CFAES

OHIO STATE UNIVERSITY EXTENSION

NORTHEAST OHIO AGRI-CULTURE NEWSLETTER

Your Weekly Agriculture Update for Ashtabula and Trumbull Counties

August 1, 2023

Ohio State Fair Reserve Grand Champion Market Lamb, Exhibited by Trumbull County's own Avery Rice. Congrats Avery!

In This Issue:

Hello Northeast Ohio Counties!

The calendar says August 1st but the weather recently has been more like September with cool nights in the low 50s and heavy dews. Keep an eye out for disease in field crops as conditions are perfect for many of them. Tar spot was found across NE Ohio last fall, so scout for it in your corn this year.

Ashtabula County Fair is one week away! Today, August 1st is the last day for many entries, so get your vegetables, hay, and bake goods signed up by 8 PM!

Have a good week and stay safe!

Lee Beers
Trumbull County
Extension Educator

Andrew Holden
Ashtabula County
Extension Educator

August's Stealthiest Insect Pest: Stink Bugs in Soybean

By Kelley Tilmon & Andy Michel
Source: https://agcrops.osu.edu/newsletter/corn-newsletter/2023-25/august%E2%80%99s-stealthiest-insect-pest-stink-bugs-soybean

Why are stink bugs the stealthiest insect pest near the end of summer? It's because their method of feeding is so subtle. You won't see damaged leaves or sickly-looking plants with stink bugs. They have straw-like mouthparts which they poke through the pod directly into the developing seed. If this happens early enough in seed development the seed will simply abort. If it happens later, the seed will be shriveled and shrunken. Either way, this reduces yield and/or reduces seed quality, though you will not see the damage unless you carefully inspect the pods for missing or damaged seed.

The good news is that soybeans are relatively easy to scout and are susceptible to the insecticides labeled for them. There are many species of stink bugs that feed on soybean including brown marmorated stink bug (BMSB), green, red shouldered, and brown stink bugs. It's not necessary to distinguish between them for threshold purposes.

Begin scouting for stink bugs when the soybean plant reaches the R2 stage (full bloom, when the plant has an open flower at one of the two upper-most nodes on the main stem). Stink bug feeding can cause economic loss from the R3 stage (pod set) to the R6 stage (full seed set). Using a sweep net, sample in at least 5 locations in smaller fields, more in larger fields. Stink bugs tend to be more numerous on field edges so sample throughout the field for the overall picture. At each location take a set of 10 sweeps, taking a step with each sweep of the vegetation. Count the number of stink bugs captured in your sweep net for each 10 sweep set. All pest stink bug species, both adults and nymphs, should be counted together. In soybeans grown for grain the threshold is 4 bugs per 10-sweep. In soybeans for seed or food the threshold is 2 bugs per 10-sweep (because the reduction in seed quality is more important).

Stink bug sweep net threshold levels

Seed usage	Average / 10 sweep set
Food grade or seed	2
Grain	4

For more information about stink bug biology, identification, and management visit our field guide to the Stink Bugs of Ohio Soybean **here**.

Ag Law Harvest

By Jeffrey K. Lewis, Esq., Program Coordinator, OSU Income Tax Schools & Extension
Source: https://farmoffice.osu.edu/blog/fri-07282023-121pm/ag-law-harvest

It's getting hot! And we are here to bring you even more heat. This month's Ag Law Harvest takes you across the country and even across our northern border as we highlight some interesting court cases, a petition to the USDA, and some legislation coming across the desks of Governors from Maine to Oregon.

Ohio Court Determines That Dairy Farm Did Not Intentionally Harm Employee.
In 2019, a dairy farm employee sustained serious injuries after getting caught in a PTO shaft while operating a sand spreader. After his injury, the employee filed a lawsuit against his employer for failing to repair or replace the missing safety guards on the PTO shaft and sand spreader. In his lawsuit, the employee alleged that the dairy farm's failure to repair or replace the missing safety guards amounted to a "deliberate removal" of the equipment's safety features making the dairy farm liable for an intentional tort. In other words, the employee was accusing his employer of intentionally causing him harm. Normally, workplace injuries are adjudicated under Ohio's workers' compensation laws, unless an employee can prove that an employer acted intentionally to cause the employee harm.

For an employer to be held liable for an intentional tort under Ohio law, an employee must prove that the employer acted with the specific intent to injure an employee. An employee can prove an employer's intent in one of two ways: (1) with direct evidence of the employer's intent; or (2) by proving that the employer "deliberately removed" equipment safety guards and/or deliberately misrepresented a toxic or hazardous substance. Because there was no direct evidence to prove the dairy farm's intent, the employee could only try his case under the theory that the dairy farm deliberately removed the safety guards, intentionally causing him harm.

The case went to trial and the jury found the farm liable and ordered it to pay over $1.9 million in damages. The dairy farm appealed to the Twelfth District Court of Appeals arguing that its failure to repair or replace does not amount to a "deliberate removal" of the safety guards from the PTO shaft and sand spreader. The appellate court agreed.

The Twelfth District decided to apply a narrow interpretation of the term "deliberate removal." The court held that a "deliberate removal" is defined as the "deliberate decision to lift, push aside, take off, or otherwise eliminate." The evidence presented at trial showed that the shaft guard may have simply broken off because of ordinary wear and tear. Additionally, the evidence could not establish who removed the connector guard or if the connector guard did not also break off due to ordinary wear and tear. Thus, the Twelfth District found that the evidence presented at trial did not support a finding that the dairy farm made "a careful and thorough decision to get rid of or eliminate" the safety guards. Furthermore, the Twelfth District reasoned that an employer's "failure to repair or replace a safety guard is akin to permitting a hazardous condition to exist" and that the "mere knowledge of a hazardous condition is insufficient to show intent to injure. . ." The Twelfth District vacated and reversed the $1.9 million judgment and entered summary judgment on the dairy farm's behalf.

USDA Receives Petition Over "Climate-friendly" Claims.
The Environmental Working Group (EWG) has petitioned the U.S. Department of Agriculture ("USDA"), asking the USDA to: (1) prohibit "climate-friendly" claims or similar claims on beef products; (2) require third-party verification for "climate-friendly" and similar claims; and (3) require a numerical on-pack carbon disclosure when such claims are made. The core legal issue is whether such "climate-friendly" labels and numerical carbon disclosures are protected and/or prohibited by the legal doctrine of commercial speech, which is protected under the First Amendment of the U.S. Constitution. EWG argues that the USDA has the authority to regulate such speech because commercial speech is only protected if it is not misleading. Additionally, EWG claims that requiring numerical carbon disclosures advances a substantial governmental interest by protecting consumers from fraud and deception. Although EWG has the legal right to petition the USDA, the USDA does not have to grant EWG's petition, it must only consider the petition and respond within a reasonable time.

Maine Governor Vetoes Ag Wage Bill.
Earlier this month Maine Governor, Janet Mills, vetoed Legislative Document 398 ("LD 398") which required agricultural employers to pay their employees a minimum wage of $13.80 and overtime pay. Governor Mills stated that she supports the concept of LD 398 but was concerned about some of the bill's language. The Maine legislature had the opportunity to override the Governor's veto but failed to do so. After the legislature sustained her veto, Governor Mills signed an executive order establishing a formal stakeholder group to develop legislation that will establish a minimum wage for agricultural workers while also addressing the impacts the future legislation will have on Maine's agriculture industry.

A Big Thumbs Up!
A Canadian judge recently found that a "thumbs-up" emoji is just as valid as a signature to a contract. In a recent case, a grain buyer, South West Terminal Ltd. ("SWT"), sent through text message, a deferred grain contract to a farming corporation owned and operated by Chris Achter ("Achter"). The contract stated that Achter was to sell 86 metric tonnes of flax to SWT at a price of $17 per bushel. SWT signed the contract, took a picture of the contract, and sent the picture to Achter along with a text message: "Please confirm flax contract". Achter texted back a "thumbs-up" emoji. When the delivery date came and passed, Achter failed to deliver the flax to SWT which prompted SWT to file a lawsuit for breach of contract. SWT argued that Achter's "thumbs-up" meant acceptance of the contract. Achter, on the other hand, claimed that the use of the emoji only conveyed his receipt of the contract.

The Canadian court ultimately ruled in favor of SWT. The court relied on evidence that Achter and SWT had a pattern of entering into binding contracts through text message. In all previous occurrences, SWT would text the terms of the contract to Achter and Achter would usually respond with a "looks good", "ok", or "yup". This time, Achter only responded with a "thumbs-up" emoji and the court concluded that an objective person would take that emoji to mean acceptance of the contract terms. Achter was ordered to pay over C$82,000 ($61,442) for the unfulfilled flax delivery. As the old saying goes: "a picture is worth a thousand words or tens of thousands of dollars."

Oregon Governor Signs Agriculture Worker Suicide Prevention Bill into Law.
Earlier this month, Oregon Governor Tina Kotek signed a bill that creates a new suicide prevention hotline for agricultural producers and workers into law. Senate Bill 955 ("SB 955") provides $300,000 to establish an endowment to fund an AgriStress Helpline in Oregon. Proponents of the bill believe the AgriStress Helpline will be able to specifically address the needs of agricultural producers and workers which "[s]tatistically . . . have one of the highest suicide rates of any occupation." Oregon becomes the 7th state to establish an AgriStress Hotline joining Connecticut, Missouri, Pennsylvania, Texas, Virginia, and Wyoming.

Powdery Mildew Management in Cucurbits

By Sally Miller
Source: https://u.osu.edu/vegnetnews/2023/07/29/powdery-mildew-management-in-cucurbits/

Powdery mildew colonies on the underside of a pumpkin leaf. Fungicide applications should start when these colonies are first observed during scouting. It is important to check both surfaces of the leaves. Photo by Josh Amrhein.

[Updated from 2022 post] Powdery mildew usually appears on pumpkins and other cucurbits in Ohio beginning in early July, but this year it appears to have come in a little later. The pathogen, *Psudoperonospora cubensis*, does not overwinter in Ohio; infections result from spores blown into the area on the wind. Powdery mildew is favored by moderate to high temperatures and high humidity. However, unlike most other fungal plant pathogens, it is inhibited by free moisture on the leaf surface. Scouts observed a small number of powdery mildew colonies about 2 weeks ago on squash in our downy mildew sentinel plot at OSU's North Central Agricultural Research Station in Fremont.

Signs of infection are small circular powdery growths on either side of the leaf. These spots enlarge and can eventually cover most of the leaf surface and kill the leaves. Stems and leaf petioles are also susceptible, but the disease is not observed on fruit. In pumpkins, powdery mildew may also attack the "handles", which can be further damaged by secondary pathogens.

Powdery mildew is managed using disease-resistant varieties and fungicides. Pumpkin and squash varieties vary in resistance to powdery mildew; in general, the more susceptible the variety, the more fungicide needed. The choice of fungicide is important because insensitivity to overused fungicides is common. It is critical that a fungicide resistance management program is followed. Alternate fungicides in different FRAC (Fungicide Resistance Action Committee) groups, indicating different modes of action against the fungus. Fungicide applications should begin when the disease first appears and incidence is low (rule of thumb: at least one leaf of 50 scouted). Fungicides that are labeled for use against cucurbit powdery mildew can be found in the searchable Midwest Vegetable Production Guide for Commercial Growers.

OSU evaluations of efficacy of powdery mildew fungicides in Ohio in 2021 indicated that Aprovia Top, Luna Experience, Inspire Super, Rally, Miravis Prime, Luna Sensation, Microthiol Disperss, Vivando and Procure provided very

good control of powdery mildew on pumpkins (see table in color below). Velum Prime, Cevya, Prolivo and Gatten provided good control of powdery mildew on upper leaf surfaces but poor control on the lower surfaces.
Quintec provided good control in 2021 but in other years and other states has failed due to resistance. Fontelis, Bravo Weather Stik, Merivon Xemium, Pristine, and Torino have been shown to provide poor or variable control in Ohio or other states and are not recommended.

Fungicide	FRAC code	PHI (days)	Efficacy	Comments†
Aprovia Top	3+7	0	Good	Good control on both leaf surfaces
Luna Experience	3+7	7	Good	Good control on both leaf surfaces
Inspire Super	3+9	7	Good	Good control on both leaf surfaces
Procure	3	0	Good	Very good control on both leaf surfaces
Rally	3	0	Good	Good control on both leaf surfaces
Vivando	U8	0	Good	Very good control on both leaf surfaces
Miravis Prime	7+12	1	Good	Good control on both leaf surfaces
Luna Sensation	7+11	0	Good	Good control on both leaf surfaces
Microthiol Disperss (sulfur)	M2	0	Good	Good control on both leaf surfaces
Velum Prime	7	0	Fair*	Good control on top leaf surface but poor control on undersides
Cevya	3	0	Fair*	Good control on top leaf surface but poor control on undersides
Prolivo	50	0	Fair*	Good control on top leaf surface but poor control on undersides
Gatten	U13	0	Fair*	Good control on top leaf surface but poor control on undersides
Quintec	13	3	Varies**	Resistance has been observed
Fontelis			Poor	Not recommended
Bravo Weather Stik			Poor	Not recommended
Merivon Xemium			Poor	Not recommended
Pristine			Poor	Not recommended
Torino			Poor	Not recommended

†Based on results of Ohio field trials and bioassays, 2021

Jim Jasinski, OSU Extension, has been running field trials in central Ohio for many years to assess fungicide efficacy against powdery mildew on pumpkins. Some effective fungicide combinations, based on 2021 and 2022 data, are shown in the second table. Some of these fungicides were not effective in our bioassays (table in color), but when paired a broad spectrum protectant like Manzate may prove more effective than when applied alone. Most experts suggest adding a broad spectrum protectant fungicide like Manzate to more powdery mildew-targeted fungicides to reduce the risk of fungicide development, boost fungicide efficacy and protect the crop from other diseases.

Former Buckeye Dr. Andy Wyenandt (Rutgers Univ.) has suggested that spray programs for cucurbit powdery mildew should contain multiple fungicides with different modes of action/FRAC numbers. He suggest a schedule of A-B-C-D-E-A-B-C-D-E where A, B, C, D, and E represent fungicides from different FRAC groups applied at weekly intervals. A protectant fungicide like Manzate should be tank mixed with the powdery mildew-targeted fungicide. This program is primarily to reduce the risk of resistance to any single fungicide, but it will also provide some cover if the pathogen has come in already resistant to one of the fungicides in the program.

Always check the label for full list of allowed crops and use recommendations and restrictions.

Effective Fungicide Treatments to Control PM in Pumpkin in **Ohio** in 2021 and 2022.

Treatment	Crop
Cevya alt. Quintec; all with Manzate Pro-Stick (FRAC 3,13)	Pumpkin
Gatten alt. Quintec; all with Manzate Pro-Stick (FRAC U13, 13)	Pumpkin
Procure + Vacciplant alt. Vivando; all with Manzate Pro-Stick (FRAC 3, 50)	Pumpkin
Cevya alt. Merivon; all with Manzate Pro-Stick (FRAC 3, 11,7)	Pumpkin
Gatten alt. Merivon; all with Manzate Pro-Stick (FRAC U13, 11,7)	Pumpkin
Procure alt. Quintec; all with Manzate Pro-Stick (FRAC 3,13)	Pumpkin
Procure alt. Vivando; all with Manzate Pro-Stick (FRAC 3, 50)	Pumpkin
Inspire Super* (FRAC 3,9)	Pumpkin
Aprovia Top* (FRAC 7,3)	Pumpkin

*sequential applications for research only, must be rotated per label for grower use.

Reduce loss when storing bales outside

By Clif Little
Source: https://u.osu.edu/beef/2023/07/26/reduce-loss-when-storing-bales-outside/

Even when stored outside, carefully consider storage options. Photo: C. Gelley, SE OH Hay Day

How we store hay makes a difference in the potential for winter forage losses. It is estimated that unprotected round bales of hay stored outside can experience a 4 to 8 inches or more spoilage loss on the outside of the bale over the course of the winter.
A weathered area of 6 inches deep on a 5.6-foot by 5.6-foot bale contains approximately one-third or the total bale volume. If that bale weighs 800 pounds and sells for $65 dollars, then a 6 in spoilage loss is approximately 240 pounds or a value loss of approximately $19.50.

Factors affecting loss

Many factors affect the extent of round bale storage loss each year. These include factors such as bale density, storage time, size of bale, wrap, forage type, weed content, environmental conditions and storage methods.
In this article, we will be discussing methods to reduce loss of uncovered round bales stored outside. The bale storage site is an extremely important factor in reducing loss.

Characteristics of an ideal storage area are those that drain well, have a slight slope, are close to the winter feeding area and not shaded by trees. In addition to full sun, it is best to have a southern exposure. Our objective here is to have bales at a location of easy access, that dry quickly based on sun exposure, and bale rows that don't pool water.

Place the bales in a north-to-south direction and in rows up and down these slopes, with the flat ends butted together. This will allow water to drain away quickly. Anything we can do to keep bales from soil contact will reduce bottom spoilage. It is recommended that rows be spaced 3 feet apart to promote good air circulation. Ideally, our outside bale storage area would be located away from buildings, to reduce fire risk.

Recently, more farms have chosen to store dry round bales (less than 20% moisture), and that have gone through the sweat in rows of plastic wrap. When done correctly, this can result in an effective way of preserving forage quality and reducing loss.

Winter feed cost is a large part of livestock production and giving some attention to hay storage can help to reduce the cost of production, while providing more nutritious forage to our livestock.

Protecting Wheat Seed and Rye Seed While In Storage Before Planting This Fall

By Curtis Young, CCA
Source: https://agcrops.osu.edu/newsletter/corn-newsletter/2023-25/protecting-wheat-seed-and-rye-seed-while-storage-planting-fall

It is not uncommon for a farmer to save some of their wheat or rye crop in a grain wagon for seed to plant their next crop in the fall. Once their wagon is full, it will be shoved into a barn or shed for the rest of the summer until it is needed in the fall. Occasionally, when they return to retrieve their seed, they discover that the wheat or rye has been infested by Indianmeal moth (*Plodia interpunctella*) and possibly other stored grain pests as well. The activity of these grain infesting insects results in reduced

germination potential and/or seedling survivorship requiring an increased seeding rate to compensate for the damaged seed.

Adult Indianmeal moth. These moths are not strong fliers, but they can fly some distances outdoors during the summer months. Photo credit: Whitney Cranshaw, Colorado State University, Bugwood.org.

Indianmeal moth is the most likely grain infesting insect to discover the stored seed in a grain wagon for a short period of time. How quickly it will discover the grain varies on where the nearest source of the moths is located and weather conditions amenable to moth flights.

There are several products that can be used to protect the seed grain until it is needed for planting. Since Indianmeal moth is of greatest concern, one can target both the caterpillar and the moth. A grain surface “cap out” treatment can be employed to the wagon load of grain because the main route of entry that Indianmeal moth uses is through the open top of the wagon. A “cap out” treatment is to apply the insecticide to the exposed surface of the grain and mixed into grain 4 inches deep. Indianmeal moth caterpillars can be controlled by products containing the active ingredient *Bacillus thuringensis* abbreviated *Bt* (e.g., Biobit HP, Dipel DF and Javelin). Other products labeled for Indianmeal moth caterpillars which may also deter other grain infesting insects contain pyrethrin (Pyronyl), Spinosad (Sensat), and s-methoprene (Diacon-D IGR).

If one places staves over the open wagon to be able to cover it with a tarp, one could hang a no-pest strip that releases the insecticide dichlorvos (2,2-dichlorovinyl dimethyl phosphate) (e.g., Nuvan ProStrips, Hot Shot No-Pest Strip) into the air under the trap.

The trap must be tied down to trap the insecticide over the grain. The active ingredient Dichlorvos is excellent for managing flying insects including Indianmeal moth adults.

Indianmeal moth caterpillar, cocoon, and pupa. The caterpillars spin silken threads as they move about webbing grains together and eventually building a cocoon within which to pupate. Photo credit: Whitney Cranshaw, Colorado State University, Bugwood.org.

Lep Monitoring Network Update #13 – WBC Numbers Remain High, Continue Scouting!

By Rebecca DiScipio, Stephanie Pflaum, Amy Raudenbush, Trevor Corboy, Suranga Basnagala , Mark Badertscher, Nic Baumer, Frank Becker, Nick Eckel, Allen Gahler, Don Hammersmith, Mary Jo Hassen, Alan Leininger, Ed Lentz, CCA, Kendall Lovejoy, Clifton Martin, CCA, Sarah Noggle, Jordan Penrose, Beth Scheckelhoff, Mike Sunderman, Frank Thayer, Kyle Verhoff, Brooks Warner, Curtis Young, CCA, Andy Michel, Kelley Tilmon, Jamie Hampton, Les Ober, CCA
Source: https://agcrops.osu.edu/newsletter/corn-newsletter/2023-25/lep-monitoring-network-update-13-%E2%80%93-wbc-numbers-remain-high

The Ohio Lep Network is continuing to monitor moth pests across Ohio. We are in our 13th week of monitoring, and we are continuing population reports for Western bean cutworm (WBC), corn earworm (CEW), and both variations of European corn borer (ECB - IA & NY).

While black cutworm (BCW) and true armyworm (AMW) monitoring for this season have both finished in June, this week Van Wert County, which had been seeing an increase in population numbers for several weeks after the typical peak, saw a decline in BCW

numbers with an average of 8.4, compared to 11.2 of last week. Van Wert County also reported an average of 5.9 AMW's, a slight increase to the average of 4.6 insects from last week.

For more information on these pests and many more, check out our website: https://aginsects.osu.edu

Writing on the Western Bean Cutworm

This is our sixth week reporting on adult Western Bean Cutworm (WBC) populations across Ohio. In total, 20 counties have been monitoring for WBC, using 71 total traps (Figure 1). We caught a total of 527 moths with a statewide average of 7.5 moths. These numbers are a decrease from last week (total of 779 and a statewide average of 10). While we believe we are past the peak, there are still a number of counties reporting high numbers. The highest average reports for WBC again come from Lucas County, with an average of 53 moths in 1 trap. Sandusky, reported the highest number of WBC in a single trap (77), however the county average was only 30.3. In addition to Lucas and Sandusky, five other counties had an average of 7 moths or higher including Defiance, Geauga, Hancock, Wayne, and Wood

As mentioned in our previous newsletters (#11 and #12), counties with an average of 7 or more WBC should continue scouting for WBC egg masses, which often reside on the underside of the leaves. Several counties across northern Ohio have seen decreasing numbers since last week, but if averages are still above 7 for your county, continue scouting for WBC's! For more information on how to scout for WBC and what to look for, see our previous newsletter: https://agcrops.osu.edu/newsletter/corn-newsletter/2023-23/lep-monitoring-network-update-11-%E2%80%93-time-scout-wbc

Also keep a lookout for a WBC look-alike named the flame-shouldered dart (FSD) moth. They bear the same boomerang and dot markings, with a white stripe on the outer side of the forewing but are smaller than the WBC. For more information, see our article: https://aginsects.osu.edu/news/western-bean-cutworm-moth-look

Western Bean Cutworm Moth Map
July 24th – 30th, 2023

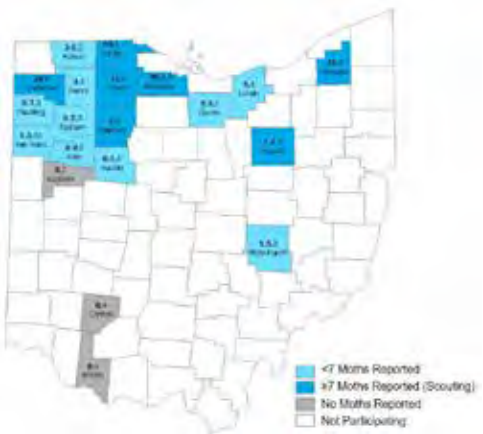

Figure 1. Average western bean cutworm moths (WBC) captured from July 24th â€“ July 30th. The bold number on the left indicates the average number of moths captured. The second number on the right indicates the number of traps monitored in each county.

Collecting the Corn Earworm
This is our eighth week reporting on corn earworm (CEW) populations across Ohio. This week, 10 counties have been monitoring for CEW, using 18 total traps. Overall, very few CEW were observed over the past week. Henry County, which had a high of 4 average CEW's last week, had a decrease in numbers this week and reported an average of 0.5 CEW. The highest average reports for CEW come from Muskingum County, with an average of 1 moth (Figure 2).

For more information on CEW as well as the threats they pose, see our previous newsletter: https://agcrops.osu.edu/newsletter/corn-newsletter/2019-27/corn-earworm-field-corn-watch-molds

Corn Earworm Moth Map
July 24th – 30th, 2023

Figure 2. Average corn earworm moths (CEW) captured from July 24th â€“ July 30th. The bold number on the left indicates the average number of moths captured. The second number on the right indicates the number of traps monitored in each county.

Eluding the European Corn Borer
This is our eleventh week reporting on European corn borer (ECB – IA & NY) populations across Ohio. This week, 10 counties have been monitoring for ECBs using 35 traps. No moths were reported across all participating counties for both the ECB-IA and ECB-NY variants (Figure 3). For more detailed information about the European Corn Borer visit our previous article at: https://aginsects.osu.edu/sites/aginsects/files/imce/ENT_15_14.pdf

European Corn Borer Moth Map
July 24th – 30th, 2023

Figure 3. Average European corn borer (ECB) moths captured from July 24th â€“ July 30th. The bold number on the left indicates the average number of moths captured. The second number on the right indicates the number of traps monitored in each county.

Want to donate your garden surplus? Ohio law provides liability protection

By Peggy Kirk Hall, Attorney and Director, Agricultural & Resource Law Program
Source: https://farmoffice.osu.edu/blog/wed-07262023-1058am/want-donate-your-garden-surplus-ohio-law-provides-liability-protection

It's the time of year when many Ohio vegetable gardeners are wondering, "why in the world did I plant so many zucchini?" And it's also when we start hearing the question, "is there any liability risk in giving away my garden produce?" The good news is that Ohio has a food donation immunity law. The law encourages food donations by granting liability protection to those who give perishable foods like garden produce to agencies that serve individuals in need. A new amendment to the law recently passed in Senate Bill 16 broadens the types of donations that qualify for liability protection. If you're up to your ears in garden produce, you may want to know about the food donation immunity law.

Here's how the law works.

1. **The grant of immunity**

The food donation immunity law is in Ohio Revised Code 2305.37. It states in Section B that a person who, "in good faith," donates "perishable food" to an "agency" is not liable for harm that may arise if the food, when distributed to an "individual in need," is not "fit for human consumption."

2. **The donation must be made "in good faith" that the food is "fit for human consumption" when donated**

There is not a definition for the term "in good faith," but it's a term commonly used in legal situations. It means that a person acted with an "honest intent" and not with an intent to deceive or conceal something. The food donation immunity law provides two conditions to help ensure a person is donating in good faith. First, the immunity only applies if a person determines, prior to making a donation, that the food is "fit for human consumption" at the time it is donated to an agency. The term "fit for human consumption," though not defined by this law, means that it is edible and safe. But note there is no responsibility on the donor to ensure the food will be edible and safe after it is donated, when it is actually consumed or distributed. Second, when determining whether food is fit for consumption, a donor cannot act with gross negligence or willful or wanton misconduct. These two conditions mean that if a donor doesn't inspect the food at all before delivery or knows something happened to the food that could make it

unsafe for consumption but donates it anyway, the law will not protect the donor from liability if the food causes harm.

3. **The law applies to "perishable food"**

The law's definition of "perishable food" is broad. It refers to any food that may spoil or otherwise become unfit for human consumption due to its nature, age, or physical condition. The definition includes fresh fruits and vegetables, fresh and processed meats, poultry, fish, seafood, dairy products, bakery products, eggs, refrigerated and frozen foods, and packaged foods. It also includes food prepared but not served by a food service operation such as a restaurant, caterer, or hotel, and gleaned foods, discussed below.

4. **Donations must be to "agencies" that serve "individuals in need"**

Donations to friends and family don't qualify for the liability protection—the law only applies to a donation to an "agency" that serves "individuals in need." Several definitions and conditions are important.

- An "agency" is an organization that distributes perishable food to "individuals in need," either directly or indirectly. The term includes any nonhospital, charitable nonprofit corporation organized under Ohio nonprofit laws, or nonprofit charitable association, group, institution, organization, or society. An "individual in need" is a person an agency determines to be eligible for food distribution due to poverty, illness, disability, infancy, or similar circumstances.
- A qualifying agency is one that does not charge a fee for the food. However, Senate Bill 16 recently amended the law to allow donations to an agency that charges an amount no more than the cost of handling the food. That change means even if individuals pay a food handling cost to receive the donated food, the donor of the food will receive immunity.
- Another section of the law, 2305.37(D), also grants immunity to an agency that distributes donated food as long as the agency determines the food is fit for human consumption when the food distribution occurs.

Ohio law also provides liability protection for "gleaning"

Growers can also be immune from liability when allowing someone else to pick or salvage the garden produce and donate it to an agency. This is referred to as "food gleaning" and Ohio law also provides liability protection to those who allow food gleaning. First, the gleaned food is considered "perishable food" and is covered by the food donation immunity law described above. Second, the food gleaning immunity law in Ohio Revised Code 2305.35 grants a landowner or operator immunity for physical injuries sustained by a gleaner during the gleaning process. The landowner or operator is not liable for injuries to a gleaner resulting from any risks or conditions of the property or any normal agricultural operations on the property.

Ready to donate?

Gardeners ready to donate excess garden produce first need to locate an agency that serves individuals in need. Find a local food bank, food pantry, soup kitchen, meals on wheels, or similar agency, and make sure the agency doesn't charge individuals to receive the food or charges no more than the cost of handling the food. These resources can help locate an agency:

- Ample Harvest - https://ampleharvest.org/find-pantry/
- Ohio Victory Gardens - https://u.osu.edu/ohiovictorygardens/donating-your-victory/
- Ohio Soup Kitchens, Food Banks, Food Pantries - https://www.homelessshelterdirectory.org/foodbanks/state/ohio

Before delivering garden produce to tan agency, be sure to inspect the produce and ensure it is fit for consumption—clean, not spoiled, and edible. Don't have time to pick and deliver? Find a food gleaner who may be willing to glean your garden and donate the food to an agency. Here's a resource that lists Ohio food gleaners: https://nationalgleaningproject.org/gleaning-map/states/ohio/?fwp_state=oh.

2023 FARM PESTICIDE DISPOSAL COLLECTION

Do you have unwanted, unused, or unknown FARM chemicals? Bring them to a collection and disposal event coordinated by ODA and EPA - at no cost to farmers.

All events are 9:00 am to 3:00 pm.
To pre-register, or for more information, contact the Ohio Department of Agriculture at 614-728-6987.

Wednesday, August 9
Morgan County Fairgrounds
2760 South Riverside Drive | McConnelsville

Thursday, August 10
Putnam County Fairgrounds, Gate 5
1206 East Second Street | Ottawa

Tuesday, August 22
Miami County Fairgrounds, North Gate
650 North County Road 25A | Troy

CFAES

Ohio Department of Agriculture

agcrops.osu.edu

Ohio Certified Volunteer Naturalist Course

The mission of the **Ohio Certified Volunteer Naturalist (OCVN)** program is to build awareness of Ohio's environment and natural resources through science-based education and community stewardship.

The OCVNs role is to support partners in meeting the needs of our citizens in the area of natural resources by assisting with educational programs.

Activities Include:

- Identifying and educating the public about invasive species
- Diagnosing plant problems
- Giving public presentations relating to nature
- Hosting events for the public
- Staffing educational booths and other various opportunities

Program Benefits:

- Learn about the biology, ecology and natural history of Ohio from many of the state's leading experts.
- Become part of a local and statewide network of dedicated volunteers.
- Apply your talents and passion to protecting, restoring and understanding Ohio's natural treasures.

If you have a strong interest in nature and enjoy helping others, you are invited to apply to become an Ohio Certified Volunteer Naturalist.

OCVN Training

The course sessions are taught by faculty and staff with The Ohio State University along with conservation and naturalist professionals throughout Ohio.

Topics include:

- Soil, Geology and Watersheds
- Ecology and Stewardship
- Botany & Forests
- Entomology & Herpetology
- Ornithology & Mammals
- Working with the public & communication skills

You will learn how to contribute to community science efforts, restore and protect critical habitats, and communicate effectively about Ohio's' environment while exploring parks and natural areas near you.

Certification Requirements

To become an Ohio Certified Volunteer Naturalist, you must:

- ✓ Complete 40 hours of combined classroom and field instruction
- ✓ Perform 40 hours of approved volunteer service within the first year
- ✓ After certification, 20 hours of volunteer service and 8 hours of advanced training are required annually

Application Process

- Spaces in the class will be viewed on a first-come, first-served basis.
- Class size is limited to 25 participants.
- You must be at least 18 years old to apply.

You can find the application at **https://go.osu.edu/portageocvn2023**

Registration is $225.00 due within two weeks of admission to the program. The price includes a binder manual, additional handouts, state fees and related costs for conducting the program.

For payment:
http://go.osu.edu/portageextensionpayment
or scan the QR code.
Return applications by August 29th to Portage County Extension Office, 705 Oakwood St. Suite 103, Ravenna, OH 44266. Please make checks payable to Portage County OSU Extension.

CFAES



Women in Agriculture
Ashtabula County Farm Tours
Beef, a Backyard Garden, & Berries

Join us for one or all of this 3-part series featuring women owned farms!

Mardy Townsend	Alexa Sandella	Lois Wright Morton
Marshy Meadows	Backyard Garden	Outwash Terrace
Windsor, OH	Kingsville, OH	Pierpont, OH
Sunday, May 7th	Sunday, July 30th	Sunday, August 27th
from 2-4 p.m.	from 2-4 p.m.	from 2-4 p.m.

Save the date! Rain or shine!

Please wear boots, bring water, and be prepared for walking

New Date

To RSVP, call or email Julie Wayman 440-576-9008 or wayman.31@osu.edu

ashtabula.osu.edu

THE OHIO STATE UNIVERSITY
COLLEGE OF FOOD, AGRICULTURAL, AND ENVIRONMENTAL SCIENCES