

PITTSBURGH TRIBUNE-REVIEW

Procedural issues lead to ban of Bayer pesticide

By Rick Wills
TRIBUNE-REVIEW
Friday, January 1, 2010

A federal judge banned the sale of a Bayer CropScience pesticide that environmental groups and commercial beekeepers say is potentially toxic to the nation's threatened honeybee population.

Both Bayer CropScience, a North Carolina subsidiary of Bayer AG, and the Environmental Protection Agency have 60 days to appeal the decision of Manhattan U.S. District Judge Denise Cote.

The ban would make the sale of spirotetramat, known by the trade names Movento and Ultor, illegal in the United States after Jan. 15.

Cote's decision does not explicitly address the inconclusive impact the pesticide might have on honeybees. Instead, she faulted the EPA for ignoring steps required in any pesticide approval process, including failing to take public comment and failing to publish Bayer's application and the agency's approval in the Federal Register.

"The EPA utterly failed to comply with these procedural requirements and has offered no explanation whatsoever for these shortcomings," Cote wrote.

Bayer CropScience said it is disappointed with the court's decision, which it said is based on the EPA's procedural error. The company is "considering its options" but has not filed an appeal, spokesman Jack Boyne said.

"The ruling has nothing to do with the characteristics of spirotetramat itself, and raises no substantive concerns regarding the product," Boyne said.

"Spirotetramat has been extensively tested in laboratory and field studies and has shown excellent performance, with regard to bee safety."

The EPA has not filed an appeal, said agency spokeswoman Enesta Jones. "We are reviewing the decision," she said, without elaboration.

The decision comes three years after scientists identified Colony Collapse Disorder, a mysterious die-off that each winter has killed at least half the bees kept by the nation's large commercial beekeepers. Its cause largely has eluded researchers.

"This decision pulls a potentially dangerous insecticide from the market so that it can be evaluated. There are lower-risk alternatives on the market," said Aaron Colangelo, an attorney for the New York-based Natural Resources

Defense Council, which sued the EPA along with the Xerces Society, a Portland, Ore. wildlife conservation group.

It is unusual for a federal judge to issue such an order, said Colangelo, who has litigated pesticide cases for more than a decade. "EPA admitted to approving the pesticide illegally, but argued that its violations of the law should have no consequences."

The EPA approved spirotetramat in 2008 for use on hundreds of crops, including apples, pears, peaches, oranges, tomatoes, grapes, strawberries, almonds and spinach.

Pennsylvania's largest beekeeper, Dave Hackenberg of Lewisburg in Union County, welcomed Cote's decision. Some of his bee colonies were used in an incomplete Bayer study of spirotetramat done last year in Florida.

"This is just round one. We figure Bayer will go back to court. Somebody also needs to take a look at the rest of the chemicals being used," said Hackenberg, who, like many beekeepers, said he believes that new pesticides are the primary cause of the bee loss.

For the past three winters, Hackenberg lost at least half of his bees, which he rents to everyone from blueberry growers in Maine to large almond-growing establishments in California to aid in pollination.

This year will be worse than last year, he predicted.

"Fifty percent of my bees have died since summer. That's bad for this early. Losses started in October, and there are still two months to go," he said.

Researchers like Maryann Frazier of Penn State University say experiments show pesticides in general have an impact on honeybees, but more work needs to be done.

"We are still very concerned that pesticides are a big part of the problem with honeybees," she said.

Colony Collapse Disorder has been associated with viruses, mites and poor bee treatment.

"There is a combination of things at work here, which is what makes the research slower and more complicated," Frazier said.

According to the Department of Agriculture, bees pollinate \$15 billion worth of crops grown in the United States.

Rick Wills can be reached at rwills@tribweb.com or 412-320-7944.

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