Are we voting on this today?

Dave Scott – This does not require a rule or a vote. This is OISC operating policy. The board could vote to endorse or not endorse this policy today, if desired, but endorsement is not required.

Martha Clark-Mettler – Just worried about that 6 months waiting time frame because of the paperwork processes.

Ron Hellenthal– Until the process runs its course, people have to be considered innocent until proved guilty.

Ron Hellenthal – OISC asked for presenting this as a proposal. Would like the recommendation if this should be revised. I presented a modification ultimately, we have to pass judgement on what OISC does.

Megan Abraham - How easy is it to get one of these violations if you are following the label?

Ron Hellenthal– I asked George. He didn't recall any person having more than three.

Fred Whitford– Asking OISC to be consistent. OISC judged by EPA to be consistent.

Mike Titus –Is the response table in this ERP for commercial applicators, or farmers, or both?

Dave Scott – Both.

Ron Hellenthal– Do we have a vote or motion to endorse, with or without modifications?

Fred Whitford– OISC does not need a vote. OISC is asking for input.

Martha Clark-Mettler – Motion to trust the State Chemist Office.

Steve Dlugosz – I am not comfortable voting on this.

John Bacone – Is this presented to us as a proposed policy?

Ron Hellenthal – Yes.

Martha Clark-Mettler – Motion is to trust the State Chemist Office and they will make the proper adjustments and move forward.

Ron Hellenthal– The board would like to see some revisions. Please present it back to the next meeting.

9. Concept revisions to Indiana off-target pesticide movement rule... deferred to a later date

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