May 4-5, 2022

Brad A. Beaver, Region 5 Pre-SFIREG Chair

Illinois Department of Agriculture

Region 5 Pre-SFIREG Spring Meeting Report

# EPA Region 5 Pre-SFIREG Spring 2022 Meeting Report

**Meeting Dates:** May 4th and 5th, 2022

**Meeting Location:** Microsoft Teams Meeting teleconference

**Report Prepared By:** Brad Beaver (IL) – Region 5 SFIREG Representative

**In Attendance:** Illinois, Indiana, Michigan, Minnesota, Ohio, White Earth, Wisconsin, and EPA Region 5

# Full SFIREG Topics

1. State Updates:

* Common theme among states - programs returning to a more “normal” regulatory process.
* Common theme among states – offices working under a hybrid model of in-person work and remote.
* Wisconsin – Lori Bowman retired as director of the Agriculture Resource Management Division and was replaced by Robby Personette. Staff currently 40% of time working in the office and rest of time remotely from home. Increased educational efforts with “soft wash” niche market. Found commercial firms utilizing pool shock products off label to clean asphalt shingles resulting in large amounts of product running off roofs. Expressed concerns with chlorpyrifos and potential fees associated with clean sweep program disposal. Chlorpyrifos sales had been increasing in Wisconsin prior to the revocation of tolerances. Could see a potential increase in dicamba usage but seeing a movement toward 2,4-d based products.
* Ohio – Seeing an increase in drone usage and drone-based inquiries involving potential pesticide applications. Meeting with FAA regarding drone regulations. Ohio PSEP utilizing both in-person and online applicator trainings. Applicator certification exams still in-person. (40-50% of applicators are choosing an online training option.) Ohio had 12 counties listed on the Enlist One and Enlist Duo ESA restricted list. Staff worked with EPA to help facilitate the addition of Enlist use in all Ohio counties. The state saw several 24(c) special local need applications.
* Minnesota - saw their building open at the end of April. Staff working a hybrid system including both in-person and remote options. Meeting restrictions have been lifted allowing staff to meet in-person as needed. Department facing multiple retirements (12+) and challenges hiring new staff. (Common theme among many states). Finding potential employees demanding to work 100% remotely. Legislative session saw a preemption bill proposed along with a proposal to ban slow-release pesticide products. Dicamba still continues to consume a huge portion of their staff time. Staff finalizing reviews of complaints from 2021. Noted that a large percentage of their dicamba enforcement cases involved training or record keeping violations. Registration staff worked with registrants to get Minnesota specific dicamba restrictions on the federal label. A cut-off date of June 12th was added for areas south of Interstate 94. All areas north of I-94 to have a June 30th cutoff. Label change requires applicators to check the registrant website for state specific restrictions. Received a section 18 request for sugar beets. Staffing may be tasked if required to aid with Avian Influenza outbreaks.   
  Minnesota PSEP team fully staffed at 6 members. Currently working with in-person workshops. Rolling out a homeowner focused “Pesticide Smart” program, designed to help them safely use pesticide products.
* Michigan – The Michigan Department of Agriculture and Rural Development (MDARD) classified Methomyl (Golden Malrin) as a restricted use pesticide. The move to RUP status was a long, time-consuming process and the result of dozens of investigations involving off label uses intended to kill non-target species. RUP status was designated through executive order. MI seeing a large increase in pesticide investigations involving cannabis. (>70 investigations) All cannabis lots are screened for pesticides. Currently focusing WPS investigations at these facilities on education/outreach. As with Ohio, MDARD is seeing a lot of activity with drones. Businesses licensed for mosquito control, spongy moth control, traditional ag applications and a major tree company using drones for right-of-way and invasive species control. MDARD discussing next steps for the evolution of their program to regulate drone usage. Pesticide certification exams are mostly administered (90%) by the Metro Institute. Exams are taken at a Metro location or through a Metro Institute fully proctored online option.   
    
  Discussed approaching EPA regarding federal RUP status for golden malrin.
* Indiana – Concerned with the late spring and the potential for an increased number of pesticide misuse complaints. Working with legislation regarding storage requirements for package goods. IN product registration division working with two 24(c) applications. Dicamba complaints have remained steady, largely attributed to the June 20th cutoff date. IN has also experienced an increase in the number of calls regarding residential mosquito applications. Specifically, regarding the spray application devices and their potential for human exposure and drift onto nearby residential property.
* IL moving toward a hybrid in-person/online certification and training program. In 2022, IL has administered over 8,000 exams through a proctored online system and over 8,000 exams at in-person locations. Applicator training for 2022 is being offered solely through an online platform providing access to training modules for a 30-day period. 2023 will offer a true hybrid model of testing and training offering both in-person and online option. Pesticide misuse cases continue to drain Department resources. IDA investigated 326 alleged cases of pesticide misuse, 179 of which were dicamba related. From 2017-2021 IDA investigated over 2,600 alleged cases, with 1,493 of those cases being dicamba related. An increase in aerial application-based complaints was also noted in 2021 reviews. IDA’s statewide groundwater monitoring network is undergoing a full-scale assessment. IL currently samples 131 wells on a two-year rotation looking for the presence of commonly used pesticides in shallow groundwater. The assessment is evaluating the condition of each well and making recommendations for future sampling programs. IL pesticide clean sweep collected 10,600 lbs of unwanted pesticides from 21 participants in a 10-county region. Container recycling collected 92,500 lbs of HDPE #2 plastic or approximately 123,000 containers. New pesticide related legislation included a 500’ setback when applying RUPs near schools during normal hours of operation. IDOA experiencing many retirements.
* White Earth was unable to attend this session.

1. Section 24(c) and 24(a):

* Illinois implemented state specific dicamba requirements through a 24(a) rulemaking process.
* Indiana unable to pursue new 24(a) restrictions but was able to use an existing regulation that allowed the Indiana Pesticide Regulatory Board to designate dicamba a "highly volatile herbicide" and implement a June 20th cutoff date.
  + - All states indicating a lack of regulatory flexibility with products such as dicamba if they must add state specific restrictions through the FIFRA 24(a) process instead of a FIFRA 24(c).

1. EPA ESA Workplan:

* Jake Li, Deputy Assistant Administrator for Pesticide Programs provided an in depth look at the newly released comprehensive workplan to address the challenge of protecting endangered species from pesticides. Jake provided a look at the history of the process and discussed how the workplan reflects EPA’s experiences, assesses its future ESA workload, and describes administrative and other improvements that EPA will pursue or consider pursuing. The workplan reflects the Agency’s most comprehensive thinking to date on how to create a sustainable ESA-FIFRA program.

1. Dicamba Registrations and the 2022 growing season:

* Indiana, Minnesota, and Illinois received a large number of dicamba related pesticide misuse complaints during the 2021 season. Each of those states experienced a strain on resources to investigate these complaints in addition to normal misuse workload.
* Indiana, Minnesota, and Illinois only states in region to implement additional state specific dicamba restrictions.
* Like the 2021 growing season, IN implemented a June 20th cutoff through the through the FIFRA 24(a) process by using an existing regulation for the 2022 season. This cutoff date applies to the new over the top soybean dicamba herbicides as well as all other ag-related products containing 6.5% dicamba or higher. The Indiana Pesticide Regulatory Board designated dicamba a "highly volatile herbicide" under state law, which allowed the state to add the June 20th cutoff restriction. IN felt it had success with this same cutoff date last season.
* In 2021, Illinois was able to use an emergency state rulemaking process under FIFRA 24(a) to implement 5 restrictions for over-the-top dicamba applications to soybeans. They issued the same 5 restrictions for 2022 but had to use a permanent rule making process.
  + June 20th cutoff date,
  + 85-degree temperature restriction,
  + requirement to use Fieldwatch sensitive crop registry,
  + do not apply restriction if wind is blowing toward residential areas or Nature Preserve Commission Sites.

Any future changes needed to these restrictions will go through a formal rulemaking process.

* Minnesota worked with the 3 registrants and EPA to get their state specific restrictions on the federal label for all three over the top dicamba soybean products. Minnesota credited support from grower groups for the success of the process. The federal label directs applicators to a website which lists the state specific restrictions for Minnesota and Iowa. Minnesota has enacted a June 12th cutoff for all applications made south of Interstate 94. Areas north of Interstate 94use the June 30th cutoff.
* Illinois and Indiana did not pursue the federal label change to avoid confusion with their existing state specific regulations.
* States feel they have lost regulatory flexibility with this product without the use of the FIFRA 24(c) option.
* Everyone experiencing dicamba fatigue. States are struggling to complete the increased caseloads. State inspectors experiencing burnout and some pursuing retirement earlier than would be expected.
* All states interested to know the dicamba specific data that USEPA would like to track for the 2022 misuse season.
* States did not see the same number of pesticide misuse complaints from new 2,4-D Enlist technologies.

1. Dicamba and Potential Weed Resistance:
   * Dr. Aaron Hager, weed scientist from the University of Illinois provided a discussion of potential dicamba weed resistance. Noted first case of dicamba resistance found in Canada in 1990 and the ten weeds known to be resistant to dicamba. Recently reported first case of dicamba resistant waterhemp in Illinois. With increasing selective pressure, dicamba resistance could spread quickly. Best to map out three or four year weed control programs and not just do it on a yearly basis.
2. Pesticide Supply Issues:

* KJ Johnson, president of the Illinois Fertilizer and Chemical Association (IFCA) provided a crop production update and an overview of the supply issues facing the agriculture sector during this spray season. The IFCA represents the AG retailers in Illinois regarding, pesticides, fertilizers, equipment, and input transportation. Supply shortages started with COVID and continued to decline in a domino effect of issues facing the industry. Discussed the country of origin and how that affects supply. China reducing production due to Olympics and more stringent environmental requirements. Glyphosate and glufosinate in short supply due to supply chain and production issues in China. Extend products produced state side so product availability should not be a significant problem. Not only are ships waiting to be loaded in port, but transportation is also very difficult once a product arrives stateside. Some companies resorted to flying in products. Supply issues not only related to products. Cardboard shipping boxes and container lids were also scarce.

1. Enlist Product Lables and ESA Restrictions:
   * Lindsay Roe, USEPA Brach Chief, Herbicide Branch of the Pesticide Registration Division. Discussion regarding the new process used to issue seven-year registrations for Enlist One and Enlist Duo and be in compliance with ESA requirements.
   * Discussed the recent decision to approve the use of both products in 134 additional counties.
2. Mosquito Control Mist Blowers – Subscription Based Applications:
   * Dave Scott from Indiana provided an overview of a draft issue paper regarding potential issues with mosquito control in residential neighborhoods. The draft, which was discussed at the April Working Group Meeting, looks at the issues behind complaints from these residential applications. During misuse investigations, SLAs are struggling with determining whether the pesticides are being used legally or whether the resulting off-target exposures are creating a human or environmental risk. Although many insecticides now have mosquitos listed on their labels as an intended target pest, the use directions and restrictions for mosquito control are “confusing, minimal, or completely nonexistent”. Concerns with applications being made with power mist blowers were also discussed. The paper urges a deeper look into the nontarget risks from potential drift exposures.  
       
     Illinois discussed new legislation aimed at subscription-based mosquito applications.
3. New Inspection and Enforcement System (INTELS) – Michigan:
   * Caitlin Burkman from the Michigan Department of Agriculture & Rural Development (MDARD) demonstrated a new computerized enforcement system that was designed specifically for their agency. Automated features provide a great timesaving for the Department. Key to their successful system came from a great deal of planning and dedication of staff time to work with the developer.
4. C&T Plan Approval Process and Feedback from EPA Regions and headquarters:

* Region 5 EPA provided a status update regarding plan reviews from both a national and regional perspective and discussed the possible extension of C&T deadlines.
* Region 5 EPA listed issues identified within regional plans.
* Region 5 asking for additional implementation plan details. States expressed concern providing detailed implementation dates while plans not finalized.
* Several states expressed significant concerns providing EPA with proposed legislative language. Several have restrictions prohibiting sharing proposed legislation prior to it being introduced by their legislative bodies.
* States had concerns with July 2022 timeline to have 2nd pass review completed and forwarded to Headquarters.
* States have multiple partners to consult and work with outside of the EPA review process.
* States expressed concern with the appearance that EPA did not want to discuss concerns specific to one state in front of the other states in the region. States stated reason for SFIREG was to discuss all issues openly.
* States expressed concerns EPA unable to look at the intent of the regulation.

1. Online Pesticide Applicator Training/Testing:
   * States using online pesticide applicator training and/or testing finding it a valuable alternative to in-person only option. Hybrid systems using a combination of both in-person and online options seem to be the way most states are moving with their programs. While some applicators prefer the in-person setting, states are seeing applicators asking for the online option. Illinois, Indiana, and Wisconsin all gave descriptions of their online programs. Indiana uses Metro Institute as their vendor and Wisconsin uses Pearson Vue. Illinois PSEP team uses the Moodle learning management system for exams and ProctorU for proctoring services.
2. Pesticide Preemption Bill:
   * Discussion of House Resolution 7266 introduced by Rodney Davis (IL-13) on March 29, 2022. This bill amends the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to prohibit local regulations relating to the sale, distribution, labeling, application, or use of any pesticide or device subject to regulation by a state or the Environmental Protection Agency under FIFRA. Bill was introduced on 3/29/22 and referred to House Committee on Agriculture. House Committee on Agriculture referred to Subcommittee on Biotechnology, Horticulture, and Research on 4/18/22.
3. EPA Chlorpyrifos Tolerance Revocation Action:
   * States receiving questions about existing stock and disposal issues. Questions about clean sweep programs and current uses.
   * States concerned about lack of additional funding for clean sweep programs.
4. PFAS/PFOS in Containers of Pesticide Products:  
   * States not reporting any current issues or concerns.
5. Treated Seeds and Articles of Exemption:  
   * No items to report.
6. New Region 5 Pre-SFIREG Chair:
   * After serving a four-year term, Illinois will be handing over the Region 5 Pre-SFIREG chair to Minnesota. Roger Mackedanz from the Minnesota Department of Agriculture will be filling that role.
7. Future Region 5 Pre-SFIREG Meeting Dates:  
   * Nov. 2nd and 3rd 2022
   * May 4th and 5th 2023