

Records, witnesses are best protection, says attorney

Mark all hazards and mix all chemicals yourself.

That was the advice of Mike Veron, an attorney from Lake Charles, La. and a member of the USGA Green Section Committee.

"Adopt the mindset that the worst that can happen will happen," said the lawyer who represents many major chemical companies.

"A chemical company's first line of defense in any lawsuit regarding alleged chemical damage is that the chemical didn't do the damage. Its second line of defense is that if the chemical did do the damage, it's because the chemical was misused."

Therefore, a superintendent's first line

of offense in any claim against a chemical company must be to document that he used the chemical properly.

Veron then listed four steps every superintendent should take to prove his case:

1. Only the superintendent—or perhaps his assistant, depending on his qualifications — should do the mixing.

2. Keep a log that shows when you mixed, what you did, and who witnessed it. Always have at least one other person witness the mixing.

3. Save the label. Don't discard it with the container. As you know, federal law generally requires that every chemical have a label showing its contents and showing



MIKE BAILEY/FGCSA

Mike Veron represents several chemical companies in Louisiana

its application directions. Save that with your log book.

4. When you apply the chemical, keep a small amount of the chemical so that if necessary, you can have it tested later.

"That way, when some irate greens chairman walks into your office and asks if you have seen what is left of the sixth and seventh greens, you will be able to document that at least, if the damage is blamed on the chemical you sprayed there three days ago, you complied with the label and

you can also show that you have a witness that you complied with the label."

(Please see TESTIMONY, page 32)



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Testimony of experts usually is required as well

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To collect damages from a manufacturer, however, it's not enough to prove that you were not at fault.

"You have to prove that they were," said Veron.

Usually that proof will require testimony from experts, preferably experts who have nothing at stake — chemist, toxicologist, agronomist. . . or even the superintendent next door — to take soil samples and do whatever is necessary to substantiate the claim of chemical damage.

Veron also addressed the issue of liability for injuries to employees, members, guests and even uninvited intruders.

Sometimes, the attack comes from the least expected quarters.

"There are innumerable horror stories and I am going to tell you one," he said,

relating the story of a New Orleans country club that was ordered to pay \$693,000 to one of its members who accidentally stepped into an unmarked open drain while jogging — even though the member was not seriously injured and should have known not to jog in the area because he knew the hazard existed — he had complained about it several times to club management.

"The moral of the story is that if you are a superintendent and you have any kind of a work condition or work in progress that may constitute a hazard of any kind and if you have to leave it unattended, put barricades around it, put up 'Danger!' signs, do everything possible not only to warn others of the danger but also to prevent them from being exposed to it.

"You should get a rule from the board that prohibits the members' children from getting into the ponds," Veron said.

Ponds, he explained, are like swimming

pools: they fall into the category of "attractive nuisances."

"You know why there are fences around swimming pools. Well, it's a small step from a swimming pool to the ponds on your golf course," he said. "Children like to get in the ponds — a lot of them try to get in and get the golf balls to sell back to the golfers.

"A kid could get in one of those ponds and get bit by a snake or an alligator or get into some horseplay with his buddies and drown."

The principles of law are :

1. Prevent the potential accident if you can.
2. If you can't prevent the accident, warn about the dangerous conditions.

Simple one-word warnings often aren't enough, Veron said. "Make sure you ex-

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Superintendents seen as victims of own success

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plain what the hazardous condition is. If they think you're just being snobbish, they may ignore your warnings.

In conclusion, Veron said the rising professionalism of superintendents has a "down" side.

"You are the victims of your own success," he said. "As you continue to improve turfgrass conditions, you continue to raise the expectations of all of us who enjoy your work. And when you don't meet those expectations, too often you can wind up in court."

Demographics, environmental regs dictate design

Golf course development has entered a new era, says Kevin Downing, golf and landscape operations manager for a South Florida developer and a member of the USGA Green Section Committee.

And any developer who doesn't understand that the rules have changed may end up spending all his capital on the permitting process or — worse — if he does get through permitting with his bankroll intact, "he may not be able to sell his real estate because he builds more golf course

than his market can handle."

Downing, a last-minute substitute speaker for Tom Meeks, USGA director of rules and competitions, repeated the presentation he had made a few days earlier at the annual Tifton Turfgrass Conference in Tifton, Ga.

"If you build a golf course for the three-handicapper, you had better be prepared for a very long sell-out because there aren't that many three handicappers walking around out there," said Downing, who plays to a low handicap himself when on top of his game.

"With the kind of money you're talking about at today's upper-end country club community, people just aren't going to buy into a golf course they can't play."

Downing described the evolution of Willoughby GC in Stuart, a 600-acre development on sensitive wetlands (including some native habitat for the federally protected scrub jay) surrounded by commercial development and a major thoroughfare — U.S. One.

"It used to be vogue to design 'target' golf courses," Downing said. "Now it's mandatory."

His company spent \$1.1 million on the permitting process, drawing up three completely different land-use plans before finally getting permission to turn the first shovelful of dirt.

Because of new requirements for upland buffers and special treatment of littoral zones, the protected scrub jay habitat and the requirement of a local agency that 25



MIKE BAILEY/FGCSA

Kevin Downing substituted at the last minute for a USGA official who could not make the trip from Far Hills, N.J., for the conference.

percent of the native vegetation be left untouched, Downing said the golf course had to be routed before the architect was hired.

"Furthermore, we had done focus groups to make sure we knew what our potential market wanted in the way of a golf course community," he said. "They not only told

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