

Posting, notification key topics in lawn care industry spotlight

■ Posting and notification are the pesticide issues that communities are focusing on after June's U.S. Supreme Court ruling. And, yes, they're making their own rules, as this series of articles about various communities throughout the nation shows.

Lawn pros seeing red over large, pink lawn posting signs

Too late to halt local laws, LCOs take up costly fight over restrictive requirements and get initial favorable ruling.

■ Once a local board drafts and puts pesticide laws on the books, it will fight to keep them there.

That's what the green industry is finding out.

ChemLawn of Easton (Mass.), TruGreen of Warwick (R.I.), Tuckahoe, and The Lawn Co., Inc., are defendants in a lawsuit filed by the Mansfield (Mass.) Board of Health. The suit alleges the companies disobeyed town pesticide laws early this past summer. It seeks a total of \$16,000 in fines from the companies.

The four, as a group, had been contesting the town's regulations.

Now, as a group, they're contesting its suit.

The five-member Mansfield Board of Health passed the regulations last February. Mansfield is a small city just off I-95, closer to Providence, R.I., than to Boston.

By the time lawn care companies reacted, and came in person to seek a compromise, the health board's resolve had hardened.

Emboldened by a June U.S. Supreme Court decision, the board soon thereafter scouted for, and found, victims.

"Apparently someone went around one day and determined we weren't complying with their laws," Ed McGuire, president, The Lawn Co., Inc., tells LANDSCAPE MANAGEMENT.

A town official seemingly took company names from lawn flags—the ones required by state law—and cited the companies for not posting pink (that's right, pink) 8-by-11-inch signs that regulations mandate.

Other provisions of the Mansfield "Turf

Care and Plant Regulator Applicators" regulation:

● Companies applying a turf pesticide or plant growth regulator within Mansfield must obtain a certificate of registration from the health board each year. The fee is \$100.

● The names of all products used as turf pesticides and plant growth regulators must be filed, with appropriate labels and MSDSs, with the board.

● All pesticide spills must be reported immediately to the board.

● All lawn service vehicles must carry storm drain protective covers and 100 pounds of granular absorbent.

● All applicators must be licensed. The license shall be surrendered for inspection upon request of the board or its agent.



McGuire: we weren't complying

Failure to comply may be cause for revocation of the registration certificate.

● There's a \$500 per violation per day penalty for violations in posting, product registration, and for failure to report spills.

In late August Superior Court Judge John Xifaras denied the health board's preliminary request to force the companies to comply with the laws.

"Any local regulation which imposes additional or inconsistent conditions or requirements on the use of pesticides beyond those established by state law must fail," wrote Judge Xifaras.

He said the Mansfield law "frustrates" the purpose of having standard signs as required by state law. These signs, he said, are recognizable by the public.

But the Xifaras decision represents, at best, a dubious victory for the applicators. Even if the lawn care firms win the lawsuit, they will have spent thousands of dollars in legal fees.

Meanwhile, the Mansfield health board continues to spend taxpayers' money in legal fees over concerns already debated and decided upon by the State of Massachusetts. That's the green industry's position anyway.

—Ron Hall

Farm, green industry unit for Indiana pre-emption law

Industry fears too many masters; weakening of state's regulatory framework if towns meddle with pesticide laws.

■ It's no easy matter telling a city councilman or county commissioner to butt out of the pesticide legislation picture.

There's some question now—in light of the U.S. Supreme Court ruling last June in *Mortier v. Town of Casey*—that you even

can. Or should.

"It's very difficult to tell people that their local elected officials don't have a say over certain things," admits Robert Andrews, owner of a lawn care company in Carmel, Ind. "After all, they are elected to represent their constituents' best interests."

But Andrews isn't the only business person or farmer in Indiana skittish about local legislators telling them what chemicals they can use and how they can use them.

Indiana, like most states, doesn't specifically forbid local political bodies from making their own pesticide laws.

Indiana does now, however, have a

coalition (green industry, pest control, agriculture) that wants to change that.

In fact, only Pennsylvania, West Virginia, Minnesota and Louisiana specifically address the question of smaller political bodies within their boundaries making pesticide law, apart from federal and state regulations. Generally speaking, towns, counties, etc. within these states cannot (the lines get kind of fuzzy on some issues) enact separate pesticide legislation.

Elsewhere, including Indiana, any local government seemingly can appoint itself as a pesticide regulator.

Andrews, in-coming president of the Professional Lawn Care Association of America, is one voice in this coalition seeking to convince Indiana legislators to pass a state law to keep local governments from becoming pesticide "policemen."

Adds Steve Biggers, golf course superintendent at Highland Country Club, Indianapolis: "We don't need over-reaction by any communities to pesticides. Nobody's going to benefit from communities passing pesticide laws in knee-jerk fashion."

The coalition, meeting twice by late summer, is moving deliberately. Still, it

hopes to line up legislative sponsors by year's end and bring the matter before state lawmakers early in 1992.

Andrews' application company, The Greenskeeper, operates in six central Indiana counties. He says a proliferation of local pesticide laws would be "disastrous."

An explosion of communities with different pesticide use laws could even threaten Indiana's present statewide regulatory system, a system Andrews describes as knowledgeable and progressive.

Indeed, representatives from the Office of the Indiana State Chemists have attended coalition meetings.

"They've invited us and included us in their meetings because we're the people who regulate pesticide use," says Dave Scott, a pesticide regulator based at Purdue University. "They obviously want to know what our position is in respect to pesticide laws."

Apart from convincing state lawmakers that the local meddling in pesticide laws is not wise, coalition members seek to convince government officials (and the public) that, as professional applicators, they're taking steps to safeguard the public.

Many lawn and landscape firms began

posting chemical applications before the matter even became an issue in their communities.

And now, posting, it seems, is becoming commonplace on golf courses within Indiana, too.

Members of each of the state's four golf course superintendents associations support a plan to post on the 1st and 10th tees on days when chemicals are used on their courses. Also, a sign in each pro shop will advise golfers that they can obtain information concerning chemical use on the course from the course superintendent.

Although Indiana's coalition is broad based and includes support from Indiana's strong agricultural lobby, members are uncertain just how much the state will restrict local pesticide regulation—if at all.

"There are two ways to approach pre-emption," says Andrews. "The state can outlaw local political bodies from legislating pesticide regulations. Or it can permit them to, but only with guidance from the lead regulatory agency in the state."

Adds Biggers, "we don't think it's realistic that we're going to get total preemption."

—Ron Hall

Compromise: the key in New Jersey

Try to influence local legislators at an early stage, rather than after the fact.

■ This past summer, one of David Sandler's Lawn-A-Mat customers told him of the borough's plans to toughen up the notification requirements in Fair Lawn, N.J. Sandler acted fast.

"I contacted the borough leaders and let them know I wanted to be apprised of the developments.

"Initially," recalls Sandler, "they would not give us any information, but they released information to the newspapers. Rumors and mis-information followed, but they wouldn't let (applicators) in on what was happening."

Sandler persisted, and soon he and two other landscapers were able to arrange a meeting with borough officials.



Sandler: rumors run rampant

it was kind of insane. Over the course of about a year, we met three or four times in group sessions, phone calls. Ultimately, the ordinance that was adopted was one we could live with."

Ultimately, says Sandler, ordinances become anti-competitive.

"Dealing with a patchquilt of local regulations is a nightmare we anticipate, though I think New Jersey has a statute which would encourage them to follow state guidelines."

"Initially," Sandler recalls, "the borough had wanted 100 percent pre-notification of everyone within 800 feet."

"We let our side be heard, and we kept the discourse on a civil level, even though we thought

As a responsible businessman, Sandler rolls with the punches.

"People are being affected by something they didn't want or need, regardless of what we consider the risk," says Sandler, who thinks neighbors are entitled to be pre-notified and are entitled to reasonable protection so that they won't be exposed.

Sandler advises company managers to stay informed. At the first hint of legislative activity, establish contact with the legislators, and let them know you'd like to be kept abreast of legislative developments.

Such activity represents a time commitment, "even though it means that after a 12-hour day you go to a work session with the borough officials in the evening," admits Sandler. "Someone has to make the effort to go to one of those work sessions, if you want to have any influence on the ultimate legislation.

"You're better off to have an influence at an early stage than to try to deal with it after the fact," Sandler advises. "If you stick your head in the sand, (the ordinance) is not going to disappear."

—Terry McIver