



Mr. Steve Hammond, Director
New York State
Department of Environmental Conservation
625 Broadway
Albany, NY 12233-7250

SUBJECT: Imidacloprid Status in Long Island

Dear Mr. Hammond,

Since its introduction into the NY markets in 1995, imidacloprid has become an essential tool replacing many other insecticides in both the agricultural and nonagricultural communities. Bayer has devoted considerable time and resources into researching and monitoring the compound to ensure its appropriate and necessary use on Long Island., Bayer has involved the various consumers and stakeholders, including the agricultural, lawn care, and arboricultural communities, Cornell University Extension Service and NYSDEC throughout multiple product registrations.

October 21, 2004

Bayer CropScience
RTP
P. O. Box 12014
RTP, NC 27709
Tel. 919 549-2000

Imidacloprid groundwater monitoring on Long Island has been ongoing since 1998 and NYSDEC has expressed concern about low-level detections from that program. Less than 1% of all samples taken had any detections of imidacloprid residues and all were low levels (<7 ppb). These low-level detects are consistent with modeling originally and independently conducted by Bayer, EPA and NYSDEC prior to state approval. Upon state approval, an agreement between Bayer and NYSDEC established mitigation triggers of 10 and 25 ppb based on the NYSDEC default of 50 ppb (this is compared to EPA's informal MCL of 399). All parties, including NYSDEC, have acknowledged that the low levels of imidacloprid residues detected in the groundwater on Long Island are not a health concern. This is evidenced by EPA's subsequent establishment of additional tolerances (FR Notice 06/23/03. Vol 68., No. 114) after taking into account all available data, including all of the NYSDEC water monitoring data.

We believe the data collected over the past 6 years do not justify any further restriction of use on Long Island . Bayer cannot scientifically attribute the low level detections to any particular use pattern(s). However, NYSDEC has (arbitrarily) decided to restrict against the use of imidacloprid by homeowners on Long Island. Since this decision is not based on sound science (or within the grounds of previously defined agreements), it is difficult to know what constitutes acceptable conditions of use for product registration. Consequently, Bayer has decided to not pursue renewal of any professional (defined as agricultural, professional turf, greenhouse/ornamental and tree) and consumer (lawn and garden) uses on Long Island upon expiration of current product registrations.



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Bayer has and will continue to steward our products responsibly. Therefore, herein is Bayer's position on the phase-out of product use on Long Island (Nassau and Suffolk counties).

1. Bayer proposes that all imidacloprid products will be phased out according to the existing registration cycle. Consumer products expire on November 30, 2004; Agricultural uses expire on December 31, 2005; and Professional uses expire over a range, from November 30, 2004 to the latest being December 31, 2006. Bayer is willing to extend the phase-out period for any of these uses based on the needs of the user community. Furthermore, product in the channels of trade will be allowed to be sold/used under a discontinued registration status.
2. Due to the discontinuation of use on Long Island, Bayer does not believe that the professional products require a NY 'restricted use pesticide' classification for use in the rest of the state.
3. Because there is no imminent human health concern and with limited inventory, there will be no need to recall existing products sold on Long Island.
4. In accordance with our previous discussions, all pending professional and consumer imidacloprid registrations currently filed in NY State (Attachment 1) will be resubmitted with the EPA amendment adding the label statement "Not for sale, sale into, distribution and or use in Nassau and Suffolk counties of New York." There is no precedent for including the counties of King and Queens in the restriction for consumer pest control product. NYSDEC has committed to expedite the registration approval of these amended labels.
6. Bayer agrees to continue the current monitoring of the 15 designated Bayer wells on Long Island through 2006. Bayer and NYSDEC agree to continue to share any data developed through the Bayer or Suffolk County monitoring programs.
7. Bayer will communicate our marketing and stewardship plan for exclusion of Long Island, including the Best Management Practices, to our



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customers and stakeholders, a copy of which will be provided to NYSDEC. The plan will be expanded to all supplemental registrants who will be required by NYSDEC to comply prior to the issuance of a supplemental registration.

8. In the event that an imidacloprid product is shipped into the restricted areas, NYSDEC, Bayer and any involved stakeholder(s) will meet to discuss the incident prior to any potential enforcement actions.

9. NYSDEC agrees that all future registrants of imidacloprid products on Long Island and/or the state will be held to the same testing and stewardship requirements.

Bayer looks forward to further discussing the Long Island phase-out proposal jointly with NYSDEC and the impacted stakeholders. Bayer believes that these issues can be addressed and resolved in a cooperative manner.

Sincerely,

A handwritten signature in black ink that reads "Margaret Cherny". The signature is written in a cursive, flowing style.

M. A. Cherny
Vice President, Government Relations and Communications
Bayer CropScience, LP