

5th Circuit Court hears Diazinon appeal

BY PETER BLAIS

Ciba-Geigy Corp., the original developer and the country's largest manufacturer of diazinon-based products, has appealed the Environmental Protection Agency's recent decision upholding its ban of the pesticide on golf courses and sod farms because of its risk to birds.

The EPA ruled in late July that "the only way to preclude diazinon from generally posing an unreasonable avian risk is to prohibit its use on golf courses and sod farms altogether."

That action upheld a ban the EPA imposed in June 1988, the first EPA prohibition of a pesticide solely to protect birds, according to Ciba-Geigy spokesman Stephen Powell.

Superintendents have reportedly found alternatives to diazinon since the government prohibition took effect. But those alternatives generally control fewer pests than does diazinon. That means several different chemicals must be applied to control the same problems.

"The ban has had some effect, but nothing earth-shattering," said Mark Jarrell, superintendent at Palm Beach National Golf & Country Club. "Diazinon is an all-purpose, broad-spectrum pesticide. It seemed safe and effective. It's too bad to lose something like this for political rather than scientific reasons. From what I understand, there were a few birds killed in the Northeast from the granular diazinon. The liquid formulation wasn't a problem.

"I have two or three options to replace diazinon. It makes it more expensive for treating something like mites. It probably costs me several hundred dollars more a year."

Ciba-Geigy, which Powell estimates supplies 75 to 80 percent of the diazinon sold in the United States, appealed the ruling in early September to the 5th U.S. Circuit Court of Appeals. The chemical manufacturer argued the pesticide can be used without endangering birds, primarily waterfowl, with certain restrictions.

According to Powell, those restrictions include:

- barring applications around ponds and wetlands;
- irrigating immediately after application so pesticide granules dissolve into the soil rather than remain on the surface where birds can eat them;
- limiting the number of applications per season; and
- limiting the timing of applications to when waterfowl aren't present.

Added Powell, whose company also appealed the original EPA diazinon ban to the 5th U.S. Circuit Court of Appeals in 1988: "We're basically following the same guidelines we did back then. We believe diazinon can be used in a manner that minimizes the risk to birds."

Powell said his company's latest legal effort could be successful because of rulings by both an administrative law judge and the appeals

court that the EPA review its initial ban.

An administrative law judge suggested several modifications to total prohibition after the EPA filed a notice of intent to ban the use of diazinon on golf courses and sod farms in 1986, Powell said.

The EPA was under no obligation to follow the administrative judge's ruling and imposed the ban in June 1988.

Ciba-Geigy filed its first appeal that summer, but re-labeled its bags of D.Z.N. Diazinon with instructions it not be used on golf courses or sod farms. The appeals court ruled in June 1989 that the EPA make some

modifications and sent the matter back to the federal agency. The EPA incorporated some changes but stood by its golf course and sod farm ban, prompting Ciba-Geigy's latest appeal.

"We've followed the agency decision that diazinon be taken out of the golf market. But we're hoping it will be reinstated," Powell said.

Statistically, golf courses represented less than 2 percent of Ciba-Geigy's diazinon sales in the pre-ban days of early 1988, Powell said. Homeowners were the major customers, buying 65 percent. Farmers and indoor pest controllers purchased 15 percent each. That left

just 5 percent for professional turf care companies and golf courses.

Homeowners, institutions, farmers and indoor pest controllers can still use diazinon. The ban applies just to golf courses and sod farms because of their attractiveness to waterfowl.

"I've seen a lot of birds around cornfields. I guess the golf course ban is a little surprising from that standpoint," the Ciba-Geigy spokesman said.

Powell said feedback from superintendents indicate they are using several pesticides to replace diazinon.

Many of the products are effective

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on tees and greens, but less so on fairways, he added.

One of the most common pests diazinon controls is white grubs, Powell said. The EPA in 1988 recommended five substitutes for diazinon — bendiocarb, carbaryl, chlorpyrifos, isofenphos and trichlorfon.

Powell said there are five to 10 diazinon manufacturers in the United States. All have supported his company's court actions. No appeals court decision is expected soon, he added.

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