

GREEN INDUSTRY NEWS

AUGUST, 1991, VOLUME 30, NUMBER 8

LANDSCAPE MANAGEMENT

LEGISLATION

High court says localities may regulate pesticides

WASHINGTON, D.C.—The U.S. Supreme Court ruled unanimously that local governments may regulate pesticide use on public lands, private lands subject to public use, or in aerial applications, as the final act of *Wisconsin Public Intervenor v. Mortier* was played out June 24th.

What does this mean for the professional pesticide applicator? According to Deb Strohmaier, director of public relations for ChemLawn: "It might not be as difficult to manage (for companies that) are just servicing one or two communities," but ChemLawn, for one, must be concerned about "all the individual possibilities in 45 states."

In two preceding court battles, representatives for the lawn care industry had argued that the 1972 Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) pre-empted such local regulation.

Allen James, executive director of Responsible



"Trouble" states where localities have tried in the past to pass local legislation, according to the PLCAA.

Industry for A Sound Environment (RISE), says the court determined that neither FIFRA's language nor its history "provided sufficient justification for pre-empting local regulation of pesticides."

"The decision creates an unworkable framework for the regulation of pesticides," says Ralph Engel, president of the Chemical Specialties Manufacturers

Association (CSMA). "Jurisdictions by the tens of thousands now have the authority to impose regulations."

Tom Dawson of the victorious Wisconsin Public Intervenor's office calls that "a garbage argument." He says that many town supervisors are themselves farmers, who would not inflict undue hardship on their own livelihoods.

Case Western Reserve University law professor William Marshall in Cleveland, Ohio—who is familiar with the case—says a salvo of new regulations will not necessarily follow the decision.

"All the opinion does is say that the federal law allowed for localities to engage in additional kinds of restrictions if they wanted to," says Marshall. "That's neither an incentive nor a disincentive for localities."

Strohmaier doesn't expect a rash of local action, but suspects certain areas of the U.S. previously active against pesticides to now be motivated further. Strohmaier suspects that more legislative activity will occur next spring, as companies gear up for the new season.

Dawson says he hopes that perhaps now the pesticide industry will agree to "help draft model ordinances."

—Terry McIver □

WASHINGTON, D.C.—What remains to be seen in the epilogue to the Wisconsin/Mortimer courtroom drama is the amount of legislative action to be taken by communities.

"The ruling," says CSMA's Ralph Engel, "makes it extremely important that Congress

Congress may intervene

once and for all closely re-examine the issue of local preemption, and expressly state in FIFRA that local jurisdictions are preempted from regulating pesticides—products that are already heavily and effectively regulated on a

national level."

Congress would certainly be pressured further to amend FIFRA, if what results is indeed a "patchwork quilt" of divergent laws. Justice Byron White, in writing for the court, concluded that "Congress

is free to find that local regulation does wreak havoc, and enact legislation with the purpose of preventing it."

Allen James says RISE will consider whether it will seek a FIFRA amendment immediately, or wait for localities to begin passing laws.

—T.M. □