



EPA changes bring uncertainty

As if the FQPA isn't complex enough, EPA's high-level management changes will bring new faces and unknown agendas.

By SUSAN GIBSON/
Executive Editor

Although a new Congress will take its place this month, some of the more important issues in pesticide regulation will take place in the halls of the U.S. Environmental Protection Agency (EPA) and local governments, according to David Crow, legislative contact for Responsible Industry for a Sound Environment (RISE), Washington.

On the local front, attempts to ban pesticide use on public lands continue to spread, with wide-ranging effects, reports Fred Langley, RISE manager of state government relations.

Both developments have the potential to change the ways lawn care and landscape managers go about their work.

FQPA tug of war

The best intentions of legislators may be tested as the EPA plans how it will implement the Food Quality Protection Act (FQPA), Crow notes. Although the agency is charged with fair implementation of the act, many in our industry feel EPA isn't handling it correctly.

For instance, the EPA has an August, 1999 deadline to develop the first third of allowable FQPA tolerances for non-agricultural exposures to pesticides. To set the exposure levels, EPA must rely on either existing exposure data generated from tests (many of which have been conducted in the industry for pesticide certification purposes) or its own worst-case scenarios (an option EPA appears to favor). RISE and other industry groups fear the worst-case scenarios will generate unrealistic numbers for pesticide exposure and unfairly disqualify a number of materials.

"(The EPA) is thinking up worst-possible-case scenarios, which is a terrible way to regulate, especially with all the good usage data that is available," Crow says. "We (the industry) know a lot about exposure, how our products work, our market and the users. We know how people are thoughtful in the use of these products in and around their homes."

EPA's strategy to rely on its own scenarios ignores extensive evidence generated in years of testing by the industry, he adds.

"When the data is available, exposure is a tiny fraction of the model.

"EPA is acting as if we don't have this data and they can't get it readily," Crow points out. "Our exposures are reasonable, quantifiable and within the range of safety for the average family."

As the deadline approaches, RISE and other industry groups are talking with members of Congress, encouraging them to monitor EPA's process for implementing FQPA. The pressure is on to get EPA to determine tolerances for two to three years (based on current information), which would allow additional study, rather than set exaggerated, inflexible exposures in order to meet the August deadline.

Industry lobbying efforts cover two fronts, Crow explains — Congress and EPA. "We'll talk to anyone in Congress who will listen," he notes, to explain that several models are available to determine exposure, that deadlines can be extended to allow reasonable exposure levels to be set and that Congress should ask EPA to be accountable in developing its implementation programs.

When talking with EPA, industry lobbyists explain the development and use of their products, their knowledge of the market and consumer behavior and the their collective, extensive experience with those materials.

"Congress wanted to update the De-laney clause, but they didn't intend EPA to make drastic assumptions within a three-year period," Crow says. "Some members of Congress are confounded by this (EPA strategy). When people understand this is a smart industry and we have done really good work testing the molecules, they'll understand this is not an unknown thing."

He adds, "We have to make the case that no other industry (except pharmaceuticals) is tested and scrutinized as rigorously as ours."

"We'd like Congress to call the top brass

at EPA and tell them, 'We're watching you thoughtfully and if you're not even-handed, we can make changes in the law.'"

EPA's revolving door

Another area of concern is the new management of EPA. Resignations of key managers such as EPA Administrator Carol Browner and Lyn Goldman, EPA Assistant Administrator for Prevention, Pesticides and Toxic Substances, leave huge gaps in the current leadership.

Yet to be named administrators will eventually fill those positions, overseeing EPA's direction and strategies on pesticide use and exposures. For the pesticide industry, the process gets tricky.

"We don't know who we will be dealing with," Crow points out. "We worked with Lynn Goldman for six years and we understood her viewpoint and negotiating style. The replacements could be someone we already know or someone new."

He notes that the critical element will be how much the replacements understand about the pesticide industry and its issues. "These are big jobs and the administration will have to fill them soon. It will be a crucial period with a lot of questions, and the uncertainty is troubling."

Public protests

When local ordinances eliminate certain pesticide uses or limit use in even minor ways, those are attempts by pesticide activists to get around the concept of pre-emption, warns Fred Langley. "Most (lawn or landscape contractors) would say, 'That's county business and I don't do business with the county,' but they present barriers to pesticide use."

The phenomenon is spreading, he notes, explaining that ordinances limiting pesticide use on public lands eventually set precedents for land use, which can carry over into land development projects. As an

example, Langley cites permitting processes that ask land developers to consider building pesticide-free housing developments. In Gaithersburg, MD, for instance, developers would have to install all-natural landscapes with no use of pesticides in landscape maintenance. This ordinance and similar strategies are appearing in isolated areas of New York, North Carolina, and Texas, he says.

"The difficult part for us is that while we can track state legislatures and help impact how it comes out, there is no tracking system for local initiatives. By the time we hear about some of these initiatives, the act has already happened," Langley explains.

He notes that there are two different understandings of IPM. "Activists define it as no pesticides, pesticides as a last resort or

"Pesticides have been villainized but pests are the problem. We've lost sight of what the problem is ..."

using only the least toxic pesticide." The industry may define it as "using the right product at the right time, choosing from all the tools available based on monitoring and doing what's appropriate."

Look for more local initiatives limiting pesticide use, Langley predicts. "Activists have targeted local issues as the weak underbelly of the industry. Even if you're nonparticipatory, they are busy at the local or county level. Keep an ear to the ground and report any initiatives."

He says that local issues are best handled at the local level. "Pesticides have been villainized but pests are the problem. We've lost sight of what the problem is and we need to hear the other side of the story beyond rhetoric and inflammatory language." □

The author is Executive Editor of Landscape Management magazine.

Congress makes getting labor tough

The climate in Washington D.C. is anti-immigrant with government agencies focusing on solving the problem of illegal alien workers.

By RON HALL/ Managing Editor

Many landscape contractors rely upon Hispanic labor to install and maintain clients' landscapes. Most of these workers come from Mexico. It's getting tougher every day to find these workers. Here's why.

While Congress hasn't passed any new laws concerning immigration since 1996, it's told governmental agencies that it's time to start enforcing the laws that are on already the books. These laws are designed to stem the flow of illegal immigrants. To this — and to the hiring of more border patrol and Immigration and Naturalization Service (INS) enforcement officers — some landscape contractors, particularly those that compete against firms with large numbers of seasonal migrants, say "hooray!"

They're everywhere?

Undocumented workers in the U.S. workforce is a big problem. The INS believes there are about 5 million undocumented aliens in the United States.

James S. Holt, Ph.D., senior economist with law firm of McGuiness & Williams, LLP, Washington, D.C., says that a U.S. Department of Labor survey in 1996 found



that 40% of seasonal agricultural workers admitted to poll takers that they were illegal workers. INS audits of businesses employing foreign-born laborers often discover that 60% to 70% of the laborers are working with fake papers, says Holt.

New programs and increased cooperation between governmental agencies are making it increasingly easy to identify them. The Social Security Administration, the Internal Revenue Service and the federal and state departments of labor are starting to share data. This data, including the growing pool of tax revenues collected from laborers with phony social security numbers, leads many people in government to believe that most newly arrived immigrants are not legally entitled to work here.

Avoiding a hassle

Many landscapers have already put systems in place to deal with this problem. They realize they can't afford to have their

Landscape business owner Joe Loyet, St. Louis, MO, right, has used Mexican-born crews for years. He says they are good workers.

workers, even a percentage of them, taken away in midseason by an INS audit.

Angie Lubenow with Munie Outdoor Services, Inc., Belleville, IL, says that one way that her firm checks out workers with suspicious work documents is to call Social Security (800/772-1213) and see if

that worker's social security number matches his name.



Angie Lubenow, Munie Outdoor Services, Belleville, IL, says it helps to build a strong relationship with local INS office.

Because of discrimination laws, an employer can only do this after that person has been hired or after he leaves the job.

"We took a real proactive approach," said Lubenow of her company's efforts to hire only properly documented workers. This included building a relationship with the local INS office.

But even the most conscientious landscape firm that employs foreign-born Hispanic workers can unwittingly hire illegal ones. False documents are easy to come by.

Slim pickins'

Labor contractor Robert Wingfield says the available supply of legally documented Hispanic laborers in the United States is drying up. Most were made "legal" in 1986 under a one-time amnesty provision in the Immigration Reform Act of that year.

Owners of small landscape businesses can still apparently find small numbers of these "legal" workers if they're persistent enough. Ken Heltemes, owner of A Growing Concern, Raleigh, NC, says that every fall he needs a little extra help with seeding and aerating. About a decade ago, he found some workers, again Hispanic, by walking up to them and asking them if they knew of anybody who wanted to work from August through October. Surprisingly, one said that he did and, over the course of several years, he returned each fall with friends or relatives.

"It was important that we got off on the right foot with them," says Heltemes, who got some language help from a local high school Spanish teacher. He says he was strict with safety training and work rules, but

fair with pay and hours, the two things that the Hispanic workers are most concerned about.

Heading south

If you need more than a few laborers, you'll probably have to bring them in from Mexico or a Central American country. And, it's getting tougher every day to bring new seasonal workers into the United States, says Wingfield. For all practical purposes, this can only be accomplished through a program known as H-2B. Meeting the requirements of H-2B is time-consuming, and it can be costly.

Even so, Wingfield says that if a landscape business owner needs labor badly enough, he can, with some exceptions, still get laborers south of the border. Wingfield is president of Amigos, Dallas, a firm that helps U.S. companies through the process of obtaining foreign-born Hispanic labor.



Robert Wingfield, president of Amigos, Dallas, TX, advises landscapers hoping to get laborers through the H-2B program to give themselves 90-120 days.

While the new Congress isn't expected to legislate away the flow of "legal" foreign-born workers this term, the mood in Washington is definitely anti-immigrant.

That's why Congress is stepping up enforcement of immigration law through a larger INS. Also, within several years, employers nationwide should be able to check to see job applicants' documents are in order by contacting government agencies over the telephone. There are several regional pilot projects in place now. Participation in this program, to date, has been voluntary.

Employers with illegal laborers stand

the possibility of losing these workers at a moment's notice should their operations be audited by the INS. This could become increasingly likely given the anti-immigrant mood in Washington D.C. □

Guestworker amendment sacrificed

Congress sacrificed the Agricultural Job Opportunity Benefits and Security Act of 1998 (AgJOBS) in October. But agribusiness interests, including groups like the American Nursery and Landscape Association, are likely to continue to seek a law allowing U.S. agriculture to use more labor from Mexico. It could also mean more available labor for landscape nursery owners, although landscape contractors would not qualify.

AgJOBS, if approved, would have reformed the H-2A agricultural guest worker program and allowed the importation of "an unlimited number of foreign laborers," said Mario Obledo, president of the National Coalition of Hispanic Organizations, which opposed the measure. Organized labor also opposed the measure, claiming that the farm labor supply is adequate and that U.S. residents, as well as other guest workers, would suffer if more workers were allowed to enter the country.

It looked like the amendment stood a good chance of becoming law. It passed the U.S. Senate in July, but in October, congressional leaders and White House staff compromised on an appropriations bill that excluded AgJOBS.

Expect more discussion in the new Congress about farm labor and the need for a revised agricultural work visa program. □



Ken Heltemes, A Growing Concern, Raleigh, NC, used a local high school Spanish teacher to help him bridge the communication gap.

Noise won't blow away

Landscape contractors should keep their ears open to the sound of controversy concerning the use of gas-powered leaf blowers.

By ROBIN PENDERGRAST

While the earliest attempt to control and influence leaf blower/power blower use was in Beverly Hills, CA, in the summer of 1976,

the recent controversy covers many states and has many asking "where will it all end?"

The evolution of the sound issue, in concert with emissions issues and local, county and federal legislation, has become a nightmare for commercial landscape contractors and grounds managers.

Since the Beverly Hills event, including the initial legislation that was introduced in Los Angeles in 1986, more than 400 municipalities have discussed controlling lawn and garden equipment and specifically, the noise associated with leaf blowers. In most cases, they have opted for common sense and practical approaches to these issues.

Finding resolution

Two recent cases outline the methods by landscape contractors to resolve this issue.

In Abington, PA, for example, someone read or heard that the way to control leaf blowers or lawn and garden equipment was to get rid of them. This concept became the opposition's answer to the problem.

Calmer and more responsible thoughts prevailed with landscapers and leaf blower activists attempting to create a workable and long-term solution. Collectively, they worked out a compromise.

Some communities impose short-term restrictions (seasonal, time-usage or decibel level), but do so without receiving any outside input. In Abington, the combined efforts of local landscapers, along with the leaf blower activists resulted in a "buffer zone" in and around residential areas. Here, landscape crews were restricted to half-throttle on leaf blowers and other select pieces of lawn and garden equipment.

The response revealed that activists can approach this issue calmly, and that landscape contractors were more than willing to reach a practical solution. Several local and national associations also offer practical information on working safely and quietly within a buffer zone. Using equipment designed specifically for quieter operation also helps.

Concerted efforts

In suburban Highland Park, IL, the program isn't so simple. Four years ago, various antiblower activists and the Environmental Commission, decided that blowers in any format were not needed between May 1st and October 1st. When the ordinance was put in place, challenges began immediately by landscapers.

The antiblower lobby informed the Environmental Commission that the ordinance was not being enforced and that seasonal ordinances and selected time constraints were not easily enforceable. They've been lobbying to ban all products that move debris, including electric, gas-powered, hand-held, backpack, two-wheel and three-wheel walk-behind leaf blowers.

Local organizations, including the Illinois Landscape Contractors Association,

and 11 companies that service most of the upscale homes in Highland Park, consolidated to monitor the situation and voice their opposition to the ordinances. Echo Inc. was also asked to provide support, and joined an ad hoc organization of landscapers working to create a workable solution.

As *Landscape Management* went to press, local landscape companies like Mariani Landscape, Scott Byron & Co. and Fiore & Sons are monitoring the situation and providing the facts to make sure that the potential reality of the "ordinance adjustment" doesn't evolve into a controversial and combative ban on leaf blowers.

Just another chapter? Probably not.

Other communities around the country have attempted to take up the charge, including an activist group in Texas. The goal is often to ban leaf blowers entirely.

Professional and commercial landscape operations must monitor the communities

...more than 400 municipalities have opened up their legislative doors to discussion on controlling lawn and garden equipment and specifically, the noise associated with leaf blowers.

in which they work and the technique and temperament of how their equipment is used, particularly leaf blowers.

Often, the statements made and the positions taken are not based on factual information and can have a negative, if not devastating, influence on the day-to-day activities of today's landscape industry. □

The author is a partner at International Marketing Exchange Inc., McHenry, IL, and has represented the industry on noise issues for more than 12 years.

Irrigation faces move to conservation

New standards for design and installation, water audits, even certification in some locations will challenge those who provide irrigation products and services.

By BRUCE SHANK

Landscapes are a vital part of everyday community life and, as such, depend more on irrigation for proper care. The more governmental agencies get involved in public landscapes, the more other agencies, such as water districts, become involved. As standards improve, the need for irrigation grows.

While many of the issues involved with irrigation are not regulatory, they will have impact on the future of landscape management, especially in high-end projects located in both the North and the South.

Design weaknesses

The primary weakness of irrigation systems is their design, not the performance of individual irrigation components. A recent study in San Antonio, TX, revealed that water conservation efforts were hampered most by poor irrigation system design. Current technology to maximize irrigation distribution uniformity and to cut waste is not being used properly. The problem centers around older systems and those installed by do-it-yourselfers.

Conservation inconsistencies

States and counties vary in their approach to conservation. The Irvine approach is to use a tiered water rate structure based on metering and determining baseline water needs for landscapes. Once water use exceeds the baseline, prices skyrocket. The Las Vegas approach is to restrict the percentage of turfgrass used in landscapes. The Albuquerque approach is to assign trained water specialists with enforcement powers; so called "water police." It is a tougher version of the Palm Springs

approach, where agency personnel perform audits of large irrigation systems to gauge performance.

More states are implementing irrigation contractor certification programs that require training and testing. Government is getting involved in irrigation at a rapid pace across the country as growth, water infrastructure and water supply for the next century become serious issues.

Every year, irrigation becomes harder for landscape contractors to ignore. When you consider that the cost of an irrigation system averages 23% of the cost of a landscape installation, irrigation deserves the attention of contractors from coast to coast.

The only way a landscape contractor can be certain that his or her installation survives for one year or 50 years is with irrigation. High temperature records were set every month of 1998, while droughts tested water supplies in the Carolinas, Texas, Nevada and Massachusetts. Betting on weather over irrigation is no longer wise, when you consider the average customer's investment in real estate and landscaping.

Weather and pests are the two most serious threats to landscape plants. The pest control industry offers a significant arsenal to provide both preventative and curative management of diseases and pests. Irrigation, on the other hand, requires an infrastructure to supply needed moisture when droughts hit. Both quality and productivity of plants are significantly improved when periods of insufficient soil moisture are eliminated. **LM**

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