

T&E COMMITTEE #3
September 9, 2013

Discussion

MEMORANDUM

September 5, 2013

TO: Transportation, Infrastructure, Energy and Environment Committee

FROM:  Keith Levchenko, Senior Legislative Analyst

SUBJECT: **Discussion:** Pesticides and Pesticide Use in the County

Councilmember George Leventhal requested that the T&E Committee discuss the issue of pesticides. This request came in light of recent legislation enacted by the District of Columbia and the City of Takoma Park, both of which added new requirements beyond existing Federal regulation.

The focus of this meeting is on pesticide use in relation to facility management and lawn care/landscaping services (both public and private) and not with regard to farming/agricultural land uses.

Legal Framework

The Environmental Protection Agency (EPA) is responsible for regulating pesticides in the United States (under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Food Quality Protection Act).

EPA defines pesticides as:

“A pesticide is any substance or mixture of substances intended for: preventing, destroying, repelling, or mitigating any pest. Though often misunderstood to refer only to insecticides, the term pesticide also applies to herbicides, fungicides, and various other substances used to control pests. Under United States law, a pesticide is also any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.”

Note: Fertilizers, nutrients, and other substances used to promote plant survival and health are not considered plant growth regulators and thus are not pesticides.

Pests are defined as:

“...living organisms that occur where they are not wanted or that cause damage to crops or humans or other animals. Examples include: insects, mice and other animals, unwanted plants (weeds), fungi, microorganisms such as bacteria and viruses, and prions.”

All pesticides must be registered with EPA unless the pesticide meets the criteria for a minimum risk pesticide.¹ EPA evaluates pesticides to determine if they will harm people, non-target species, or the environment when used according to label directions. Once registered, pesticides are periodically reviewed for safety and the status of a pesticide can change if new concerns are identified.

EPA also maintains a list of restricted use pesticides which are not available to the general public and can only be used under the supervision of a certified applicator.

The primary health concerns that EPA focuses on with regard to pesticides are: cancer, reproductive effects, neurological effects, and acute and chronic toxic effects. A company wishing to register a pesticide must provide test data (based on EPA guidelines) to EPA for review.

States can pass their own pesticide regulations as long as they are at least as stringent as Federal regulations. The Maryland Department of Agriculture is responsible for pesticide regulation in the State of Maryland. Unless specifically preempted by State law, local jurisdictions are also permitted to regulate pesticides. Currently there are nine states (including the State of Maryland) where local jurisdictions can regulate pesticides.

Chapter 33B of the Montgomery County Code (see ©1-4) includes a number of customer notice requirements as well as lawn sign requirements. Storage and handling is also addressed in the chapter. Montgomery County Regulation 33B.00.01 (see ©5-7) includes additional requirements regarding the display and storage of pesticides by retailers, inspections of food service establishments for compliance with County pesticide laws by Health and Human Services, and investigations of alleged violations by retailers other than food service establishments by the Department of Environmental Protection.

¹ See the following link for the conditions under which a pesticide can be defined as minimum risk: http://www.epa.gov/opppd1/biopesticides/regtools/25b_list.htm.

Panel Discussion

Council Staff suggests that the Committee hear from three panels.

Panel #1: Government: Including County Government, Montgomery County Public Schools (MCPS), M-NCPPC-Montgomery Parks, and the Maryland Department of Agriculture

Panelists

- Department of Environmental Protection (DEP)
 - Stan Edwards, Chief of Environmental Policy and Compliance
- Department of General Services (DGS)
 - David Dise, Director
 - Beryl Feinberg, Deputy Director
 - Richard Jackson, Chief, Division of Facilities Management
- Department of Health and Human Services (HHS)
 - Clark Biel, Senior Administrator, Public Health Services
 - Patricia Brennan, Manager, Legislative Coordination/Intergovernmental Relations
- Montgomery County Public Schools (MCPS)
 - Sean Gallagher, Assistant Director, Department of Facilities Management
 - Lynne Zarate, Acting Director, Division of Maintenance, Department of Facilities Management
- M-NCPPC Montgomery Parks
 - Holly Thomas, Senior Urban Forester
- Maryland Department of Agriculture
 - Dennis Howard, Chief, Pesticide Regulation Section

DGS and the agency panelists can speak to current agency practices regarding pesticide use on County property and in County facilities. County Government, MCPS and Parks all have integrated pest management policies in place.² MCPS' Policy (ECF-RB) and a recent notification letter to Elementary School Principals are attached on ©11-19. The first few pages of the Parks administrative procedure are attached on ©20-24.

DEP staff can also speak to the County's education and outreach efforts with regard to environmental best practices on private property (including DEP's Green Business Certification program involving lawn care and landscaping companies) as well as enforcement activities for alleged violations of County pesticide laws.

HHS staff can speak to its enforcement of County pesticide regulations in place for food service establishments (COMCOR 33B Pesticides, see ©5-7).

² Integrated Pest Management is defined by EPA as: The use of pest and environmental information in conjunction with available pest control technologies to prevent unacceptable levels of pest damage by the most economical means and with the least possible hazard to persons, property and the environment.

Integrated Pest Management (IPM) was first instituted in the County in 1990. An Interagency Committee on Integrated Pest Management Policies was created in October 2000 (via Resolution 14-675, attached on ©8-10).

Panel #2: City of Takoma Park Pesticide Legislation

- Seth Grimes, Takoma Park City Council, Ward 1
- Julie Taddeo, Safe Grow Zone Initiative (Takoma Park)
- Catherine Cummings, Safe Grow Zone Initiative (Takoma Park)

For the second panel, the Committee will hear from officials and advocates involved in pesticide legislation recently enacted by the City of Takoma Park. Details regarding the Takoma Park legislation are noted later in this memorandum.

In 2012, the District of Columbia passed pesticide legislation. Council Staff was unable to secure a panelist from the District of Columbia government. However, details regarding this legislation are included later in this memorandum.

Panel #3: Industry Best Practices and Alternatives to Pesticides

- Jay Feldman, Executive Director, Beyond Pesticides
- Gene Harrington, Vice President of Government Affairs, National Pest Management Association
- Mark Schlossberg, President, Pro-Lawn Plus, Inc.(a Baltimore-based lawn care and tree and shrub company)
- Steve Sullivan, Regional Horticulturalist, The Brickman Group (a Montgomery County Green Business Certified commercial landscaping and turf maintenance company)

For the third panel, the Committee will hear from representatives from lawn care/landscaping companies, a representative from the National Pest Management Association, and Beyond Pesticides (a 501(c)3 non-profit organization which advocates for the reduction of unnecessary pesticide use) on current industry best practices and alternatives to pesticides.

Note: A number of other individuals from pest management and landscaping companies are expected to be in attendance and will also be available to answer Councilmember questions upon request.

Local Legislation

City of Takoma Park Legislation

On July 22, the City of Takoma Park approved Ordinance 2013-28, “Safe Grow Act of 2013”, which restricts the use of certain pesticides³ on all City-owned and private property within the City. According to the non-profit organization “Beyond Pesticides”, this is “the first local ban of its type in the United States.”⁴

³ The Act defines which pesticides must be on the register as: “Any pesticide classified as “Carcinogenic to Humans” or “Likely to Be Carcinogenic to Humans” by the U.S. Environmental Protection Agency; any pesticide classified by the U.S. Environmental Protection Agency as a “Restricted Use Product”; any pesticide classified as a “Class 9” pesticide by the Ontario, Canada, Ministry of the Environment; and any pesticide classified as a “Category 1 Endocrine Disruptor” by the European Commission.

⁴ <http://www.beyondpesticides.org/dailynewsblog/?p=11318>.

A summary of the major components of this legislation is on ©25-26. The full legislation is attached on ©27-35. Some testimony for (©36-41) and against (©42) is attached. Some Q&A materials provided by Paul Chrostowski (a City resident and advocate for the legislation) in response to questions from City Councilmembers is attached on ©43-48.

The legislation includes exceptions to the restrictions to address noxious growths, noxious weeds, and invasive species; meet Federal or State mandates; and control insects that are venomous or disease-carrying.

Waivers for the use of restricted pesticides may be granted by the City Manager in cases where all other alternatives have been exhausted. In these cases, the City Manager is to balance the need for the pesticide with the risks of use.

After July 1, 2014, the Act requires the City to distribute educational materials to all single-family homes, duplexes, and townhouses in the City.

Warnings are to be issued initially for violations. However, after certain dates set in the Act, violations will carry monetary penalties.

District of Columbia Legislation

On August 9, 2012, the District of Columbia approved Act 19-446, “Pesticide Education and Control Amendment Act of 2012”, which restricts the use of certain pesticides on District property (i.e., City-owned property) and on certain privately-owned property such as schools, child-occupied facilities, and water contingent property. The full legislation is attached on ©49-56. A memorandum summarizing the Committee on Transportation and the Environment’s recommendation to the full DC Council to approve the legislation is attached on ©57-68.

The District Department of the Environment (DOE) is required to create a list of pesticides to be classified as restricted-use or non-essential (as defined in the Act or in regulations). The District Act provides exceptions similar to Takoma Park’s for allowing the use of these otherwise restricted pesticides. However, unlike the Takoma Park legislation (which develops the restricted list of pesticides from other lists), the DC legislation requires DOE to develop the list based on certain criteria included in the legislation.

Exemptions are provided for pesticides used to improve water quality (such as at water and wastewater treatment plants and swimming pools).

A person may apply for a waiver (also called an exemption in the DC act) to use restricted use pesticides if the person has made a good faith effort to utilize effective and economical alternatives.

The University of the District of Columbia is required to offer classes in integrated pest management (specifically for pesticide applicators) at least once every 90 days. The University will also issue an annual report (beginning January 1, 2015) on the effectiveness of the District’s pesticide program.

Pesticide applicators are required to submit records of pesticide applications to DOE on an annual basis.

DOE shall set a pesticide registration fee of at least \$200 (an increase from \$130).

Civil fines, penalties, and fees may be imposed for violations.

Attachments

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Montgomery County Code

Chapter 33B. Pesticides. [Note]

§ 33B-1. Definitions.

§ 33B-2. Notice about pesticides to customer.

§ 33B-3. Posting signs after application.

§ 33B-4. Signs with retail purchase of pesticide.

§ 33B-5. Storage and handling of pesticides.

§ 33B-6. Regulations.

§ 33B-7. Penalty for violating chapter.

Sec. 33B-1. Definitions.

In this chapter:

Custom applicator means a person engaged in the business of applying pesticides.

Department means the department of environmental protection.

Director means Director of the Department of Environmental Protection, or the Director's designee.

Lawn means an area of land, except agricultural land, that is:

- (1) Mostly covered by grass, other similar herbaceous plants, shrubs, or trees; and
- (2) Kept trim by mowing or cutting.

Pest means an insect, snail, slug, rodent, nematode, fungus, weed, or other form of plant or animal life or microorganism (except a microorganism on or in a living human or animal) that is normally considered to be a pest or defined as a pest by applicable state regulations.

Pesticide means a substance or mixture of substances intended or used to:

- (1) prevent, destroy, repel, or mitigate any pest;
- (2) be used as a plant regulator, defoliant, or desiccant; or
- (3) be used as a spray adjuvant, such as a wetting agent or adhesive.

However, pesticide does not include an antimicrobial agent, such as a disinfectant, sanitizer, or

deodorizer, used for cleaning that is not considered a pesticide under any federal or state law or regulation. (1986 L.M.C., ch. 38, § 1; 2000 L.M.C., ch. 34; § 1.)

Sec. 33B-2. Notice about pesticides to customer.

(a) In this section:

(1) *Customer* means a person who makes a contract with a custom applicator to have the custom applicator apply a pesticide to a lawn.

(2) *New customer* includes a customer who renews a contract with a custom applicator.

(b) A custom applicator must give to a new customer:

(1) Before application, a list of:

- a. The trade name of each pesticide that might be used;
- b. The generic name of each pesticide that might be used; and
- c. Specific customer safety precautions for each pesticide that might be used; and

(2) After application, a list of:

- a. The trade name of each pesticide actually used; and
- b. The generic name of each pesticide actually used; and

(3) A written notice about pesticides prepared by the department under subsection (c) of this section.

(c) The department must prepare, keep current, and provide to a custom applicator a written notice about pesticides for the custom applicator to give to a customer under subsection (b) of this section.

(d) The notice prepared by the department under subsection (c) of this section must include:

(1) Government agency phone numbers to call to:

- a. Make a consumer complaint;
- b. Receive technical information on pesticides; and
- c. Get assistance in the case of a medical emergency;

(2) A list of general safety precautions a customer should take when a lawn is treated with a pesticide;

(3) A statement that a custom applicator must:

- a. Be licensed by the Maryland Department of Agriculture; and
- b. Follow safety precautions; and

(4) A statement that the customer has the right to require the custom applicator to notify the customer before each treatment of the lawn of the customer with a pesticide. (1986 L.M.C., ch. 38, § 1.)

Sec. 33B-3. Posting signs after application.

- (a) Immediately after a custom applicator treats a lawn with a pesticide, the custom applicator must post a sign on the lawn.
- (b) A sign posted under this section must:
- (1) Be clearly visible from the principal place of access to the property;
 - (2) Be a size, form, and color approved by the department;
 - (3) Be made of material approved by the department; and
 - (4) Have wording with content and dimensions approved by the department. (1986 L.M.C., ch. 38, § 1.)

Sec. 33B-4. Signs with retail purchase of pesticide.

A person who sells at retail a pesticide or material that contains a pesticide must make available to a person who buys the pesticide or material that contains a pesticide:

- (a) Notice signs and supporting information that are approved by the department; and
- (b) The product label or other information that the federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., requires for sale of the pesticide. (1986 L.M.C., ch. 38, § 1.)

Sec. 33B-5. Storage and handling of pesticides.

Any person who sells at retail a pesticide or material that contains a pesticide must:

- (a) transport, display, and store each pesticide in a secure, properly labeled container that resists breakage and leakage, and promptly clean up and either repackage or properly dispose of any pesticide that escapes from its container;
- (b) display and store each pesticide separately from any food, medicine, or other product that a human being or animal may ingest;
- (c) transport each pesticide separately from any food, medicine, or other product that a human being or animal may ingest unless the pesticide is in a secure container that resists breakage and leakage; and
- (d) offer to each buyer of a pesticide materials approved or distributed by the Department that:
 - (1) explain the dangers of contamination that may occur from pesticide use; and
 - (2) inform buyers of the availability of alternative products.

The Department, the Health and Human Services Department, and any other agency designated by the County Executive, must enforce this Section. (2000 L.M.C., ch. 34, § 1.)

Sec. 33B-6. Regulations.

- (a) The County Executive must adopt regulations to carry out this Chapter under method (2).
- (b) The Executive must include in the regulations adopted under this section the minimum size or quantity of pesticide subject to section 33B-4. (1986 L.M.C., ch. 38, § 1; 2000 L.M.C., ch. 34, § 1.)

Note—Formerly, § 33B-5.

Sec. 33B-7. Penalty for violating chapter.

- (a) Any violation of this Chapter is a class C violation.
- (b) Each day a violation continues is a separate offense. (1986 L.M.C., ch. 38, § 1; 2000 L.M.C., ch. 34, § 1.)

Note—Formerly, § 33B-6.

Notes

[Note] ***Editor's note**—Chapter 33B, "Pesticides," was held unconstitutional due to conflict with Federal legislation (Federal Insecticide, Fungicide and Rodenticide Act, 'FIFRA,' 7 USC 136 et seq.) which the court ruled preempted local legislation. Maryland Pest Control Ass'n. v. Montgomery County, Maryland, 646 F. Supp. 109 (D.Md., 1986), aff'd on appeal, 822 F.2d 55 (1987). Based on a later Supreme Court decision, Wisconsin Public Intervenor v. Mortier, 115 L.Ed.2d 532, 111 S.Ct. 2476 (1991), the ruling of the District Court in Civil No. JFM-86- 1688 was rescinded on April 3, 1992, and is no longer in effect.

Amendments in 1987 to State law (MD. AGRIC. CODE ANN., § 5-201, et seq.,) enacted provisions similar to those in County law. State legislation introduced in 1993 (SB 429) which would have restricted the right of local jurisdictions to regulate application of pesticides did not pass, leaving ch. 33B of the Montgomery County Code still in effect.

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COMCOR - Code of Montgomery County Regulations

COMCOR 33B.00.01 Pesticides

33B.00.01.01 General Provisions

A. Authority. In accordance with the authority conferred under Chapter 33B, Section 33B-6, of the Montgomery County Code, 1994, as amended (hereinafter referred to as the “Code”), the County Executive hereby promulgates this regulation to implement County law pertaining to public education and safety measures required of retail sellers of pesticides as set forth in Chapter 33B of the Code.

B. Applicability. This regulation applies to all pesticide retailers that are subject to Chapter 33B of the Code. Definitions

The definitions of the terms used in this regulation are provided in Chapter 33B, Section 33B-1, of the Code. For purposes of this regulation, the following additional words and phrases will have the meaning respectively ascribed to them in this regulation:

Director of Environmental Protection - The Director of the Montgomery County Department of Environmental Protection or the Director’s designee.

Director of Health and Human Services - The Director of the Montgomery County Department of Health and Human Services or the Director’s designee.

Food Service Facility - Any enterprise that prepares or sells food or drink for human consumption on or off the premises. Food service facility includes any restaurant, coffee shop, retail market, cafeteria, short-order café, luncheonette, tavern, sandwich stand, soda fountain; and any food service facility in an industry, institution, hospital, club, school, church, catering kitchen, or camp.

General Use Pesticide - Any pesticide classified by the U.S. Environmental Protection Agency (EPA) as a general use pesticide. General use pesticide includes any pesticide product or ingredient not listed in the EPA’s Restricted Use Products Report.

Non-bulk Pesticides - Any pesticide distributed, sold, offered for sale, packaged, or repackaged in containers designed for less than 10 gallons of liquid or less than 56 pounds of dry weight.

Pesticide Producer Establishment - Any place assigned an establishment number by the U.S. Environmental Protection Agency where a pesticide or device or active ingredient used in creating a pesticide is produced, or held, for distribution or sale.

Pesticide Retailer - A person that sells at retail non-bulk pesticides or non-bulk quantities of a material that contains a pesticide.

Properly Labeled - The written, printed, or graphic matter that appears on or is attached to a pesticide, or its immediate container, and the outside container or wrapper of any retail package of pesticide contains sufficient instructions for use and caution to satisfy the requirements of state and federal pesticide labeling laws.

33B.00.01.02 Display and Storage of Pesticides

A. A pesticide retailer must ensure that all pesticides, whenever displayed or stored in a retail establishment, are physically separated from food, medicine, beverages, or feed. The retailer must display or store the pesticides across the aisle from any food, medicine, beverages, or feed or place a solid, nonporous, physical barrier between those products and any pesticide. The retailer must take other reasonable precautions if necessary to prevent a pesticide from contaminating any product that is likely to be ingested by a human or a domestic animal. Reasonable precautions may include storing pesticide products in a locked container.

B. A pesticide display or storage area must contain only pesticide containers that are properly labeled and are free of leaks, cracks, tears, or open seams.

33B.00.01.03 Pesticide Spills

A. A pesticide retailer must promptly clean up any spilled pesticide product upon discovery of the spill.

B. Disposal

1. A pesticide retailer must not dispose of a pesticide that escapes from its container or packaging except in accordance with applicable state and federal laws.

2. A pesticide retailer must not dispose of a pesticide by discharging or dumping the pesticide or the pesticide container or packaging into a sewer, ditch, lake, or any other area that may release the pesticide into ground or surface waters.

C. Repackaging

1. A pesticide retailer may repackage a pesticide that escapes from its container for return to the distributor of that product if:

a. the retailer has an agreement that provides for the return of spilled pesticides; and

b. the procedures used by the retailer to prepare the product for its return to the distributor comply with applicable state and federal laws.

2. A pesticide retailer must not repackage a pesticide for sale to customers unless the retailer is registered with the U.S. Environmental Protection Agency as a pesticide producer establishment.

33B.00.01.05 Inspections

A. The Director of Health and Human Services must routinely inspect food service facilities for compliance with County pesticide laws in the regular course of performing any food safety inspection required under Chapter 15 of the Code.

B. The Director of Environmental Protection must investigate each complaint alleging a violation of County pesticide laws by a retailer other than a food service facility and may conduct any other on-site visit necessary to achieve compliance with the laws.

33B.00.01.06 Public Education

A. A pesticide retailer must make written materials on general pesticide use and safety available to each purchaser of non-bulk pesticides at each site where pesticides are available for purchase. Notice of

the availability of the written materials must be prominently displayed at those sites in a conspicuous place as near to the point of sale as practicable.

B. Although the written materials displayed under this Section need not be product-specific, the materials must:

1. be obtained from or have the prior approval of the Department of Environmental Protection; and
2. include information that advises the general public about opportunities for consumers to consider recommended alternative pest control measures.

33B.00.01.07 Severability

If a court holds that a portion of this regulation is invalid, the other portions remain in effect.

33B.00.01.08 Effective Date

This regulation takes effect 30 days after approval by the County Council.

(Administrative History: Reg. No. 32-01AMII (Method 2); Dept.: Environmental Protection and Health and Human Services)

Resolution No.: 14-675
Introduced: October 17, 2000
Adopted: October 24, 2000

COUNTY COUNCIL FOR
MONTGOMERY COUNTY, MARYLAND

By: County Council

Subject: Establishment of the Interagency Committee on Integrated Pest Management Policies for the Montgomery County Government

BACKGROUND

1. Data from the United States Environmental Protection Agency, the National Cancer Institute, and several other agencies suggest that indiscriminate exposure to the toxins used in certain pesticides may lead to both acute and chronic public health problems, such as cancer, birth defects, and kidney damage.
2. Montgomery County has been a leader in the careful use of pesticides and notification of their application. In 1985, the County Government began posting notification about its use of outdoor pesticides, and in 1986 the County Council passed a law (Chapter 38, Montgomery County Code) requiring posting of signs during and after commercial application. This law, which also required notification to customers regarding pesticides used, was an impetus for a similar State law (Annotated Code of Maryland, Agriculture Article, Section 2-103 and 5-108) that was also passed in 1986.
3. Integrated Pest Management is a safe and effective alternative methodology to scheduled pesticide applications through a multi-faceted procedure including routine pest monitoring, record maintenance and situation specific treatment and control options.
4. In February 1990, the County Council adopted Resolution No. 11-1859, which instituted an Integrated Pest Management Program as the pesticide policy for Montgomery County

Government, including county employees and contractors working in county buildings or on county-owned property.

5. The resolution indicated that the County would collaborate with the University of Maryland, Cooperative Extension Services, which is a leading center for Integrated Pest Management, for assistance and advice on policy implementation.
6. The resolution further called for the creation of a committee of agency-selected representatives to administer the Integrated Pest Management Program, and to receive and review annual records of pesticide use for County agencies and associated contractors.
7. There is still a need in the County for an interagency task force to administer the Integrated Pest Management Program by assessing and monitoring the pesticide use of various County agencies, providing expertise and assistance to those agencies when necessary, and ensuring implementation of the policy.

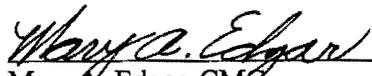
ACTION

The County Council for Montgomery County, Maryland approves the following resolution:

1. The County Council establishes the Interagency Committee on Integrated Pest Management in Montgomery County to coordinate and review integrated pest management efforts of all County agencies, share information, provide technical assistance, and cooperate on planning and implementing integrated pest management measures.
2. The Interagency Committee on Integrated Pest Management will be comprised of not less than eight (8) members, including a liaison from the Montgomery County Public Schools, Montgomery College, the Washington Suburban Sanitary Commission, the Maryland-National Capital Park and Planning Commission, the Housing Opportunities Commission, the Revenue Authority, and the County Council. The County Executive will select a senior officer or employee of the executive branch to serve as chair of the group.
3. The group must meet as frequently as necessary to perform its duties, but not less than two times annually.
4. The Interagency Committee on Integrated Pest Management has the following mandates:
 - a) establish and update standards for the use of pesticides;
 - b) collect, on an annual basis, the records of pesticide use for all County agencies and associated contractors;

- c) assess these records to ensure compliance with current Montgomery County Integrated Pest Management Program standards;
- d) study current policy and emerging industry trends and technologies to determine whether or not it is necessary to update existing standards. The Task Force should report recommendations to the Council; and
- e) report annually and advise the County Executive, County Council and County agencies on Integrated Pest Management policy implementation.

This is a correct copy of Council action.



Mary A. Edgar, CMC
Clerk of the Council

REGULATION

MONTGOMERY COUNTY PUBLIC SCHOOLS

Related Entries:

Responsible Office: Chief Operating Officer
Facilities Management

Pesticides Use in Schools

I. PURPOSE

To establish procedures to implement an integrated pest management program in accordance with the *Annotated Code of Maryland, Article - Agriculture*

II. DEFINITIONS

A. *Integrated Pest Management* is the use of combined pest control alternatives, most effective to prevent or reduce to acceptable levels pests and damage caused by pests.

B. *Pesticide* as defined in the law, means any substance or mixture of substances intended for:

1. Preventing, destroying, repelling or mitigating a pest
2. Use as plant regulator, defoliant, or dessicant
3. Use as a spray such as a wetting agent or adhesive

Pesticide does not include:

1. An antimicrobial agent, such as a disinfectant, sanitizer or deodorizer, used for cleaning purposes
2. A bait station

C. *Space spraying* means application of a pesticide by discharge into the air throughout an area. It does not include crack and crevice treatment.

III. PROCEDURES

A. Contact Person

The Integrated Pest Management Supervisor in the Division of Maintenance will be the contact person and will manage all information on pest control efforts in the school system, including material safety data sheets and product label of each pesticide or bait station that may be used in schools, or on school grounds and site-specific information on pest control activities at each school.

B. Notification by Schools

1. At the beginning of each school year, schools will include notice of the school's integrated pest management system in information to parents. The notice will include the following information:
 - a) A statement that explains the school's integrated pest management system and a list of any pesticides or bait station that may be used in the school building or on school grounds as part of the integrated pest management system
 - b) A statement that:
 - (1) The contact person maintains the product label and material safety data sheet of each pesticide or bait station that may be used by the certified applicator in buildings and on school grounds
 - (2) The label and material safety data sheet is available for review by a parent, guardian, staff member, or student attending the school
 - (3) The contact person is available to parents, guardians, and staff members for information and comment
 - c) The name, address, and telephone number of the contact person
 - d) Instructions for including a parent/guardian or staff member on a pesticide notification list (see Section C)
 - e) Information about the opportunity to provide public comments on the Integrated Pest Management practices of the school system during the a public comments segment of each regularly scheduled Board meeting
2. After the start of each school year, written notification will be provided to each newly employed staff member in the orientation packets or to the

parent/guardian of a student newly enrolled in the new student information packet.

3. Notification Lists

- a. At the start of each school year, each middle and high school will develop a pesticide notification list containing each staff member and parent/guardian of a student attending the school who requests in writing prior notification of a pesticide application made in the school or on school grounds during the school year. Elementary schools are required to notify each parent or guardian of a student attending the school and each staff member regardless of whether they have requested prior notification.
- b. The school will keep the pesticide notification list current and add names upon written request by a parent or guardian of a student attending the school or a staff member.
- c. The school will make the pesticide notification list available upon request to representatives of the Department of Agriculture of the State of Maryland.

C. Pesticide Applications

1. Elementary Schools

At least 24 hours before the pesticide is applied in a school building, or on school grounds, the Integrated Pest Management Supervisor will provide the following information to the school principal who in turn will provide written notification to each parent/guardian and staff member:

- a) Common name of the pesticide
- b) Location of the application
- c) Planned date and time of the application
- d) The following language:

"The Office of Pesticide Programs of the United States Environmental Protection Agency has stated: *Where possible, persons who potentially are more sensitive, such as pregnant*

women and infants (less than two years old), should avoid any unnecessary pesticide exposure."

2. Middle or High Schools

The Integrated Pest Management Supervisor will provide information to the school's principal, allowing sufficient time for the principal to notify students and staff. Principals will provide written notification to each parent, guardian, or staff member on the pesticide notification list, post notices at the site of the application and in conspicuous locations such as bulletin boards commonly seen by students and staff, and make an announcement on the school's public announcement system at least 24 hours before the application of a pesticide.

3. Space Spraying of Pesticides

- a) Although space spraying of pesticides is not practiced in Montgomery County Public Schools, in the unlikely event that space spraying becomes necessary, the written notification to parents/guardians, staff, and students will be made at least one week before the space spraying.
- b) The notice will be on a separate sheet of paper at least 8 1/2 inches by 11 inches in size and shall contain the following information:
 - (1) Common name of the pesticide
 - (2) Location of the space spraying
 - (3) Planned date and time of space spraying
 - (4) The following language:

"The Office of Pesticide Programs of the United States Environmental Protection Agency has stated: *Where possible, persons who potentially are more sensitive such as pregnant women and infants (less than two years old) should avoid any unnecessary pesticide exposure."*
 - (5) If the pesticide is not addressed in the notice sent at the beginning of the school year, a brief description of the pesticide to be applied

- (6) A brief description of potential adverse effects based upon the material safety data sheet of the pesticides to be applied
 - (7) The name and telephone number of the Integrated Pest Management Supervisor who is the designated contact person
4. For application on school grounds, the notice of planned date and time of application may specify that weather conditions or other extenuating circumstances may cause the actual date of application to be postponed to a later date or dates.
 5. If the actual date of application is more than 14 days later than the planned date provided in the notice, notice of the application required under this regulation shall be reissued.

D. Emergency Pesticide Applications

A pesticide may be applied in a school building or on school grounds without prior notification only if an emergency pest situation exists.

In the case of an emergency pesticide application in an elementary school building or school grounds, within 24 hours after pesticide application or on the next school day, the school will provide to each parent, guardian, or staff member:

1. Common name of the pesticide
2. Location of the application
3. Date and time of the application
4. The following language:

"The Office of Pesticide Programs of the United States Environmental Protection Agency has stated: *Where possible, persons who potentially are more sensitive, such as pregnant women and infants (less than two years old) should avoid any unnecessary pesticide exposure.*"

5. A brief description of potential adverse effects based upon the material safety data sheet of the pesticide applied

E. Use of Bait Stations

Before a bait station is used in a school, the Integrated Pest Management Supervisor and/or his staff will place a notice or sign on the door of the room in which the bait station is placed indicating the date of placement, the name of the contact person for additional information including information on potential adverse effects. The notice or sign will remain posted until the bait station is removed.

F. Public Comments

The Integrated Pest Management Supervisor or his designee will monitor and address public comments regarding the Integrated Pest Management program practices of MCPS.

Regulation History: New Regulation July 17, 2000.

This e-mail message has been approved for distribution by Mr. Larry A. Bowers, chief operating officer. No hard copy will be provided.

ACTION REQUIRED

Division of Maintenance
MONTGOMERY COUNTY PUBLIC SCHOOLS
Rockville, Maryland

July 23, 2013

MEMORANDUM

To: Elementary School Principals

Through: Mr. James Song, Director
Department of Facilities Management 

From: Lynne Zarate, Acting Director 

Subject: ACTION—Annual Integrated Pest Management Notices for All Parents, Guardians, and Staff Members

In compliance with Maryland laws and regulations pertaining to Integrated Pest Management (IPM) and notification requirements for Maryland public schools, the attached notice must be sent home to all parents and guardians of each student attending the school and distributed to all staff members at the beginning of the school year (Attachment A). A Spanish version of the notice also is attached (Attachment B).

Pesticide applications within Montgomery County Public Schools are rare and made only as a last resort or in an emergency situation. If at any time a pesticide application becomes necessary, IPM staff will inform you of the situation and will provide the necessary written notification documents that also will need to be sent home with students.

Thank you for your attention to this matter. If you have questions or concerns, please contact Mrs. Teresa M. Baumanis, environmental design assistant, Environmental Services/Indoor Air Quality, at 301-670-8238 or via e-mail.

LZ:dml

Attachments

Copy to:

Dr. Schiavino-Narvaez

Mrs. Baumanis

Elementary School Administrative Secretaries

Mr. Mullikin

Dr. Mugge

Approved:


Larry A. Bowers, Chief Operating Officer

**MONTGOMERY COUNTY PUBLIC SCHOOLS
INTEGRATED PEST MANAGEMENT NOTICE**

FOR ELEMENTARY SCHOOLS: Maryland Law requires that school staff and parents/guardians of all students be notified prior to planned pesticide applications in the school or on school grounds, or within twenty-four hours of an emergency application. Without exception, notices will be sent to all parents/guardians and circulated among school staff members.

FOR MIDDLE SCHOOLS, HIGH SCHOOLS, AND ADMINISTRATIVE CENTERS: Maryland Law requires that school-based staff and parents/guardians of middle or high school students and staff at administrative centers who wish to be notified prior to pesticide applications in the building or on the grounds must request that they be placed on the school's pesticide notification list. To do so, please fill out the enrollment form attached to this notice and return it to your school or administrative center.

FOR ALL: The Integrated Pest Management (IPM) Program implemented in Montgomery County Public Schools is a proactive approach to insect and rodent control in school facilities and on school grounds. The IPM Program includes frequent inspections of all school facilities to look for pests and conditions that favor pest invasions. As a first step in pest control, the IPM approach employs a number of preventive strategies and alternatives to pesticide application such as employee education, source reduction, inspection, identification of potential problem areas, and improved sanitation. Each strategy is monitored and evaluated, and modifications are made if necessary. Pesticides will be used only as a last resort or in an emergency situation.

The following is a list of pesticides and bait stations, **but not limited to**, by product name and common name, which may be used in buildings or on grounds during the school year:

<u>Product Name</u>	<u>Common Name</u>
4-the-birds II	Polybutene
Arilon	Indoxacarb
Avert cockroach bait station	Abamectin
Avert cockroach crack and crevice bait 310	Abamectin
Avert dry flowable roach bait	Abamectin
Avitrol	Aminopyridine
Catalyst emulsified	Propetamphos
Cynoff insecticide	Cypermethrin
Deltadust	Deltamethrin
Demon WP	Cypermethrin
Drione insecticide	Pyrethrins
Dylox 6.2 grams	Trichlorfon
Firstline termite bait stations	Sulfluramid
First Strike	Difethialone
Gentrol IGR concentrate	Hydroprene
Gentrol point source roach control	Hydropene
Golden malrin fly bait	Methomyl thioacetimidate

Liqua-tox II
Maxforce FC ant bait stations
Maxforce granular ant bait
Maxforce roach bait stations
Maxforce roach killer bait gel
Niban granular bait
Premise 75
Premise foam insecticide
PT 240 Perma Dust
PT 515 wasp freeze
PT565 plus XLO
Ratsorb
Round up Pro Max
Rozol tracking powder
Shatter termite bait cartridge
Suspend SC
Talon G
Talstar Professional multi-insecticide
Termidor SC termiticide
Terro PCO ant bait
Timbor
Uncle Albert's ant bait
Weatherblok bait
ZP tracking powder

Sodium diphacinone
Fipronil
Hydramethylon
Hydramethylnon
Hydramethylnon
Orthoboric acid
Imidacloprid
Imidacloprid
Methyl Chloroform
D-trans allethrin
Pyrethrins
Camphoraceous
Glyphosate
Chlorophacinone
Hexaflumuron
Deltamethrin
Brodifacoum
Bifenthrin
Fipronil
Sodium borate
Disodium octaborate tetrahydrate
Disodium octaborate tetrahydrate
Brodifacoum
Zinc phosphide

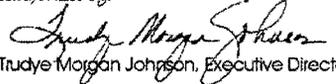
Mrs. Teresa M. Baumanis, environmental health specialist, Environmental Services/Indoor Air Quality, maintains copies of Material Safety Data Sheets (MSDS) and product labels for all pesticides and bait stations used in buildings or on grounds. If you would like to review this information, please contact her at 301-670-8238 or via e-mail.

Public comments regarding the Integrated Pest Management program may be addressed at scheduled Board of Education meetings.



**PESTICIDE SAFETY & INTEGRATED
PEST MANAGEMENT (IPM)**

No. **02-01**
Effective Date: **July 25, 2002**
Review/Update: **July 15, 2004**

Authorized by:

Trudy Morgan Johnson, Executive Director

The Commission is committed to protecting the environment and ensuring the safety of employees and users of Commission parks.

To this end, the Commission will act responsibly by implementing a program for the safe handling, storage, and application of pesticides. The Commission's program will comply with all relevant regulations and incorporate the Counties' initiatives for an Integrated Pest Management (IPM) Program.

PURPOSE

The purpose of this Directive to provide guidance and instructions for the storage and handling of pesticides, the implementation of an IPM program, outline requirements for pesticide applicators, develop a protocol for training and education and establish internal and external reporting requirements for pesticides.

APPLICABILITY

The procedures apply to all Commission employees that are required to handle pesticides within Commission properties.

INTEGRATED PEST MANAGEMENT (IPM)

In fostering the continued awareness and protection of the environment for both employees and park users, the Commission is committed to implementing and promoting an IPM program as a methodology to control pests throughout our Park system. The purpose of an IPM is to reduce the quantity and toxicity of pesticides that are used and to improve the control of pests.

This IPM initiative is supported on both a state and local level. For instance, Montgomery County Government adopted resolution #11-1859 an Integrated Pest Management Policy. In doing so, it requested commitment from employers within the county to also implement such strategies.

In practice, IPM is a decision-making process through which one determines:

- IF: pest suppression is needed,*
- WHAT: method or combination of methods is needed,*
- WHEN: control(s) should be implemented, and*
- WHERE: control(s) should be targeted.*

The following components of IPM distinguish it from traditional pest management programs that rely on routine, scheduled applications of pesticides to large areas through the following:

1. Selection of pest (and disease)-resistant species and cultivars that are environmentally suited to the site and reduction of abiotic stresses wherever practical; for structural IPM, appropriate sanitation procedures and restriction of pests to buildings are used.
2. Monitoring on a regular basis to assess and record any damage symptoms and pest levels.
3. Using cultural and biological pest control methods as much as possible.
4. Using pesticides with low human toxicities that are: a) short-lived in the environment, b) specific to target pests and diseases, and c) pose little threat to natural enemies and non-target species.
5. Applying pesticides for curative rather than preventive purposes whenever practical.
6. Targeting application of pesticides to affected plants or area only.
7. Periodic review and evaluation of treatments being used.

Treatment of pest problems using Integrated Pest Management involves the identification of problems by regular monitoring for pests in order to detect problems early. Written records of observations are kept and used in making decisions about treatments (see Reference 2 for sample form). When pest populations reach levels likely to cause an unacceptable amount of damage, a safe and effective treatment option is chosen specific to each case. The purpose of IPM is to reduce the quantity and toxicity of pesticides used and to improve the control of pests.

Treatment for pest control may be by mechanical or physical means, by making cultural improvements, by introducing biological controls, or by using pesticides chosen for being the most effective and least toxic or disruptive to the environment. Once a control measure is taken, monitoring of the pest problem continues and results of the treatment are evaluated.

Assistance with monitoring, identification of pests, and advice on treatment options can be obtained from the Cooperative Extension Service or the University of Maryland.

STORAGE AND INVENTORY OF PESTICIDES

Minimum Requirements for Pesticide Storage (required by state law)

Pesticides shall be stored in a separate building or, at a minimum, shall be separated by a physical barrier from living and working areas and from food, feed, fertilizer, seed, and safety equipment and comply with the following requirement

- The storage area shall be secured or locked to prevent unauthorized access.
- A warning sign approved by the Maryland Department of Agriculture shall be placed on the exterior of the storage area.
- Pesticides shall be stored in a dry, ventilated area.
- The pesticide storage area shall be kept clean.
- A supply of absorbent material sufficient enough to absorb a spill equivalent to the capacity of the largest container in storage shall be kept in the storage area.
- The storage area shall contain only pesticide containers that are properly labeled and are free of leaks.

- The storage area shall have an appropriate fire extinguisher available.
- Pesticides shall be stored in an area located at least 50 feet from any water well or stored in secondary containment approved by the Maryland Department of Agriculture.

Additional Recommendations for Pesticide Storage Facilities

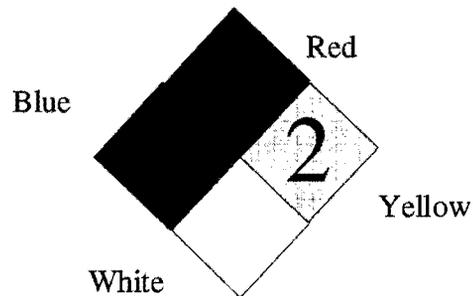
The Pest Management Advisory Committee, recommended that pesticide storage facilities have the following as well:

- A ventilating fan that stays on continuously when people are inside. The fan switch should be located outside the entrance so it can be turned on before entering.
- A heat source to keep pesticides from freezing in winter.
- Herbicides stored separately from all other chemicals.
- A Fire Code emblem (**numbered in accordance with Material Safety Data Sheets (MSDS) instructions**) on the side of the building facing road access:
(See below)

See Reference 3 for explanation of Fire Code emblem numbering system.

Storage Responsibility

Responsibility for maintaining the pesticide storage shed in a manner consistent with state standards shall be assigned to one person per site and shall be listed as a significant task function of his/her evaluation (see Reference 4).



Pesticide Storage Building Requirements

Section 15.05.01.06 of the Maryland Pesticide Regulation uses the following as an example of a compliant structure: a masonry building with concrete floors; insulated walls and ceiling covered with fireproof sheetrock; with floors, walls, and ceiling sealed with polyurethane white paint. Storage cabinets for pesticides should also be non-absorbent, fireproof, and scrub able which is best accomplished with steel cabinets having a baked enamel finish. Windows are not necessary and not desirable, but good fluorescent lighting is. A power supply is necessary for light and a ventilating fan, and a fireproof, locking metal door is recommended, as well as an explosion proof roof. Alternate structures approved by the State are acceptable.

Storage of Small Quantities of Low Toxicity Pesticides

Small amounts of low toxicity pesticides (ones which have “Caution” on the label, such as “Roundup” in quantities less than 25 gallons may be safely stored in a locked metal cabinet, marked with a sign, “**Danger Pesticide Storage**” with ventilation directly to the outdoors from the cabinet, instead of building a pesticide storage building. Such a cabinet may be placed safely in

any heated building such as a shop, equipment shed, etc., except a building where people eat. One example of an acceptable cabinet is the JUSTRITE Flammable Storage Cabinet," 30 gallon size, 44" H x 43" W x 18" D.

Storage Containers

- All pesticides shall only be kept in their original containers. Never, even temporarily, store or transfer any pesticide to any other container unless the original container is damaged or leaking. In this case, transfer contents to an empty container of the same product or to another clean container (service container) and label it with the trade name, percent of active ingredient, signal word of active ingredient, EPA Registration number, and date.
- All pesticide containers should have the date of purchase written on them with an indelible marker. Rotate supply, using the oldest containers first.

Pesticide Inventory Records

- All pesticides purchased during the year or used should be entered on the Pesticide Usage Report (Reference 6) kept in the storage facility. Pesticides used immediately upon purchase should also be included on the list. The pesticide inventory should include trade name, storage location, MSDS on file (yes or no), container type and size, cost, start quantity, and a date and amount remaining each time the pesticide is used until the container is empty.
- By January 15th, the Pesticide Usage Survey (Reference 18) must be completed and sent to the Maryland Agricultural Statistics Service or to the M-NCPPC person in **your division** coordinating the report. This survey requests the same information as the Pesticide Usage Survey (Reference 6) but is to be recorded on a separate form. This survey must be sent to the Maryland Agricultural Statistics Service at 50 Harry S. Truman Parkway, Annapolis, MD 21401.
- By January 31st, an updated copy of the **previous years'** Pesticide Usage Report, as described above, (Reference 6) must be sent to the Pesticide Management Coordinator for each County. The Coordinators must forward the usage reports to the M-NCPPC Risk Management & Safety Office (EOB).
- By January 31st, an updated alphabetized list of pesticides stored in the pesticide storage facility must be sent to the local Fire Department. Accompanying this list should be a map of exactly where the pesticides are kept (see Reference 7 for Hazardous Materials Inventory Form). This list must also be sent to M-NCPPC Risk Management & Safety Office by January 31st.
- To keep track of due dates and requirements of all forms, a Record Keeping and Reporting Requirements Checklist are located in Reference 9.

PURCHASE AND DISPOSAL OF PESTICIDE CONCENTRATES

Purchasing Pesticides

- As soon as pesticides are purchased, enter them on the Pesticide Usage Report (Reference 6) kept in the storage facility and on the inventory filed in the office.
- Whenever new pesticides are required, request and obtain copies of the label and Material Safety Data Sheets from the vendor. The pesticide label is a legal document that describes

how the product can legally be used. The MSDS provides specific information about the nature and toxicity of each chemical.

- Whenever possible, use up concentrates on hand and do not allow them to accumulate over the years.
- **AVOID THE NEED FOR DISPOSAL OF PESTICIDE CONCENTRATES** by purchasing only the amount of pesticide needed for one year.

Disposal of Pesticide Concentrates

Pesticides may become useless because of (1) age, freeze damage, container deterioration, (2) by being banned by the Environmental Protection Agency, State regulation, (3) or by the M-NCPPC Risk Management and Safety Office.

Disposal of unusable pesticide concentrates requires an expensive and complicated process regulated by the Environmental Protection Agency.

- **REPORT ALL UNUSABLE OR QUESTIONABLE CHEMICALS** to the M-NCPPC Risk Management AND Safety Office at (301-454-1681 or 301-454-1682). In some cases, concentrates may be disposed of legally by being incorporated in small amounts into fresh batches of the same or a similar chemical and sprayed out a little at a time according to label directions. **BEFORE TAKING ANY ACTION WITH ANY QUESTIONABLE CHEMICALS CONSULT WITH THE M-NCPPC RISK MANAGEMENT AND SAFETY OFFICE**
- If a pesticide container is deteriorating, cracked, torn or leaking, place it inside a 5-gallon plastic bucket or other leak-proof container until it can be used, transferred to another container and labeled, or disposed of legally.
- Do not dispose of any pesticide concentrates in regular trash containers.
- If it is determined that disposal must be in the original container or service container, the M-NCPPC Risk Management & Safety Office will assist with initial contacting of an approved disposal vendor and will advise on the procedure. The Division requiring disposal will bear the cost and must retain all paperwork involved.

TRAINING, REGISTRATION, & CERTIFICATION OF PESTICIDE USERS

Registration with the M-NCPPC

All employees who apply pesticides for the M-NCPPC are required to register **every** year by February 15. Each employee must complete the M-NCPPC Pesticide Applicator's Status Form and send it to the designated Pest Management Coordinator for each county who will forward it to the M-NCPPC Risk Management and Safety Office. (Reference 8 contains a blank copy of this form). Any change in Registration or Certification status must be reported immediately to the appropriate coordinator, who will forward the change to the M-NCPPC Risk Management and Safety Office.

Training:

Training for state registration shall meet state standards as described in Reference 10.

The Pest Management Coordinator for each county shall coordinate and/or provide training to employees who need to acquire the credentials of "Registered Pesticide Employee" by the State of Maryland.

Summary
Takoma Park Ordinance 2013-28 “Safe Grow Act of 2013”

- **Register of Restricted Pesticides:** The City Manager must develop a register of restricted pesticides by March 1, 2014 and to update the register by March 1 each successive year.¹
- **Restrictions on Governmental Applications**
 - City agents and employees are prohibited from using restricted pesticides for lawn care unless the City Manager provides a waiver for the use.
 - Other government entities which own or control land in the City are to be informed of the City’s law and encouraged to voluntarily comply.
- **Restrictions on Commercial Applications**
 - Beginning March 1, 2014, commercial pesticide applicators are prohibited from using restricted pesticides for lawn care purposes on private property or in public rights of way in the City.
 - Beginning on March 2, 2014, commercial pesticide applicators must post a written notice (with information to be detailed in future regulations) for at least two days following the application.
 - Penalties
 - Beginning March 1, 2014 through June 30, 2014 – written warning for prohibited applications
 - Beginning July 1, 2014: Each prohibited application will be a Class D infraction. Subsequent violations will be Class B infractions.
 - Beginning July 1, 2014: Failure to post required notice will be a Class G infraction.
- **Restrictions on Property Owners and Tenants Applying Pesticides**
 - Beginning January 1, 2015, property owners and tenants are prohibited from using restricted pesticides for lawn care purposes on private property or in public rights of way in the City.
 - Beginning on January 1, 2015, property owners and tenants must post a written notice (with information to be detailed in future regulations) for at least two days following an application.
 - Penalties
 - Beginning January 1, 2015 through June 30, 2015 – written warning for prohibited applications
 - Beginning July 1, 2015: Each prohibited application will be a Class D infraction. Subsequent violations will be Class B infractions.
 - Beginning July 1, 2015: Failure to post required notice will be a Class G infraction.
- **Exceptions**
 - Restricted pesticides may be applied:

¹ The Act defines the which pesticides must be on the register as: “Any pesticide classified as “Carcinogenic to Humans” or “Likely to Be Carcinogenic to Humans” by the U.S. Environmental Protection Agency; any pesticide classified by the U.S. Environmental Protection Agency as a “Restricted Use Product”: any pesticide classified as a “Class 9” pesticide by the Ontario, Canada, Ministry of the Environment; and any pesticide classified as a “Category 1 Endocrine Disruptor” by the European Commission.

- To control noxious growths, noxious weeds, and invasive species
- To meet Federal or State mandates
- To control insects which are venomous or disease carrying
- **Waivers**
 - The City Manager may approve waivers in cases where persons have exhausted all reasonable alternatives to restricted pesticides for lawn care.
- **Education**
 - After July 1, 2014, the City shall distribute educational materials to all single-family homes, duplexes, and townhouses in the City.

Regular Meeting

Agenda Item #	9
Meeting Date	July 22, 2013
Prepared By	Suzanne Ludlow Deputy City Manager
Approved By	Brian Kenner City Manager

Discussion Item	Second Reading Ordinance, Safe Grow Act
Background	<p>The Safe Grow Act of 2013 seeks to have the City Council enact a series of public education requirements and ultimately a ban on certain lawn pesticides on public and private property within the City. The Council held a public forum and a series of work sessions to discuss the proposed ordinance. The Ordinance was considered at First Reading on July 15, 2013.</p> <p>Several minor amendments have been proposed by City Attorney Kenneth Sigman, changing the publication date of the Register of Restricted Pesticides to on or before March 1 of each year.</p>
Policy	<p>Section 401(a) of the City Charter:</p> <p><i>(a) The Council shall have the power to pass all such ordinances not contrary to the Constitution and laws of the State of Maryland or this Charter as it may deem necessary for the good government of the City; for the protection and preservation of the City's property, rights, and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger, or destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents of and visitors in the City.</i></p>
Fiscal Impact	Ordinance: FY 14 - \$15,000; FY 15 - \$20,000; FY 16 - \$28,000; future years - \$25,000 per year
Attachments	Second Reading Ordinance
Recommendation	Adopt ordinance at second reading
Special Consideration	

Introduced by: Councilmember Smith

First Reading: July 15, 2013

Second Reading:

Effective Date:

City of Takoma Park, Maryland

Ordinance 2013-28

“Safe Grow Act of 2013”

**Amending the *Takoma Park Code* Title 14, Health and Safety,
to Add Restrictions on the Use of Pesticides on Public and Private Property.**

WHEREAS, Title 14, Health and Safety, protects the public health, safety, comfort, and general welfare of the residents and businesses of the City; and

WHEREAS, Takoma Park’s Strategic Plan for FY2010-15, adopted May 18, 2009, articulates concern for clean water and safe neighborhoods and working environments and calls for “use of alternative, less environmentally damaging products”; and

WHEREAS, in 2004, the City Council of Takoma Park proclaimed May 27 as Rachel Carson Day, a day in which residents are encouraged to consider the dangers from pesticides and to refrain from pesticide use, and the City has consistently, before and since, acted in society’s environmental and health best interests; and

WHEREAS, the State of Maryland does not preempt municipal restriction of pesticide use, which indicates state recognition that localities are permitted and may wish to act beyond State law, and further, the State of Maryland itself goes beyond State law: A collaborative effort that includes the Maryland Departments of General Services and Natural Resources is transitioning the State House grounds to a “Bay-friendly, pesticide-free lawn and landscape care program” and instructs Marylanders, “Try Pesticide-free organic land care to protect the Bay and your family’s health”; and

WHEREAS, the Environmental Protection Agency (EPA), the Committee on Environmental Health of the American Academy of Pediatrics, the National Academy of Sciences, and the 2010 President’s Cancer Panel have concluded that pesticide exposure is linked to reproductive disorders, birth defects, learning disabilities, neurological disease, endocrine disorders, and cancer; and

WHEREAS, the EPA acknowledges, along with the esteemed Mt. Sinai Children’s Environmental Health Center, that children, with their developing bodies and brains, are especially vulnerable to the harmful effects of lawn pesticides. Children’s behavior exposes them to far more contact with lawn pesticides than adults receive; and

WHEREAS, a study in the Journal of the National Cancer Institute finds that home and garden

pesticide use can increase the risk of childhood leukemia by up to seven times. Dr. Philip Landrigan, the Director of Mt. Sinai Children's Environmental Health Center states, "Case-control epidemiologic studies have found consistent, modest associations between pesticide exposures in utero and in early childhood and acute lymphocytic leukemia, childhood brain cancer, and childhood non-Hodgkin's lymphoma. Rates of childhood leukemia are consistently elevated among children who grow up on farms, among children whose parents used pesticides in the home or garden, and among children of pesticide applicators"; and

WHEREAS, the EPA states pesticides are chemical irritants that can trigger asthma attacks in sufferers. One in ten children suffers from asthma, more in urban areas, where building managers routinely contract with lawn pesticide applicators; and

WHEREAS, the National Institute of Environmental Health Sciences at NIH and the Harvard School of Public health have confirmed that exposure to pesticides raises the risk of Parkinson's disease; and

WHEREAS, lawn pesticides have sub-lethal effects on animal life, including pets, aquatic organisms, and wildlife. A 2012 study by biologists at Harvard University concludes that pesticides are lethal to many pollinators and have been linked to Colony Collapse Disorder in honeybees; and

WHEREAS, Friends of Sligo Creek asks people not to overuse pesticides and herbicides and also to "Encourage civic leaders to implement policies that reduce... toxic chemicals, and other impediments to water quality"; and

WHEREAS, the Chesapeake Bay Foundation's 2010 State of the Bay Report observes that non-point source pollution from residential and commercial lawn pesticides in surrounding towns pollute the watershed and ultimately Chesapeake Bay; and

WHEREAS, most provinces in Canada have banned the use of cosmetic lawn chemicals, and subsequent studies show a dramatic increase in stream health, Washington DC has enacted the Pesticide Education and Control Amendment Act of 2012, and Greenbelt, MD, strictly prohibits the use of synthetic chemical pesticides on all city-owned land with its Sustainable Land Care Policy of 2011; and

WHEREAS, non-toxic lawn care products are affordable and available to purchase in Takoma Park, and several local landscaping businesses offer pesticide-free lawn care.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND THAT:

SECTION 1. Title 14, Health and Safety, of the Takoma Park Code, is hereby amended to include a new Chapter 14.28, as follows:

Chapter 14.28

Restricted Lawn Care Pesticides

14.28.010 Declaration of policy

The application of certain pesticides, including the use of certain pesticides approved for use by the federal, state, or county governments, in manners and by persons allowed by those governments to apply them, nonetheless present an unacceptable risk of harm to public and animal health, the environment, and the region's watershed.

The City of Takoma Park prioritizes education of property owners and the businesses that serve them on the demonstrated and potential dangers posed by the use of certain pesticides for lawn care purposes, and on alternative, effective, safe means of promoting healthy lawns.

Education is important, but education alone is insufficient to protect the health of Takoma Park residents and visitors and the integrity of our environment and the region's watershed from the harm posed by the use of certain pesticides for the purposes of maintaining the cosmetic appearance of lawns. Certain pesticides are harmless to humans and non-pest species, and certain applications of potentially harmful pesticides may be justified by the need to eradicate invasive species and restore the environment. However, the desire to control purported pests such as clover, grubs, and black spot, to maintain a homogenous lawn does not merit the use of harmful pesticides.

This Chapter accordingly establishes public education requirements and phases in restrictions on the use of harmful pesticides for lawn care on public and private property within the City. It establishes an administrative framework for the implementation of educational steps, restrictions, and enforcement.

14.28.020 Definitions

As used in this Chapter,

"Commercial pesticide applicator" means any person that performs pesticide application for hire.

"Infestation" means the presence of a pest in numbers or quantities large enough to be harmful.

"Lawn" means an area of grass or other vegetation of at least 25 square feet that is kept mowed.

"Pest" means any undesirable insect, animal, plant, fungi, bacteria, virus, or microorganism;

“Pesticide” means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest, including insecticides, herbicides, and fungicides.

“Restricted pesticide” means a pesticide identified in the register of restricted pesticides developed under section 14.28.040 of this Chapter.

14.28.030 Outreach and Education

A. The City shall identify or prepare, and then periodically disseminate, materials designed to educate the community about the role of pesticides in our local environment, compliance with restrictions imposed by the Safe Grow Act, and earth-friendly practices and alternatives to the use of harmful pesticides.

#

1. Education may take the form of pamphlets and brochures, whether produced and distributed on paper or electronically, and classes and seminars, involving City staff, non-City governmental agencies, community and advocacy groups, and other resources.

#

2. Materials shall include information about and links to the U.S. Environmental Protection Agency’s list of minimum risk pesticides. The City Manager shall publish the EPA’s list of minimum risk pesticides on or before ~~January~~March 1 of each year and ensure that the publication reflects any changes to the EPA’s list during the preceding ~~twelve month~~calendar year.

B. The City Manager shall publish notice of this Chapter and a list of restricted pesticides and alternative, less environmentally damaging, products and cultural practices or methods of pest control and provide periodic notice regarding this Chapter to local lawn and garden retailers and contractors, and businesses, churches, schools, and other institutions located in the City, upon adoption of administrative regulations pursuant to section 14.28.080 and subsequently every two years or more frequently.

14.28.040 Register of Restricted Pesticides

A. The City Manager shall create and issue, by ~~March~~January 1, 2014, a Register of Restricted Pesticides.

#

1. The Register shall identify restricted pesticides.

#

2. Persons applying pesticide products are responsible for determining whether the product contains a restricted pesticide.

B. The Register of Restricted Pesticides shall include the following pesticides:

1. Any pesticide classified as “Carcinogenic to Humans” or “Likely to Be Carcinogenic to Humans” by the U.S. Environmental Protection Agency;

#

2. Any pesticide classified by the U.S. Environmental Protection Agency as a "Restricted Use Product";

3. Any pesticide classified as a "Class 9" pesticide by the Ontario, Canada, Ministry of the Environment; and

4. Any pesticide classified as a "Category 1 Endocrine Disruptor" by the European Commission.

C. The City Manager shall publish an updated version of the Register of Restricted Pesticides that reflects any changes to the classifications in subsection (B) of this section on or before ~~March~~ January 1 of each year that will remain in effect for one year.

14.28.050 Prohibited Applications

A. **Use by City Agents and Employees.** City agents or employees shall not use restricted pesticides for lawn care in the performance of their duties unless the City Manager determines, after considering the pertinent criteria developed for waiver decisions pursuant to section 14.28.070, that the restricted use of a pesticide is necessary to promote the public interest.

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B. **Use by Other Government Entities.** The City of Takoma Park shall inform governmental entities that own or control land within the City of its policy regarding restricted pesticides and encourage voluntary compliance with the pesticide use restrictions and notice requirements.

C. **Use on Private Property and Public Rights-of-Way.**

1. Commercial Pesticide Applicators.

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a. Commencing March 1, 2014, it shall be illegal for a commercial pesticide applicator to apply restricted pesticides for lawn care purposes on private property or public rights-of-way in the City.

b. Commencing March 1, 2014, a commercial pesticide applicator applying a pesticide for lawn care purposes must post a written notice, readable and visible from the public right-of-way at the point closest to the area of application, providing information as specified in Administrative Regulations. The notice shall remain in place for at least 2 days following application.

c. Penalties.

i. From March 1, 2014, through June 30, 2014, the City shall issue a written warning to a commercial pesticide applicator that violates paragraphs (a) or (b) of this subsection.

ii. Commencing July 1, 2014, each prohibited application of a restricted pesticide for lawn care purposes is a violation and shall be a Class D municipal infraction for the initial offense and shall be a Class B municipal infraction for the second offense. The third and any subsequent offenses shall be repeat Class B offenses.

iii. Commencing July 1, 2014, failure to post and maintain the written notice required under paragraph (1)(b) of this subsection is a violation and shall be a Class G municipal infraction.

2. Property Owners and Tenants.

a. After July 1, 2014, the City shall distribute educational materials developed under section 14.28.030 to all single-family homes, duplexes, and townhouses in the City.

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b. Commencing January 1, 2015, it shall be illegal for a property owner or tenant to apply restricted pesticides for lawn care purposes on private property or public rights-of-way in the City.

c. Commencing January 1, 2015, a property owner or tenant applying a pesticide for lawn care purposes must post written notice. The notice shall be readable and visible from the public right-of-way at the point closest to the area of application, providing information as specified in Administrative Regulations. The property owner or tenant shall maintain the notice for at least 2 days following application.

d. Penalties.

i. From January 1, 2015, to June 30, 2015, the City shall issue a written warning to a property owner or tenant that violates the pesticide application restrictions and posting requirements of paragraphs (2)(b) and (c) of this subsection.

ii. Commencing July 1, 2015, each prohibited application of a restricted pesticide for lawn care purposes is a violation and shall be a Class D municipal infraction for an initial offenses and shall be a Class B municipal infraction for the second offense. The third and any subsequent offenses shall be repeat Class B offenses.

iii. Commencing July 1, 2015, failure to post and maintain a written notice as required by paragraph (2)(c) of this subsection is a violation and shall be a Class G municipal infraction.

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14.28.060 Exceptions

A. The City encourages the use of cultural, physical, biological, and mechanical methods of pest control, instead of restricted pesticide use, but this Chapter does not prohibit the use of restricted pesticides for the purposes set forth in subsection (C) of this section.

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B. Any person using a restricted pesticide for lawn care purposes pursuant to an exception set forth below must post a written notice readable and visible from the public right-of-way at the point closest to the area of application that states the address of the pesticide application, substance applied, and date of application, and the exception under which the pesticide is being applied. The property owner or tenant shall maintain the notice for at least 2 days following application.

C. Restricted pesticides may be applied for the following purposes:

1. **Noxious growths.** The control of plants identified in Section 12.08.040, Noxious Growths, of the Takoma Park Code, including poison ivy (*Rhus radicans* or *Toxicodendron radicans*), poison oak (*Rhus toxicodendron* or *Toxicodendron quercifolium*), poison sumac (*Rhus vernix* or *Toxicodendron vernix*), ragweed (*Ambrosia artemisiifolia*), bamboo, kudzu-vine (*Pueraria lobata*), non-native honeysuckle, wisteria, and multi flora rose (*Rosa multiflora*).

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2. **Noxious weeds.** The control of noxious weeds as defined in section 9-401 of the Agriculture Article of the Maryland Code, including thistles belonging to the asteraceae or compositae family, such as Canada, musk, nodding, plumeless, and bull thistle, johnsongrass (*sorghum halepense*) or hybrids that contain johnsongrass as a parent, and shatter cane and wild cane (*sorghum bicolor*).

3. **Invasive species.** The control of invasive species that may be detrimental to the environment, in accordance with a license issued by the City of Takoma Park or Montgomery County.

4. **Mandatory applications.** Use of pesticides mandated by state or federal law.

5. **Health and safety.** The control of insects that are venomous or disease carrying.

14.28.070 Waiver

A. Persons that have exhausted all reasonable alternatives to the use of restricted pesticides for lawn care may request a waiver from the City Manager allowing the use of one or more of the restricted pesticides under this Chapter. In deciding waiver requests, the City Manager shall balance the need for the use of restricted pesticides against the risks of such use.

B. **Posting requirements.** Persons granted a waiver must post a written notice readable

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and visible from the public right-of-way at the point closest to the area of application, providing information specified in Administration Regulations. The property owner or tenant shall maintain the notice for at least 2 days following application.

14.28.080. Administration.

A. The City Manager shall promulgate regulations for the implementation and enforcement of this Chapter. The regulations shall include the following:

1. Procedures and criteria for notices; and
2. Procedures and criteria for waiver applications.

B. The City Manager may recommend to the Council one or more methods of assessing the effectiveness of this Chapter, which may include the development of metrics on volume and types of use of pesticides in the City or testing of local waters for pesticide contamination.

Section 2. This ordinance shall become effective on August 12, 2013.

Adopted by the Council of the City of Takoma Park this ____ day of _____ by roll-call vote as follows:

AYE:

NAY:

ABSTAIN:

ABSENT:

Note:

Changes made to the ordinance since first reading are indicated by underline or ~~striketrough~~.



COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT
MARY M. CHEH, CHAIR

**COUNCILMEMBER MARY M. CHEH TESTIMONY FOR THE TAKOMA PARK CITY
COUNCIL MEETING ON TAKOMA PARK'S PROPOSED SAFE GROW ACT
JULY 8, 2013**

On January 4, 2012, I introduced the Pesticide Education and Control Amendment Act of 2012, restricting the use of pesticides in the District of Columbia. In July of 2012, the D.C. Council unanimously passed the Act, and in October, it became effective. This legislation restricts the application of pesticides at District schools, day care centers, on District property, and on properties near waterways. In passing this legislation, the District took a big step forward in protecting its citizens, and particularly its children, from the harmful effects that result from pesticide exposure.

I introduced this law because a growing body of research shows that pesticides are toxic to human health and the environment, and because federal law does not do enough to protect us from these harms. Research increasingly links pesticide exposure to medical conditions such as cancer and diminished cognitive function, and moreover, the research shows that children are at an increased risk of suffering from pesticide exposure. When pesticides are applied to our lawns and fields, they wash into our storm drains and out into our streams and rivers, poisoning aquatic plants, animals, and any person or creature that might eat those plants or animals. What's truly terrible about this, however, is that much of this toxic pesticide use is unnecessary, or for cosmetic purposes only. Integrated pest management techniques have demonstrated that there are many less toxic alternatives and methods that can reduce the use of toxic pesticides while still keeping pests at bay.

When we first proposed this law, a few objections were raised. Some people were very concerned about outbreaks—bedbugs, poison ivy, and other harmful pests. However, our law, like Takoma Park's proposed ordinance, provides exceptions to address this issue. The Pesticide Education and Control Amendment Act provides that DDOE can grant exemptions where the use of a restricted pesticide is linked to a need to protect human health, the environment, or property. It also excludes pesticides that are critical to the management of insects that bit or sting, plants that are poisonous to touch, and pests that may cause damage to infrastructure.

Another objection that we heard frequently was that the U.S. EPA already reviews pesticides for safety before they can be registered for sale in the U.S., so why add regulations on top of their review? Well, there are a number of reasons:

First, although federal law requires EPA to review certain toxicity data on a pesticide before it may be registered, EPA's review process is not exhaustive. The toxicity studies that EPA reviews do not include many disease endpoints such as immune system effects, endocrine or hormone disruptions, learning deficits, or chronic diseases such as Parkinson's Disease. Peer-reviewed science has, however, linked all of the above to pesticide exposure. At the hearing my committee held on the Pesticide Education and Control Amendment Act in February of 2012, multiple doctors testified to this point.

Another problem with the federal process is that the data EPA reviews is supplied by the registrant, and therefore is generally based on tests performed by the chemical industry. A third major issue with EPA's review is that it evaluates pesticides on their individual merit rather than against other pesticides, substances, or practices available for achieving the same purpose. For example, the chemical 2,4-dichlorophenoxy acetic acid (2,4-D), which was an ingredient in Agent Orange, is registered as a pesticide, despite the fact that many much safer alternatives exist. Finally, EPA's review process is not actually a health-based assessment, but a risk-benefit assessment. This means that even if a pesticide does not meet the requisite safety standard, EPA may still register it if the economic value appears to outweigh the health risk.

Because the federal process does not adequately protect people and the environment from the harms of pesticide use, local and state laws are extremely important. Legislation such as the District's Pesticide Education and Control Amendment Act of 2012 and Takoma Park's proposed Safe Grow Act of 2013 can bridge the gap in the federal process and provide the additional restrictions that are necessary to protect human and environmental health.

A final objection we heard to our Act was that mandatory restrictions weren't needed—that education and outreach alone would be sufficient to reduce unnecessary toxic pesticide use. Studies have shown that this is not the case, however. A 2004 review of pesticide use reduction programs found that education and outreach programs alone achieved a significantly lower rate of reduction than those supported by enforceable legislation, and that the most successful programs all had a mandatory legislative component. The most effective programs combined both mandatory use restrictions and educational campaigns.

To that end, we included an educational component in the Pesticide Education and Control Amendment Act, establishing training requirements for applicators and publicly available courses on integrated pest management at UDC. I'm happy to see that Takoma Park's proposed Safe Grow Act also includes an education and outreach provision, which will increase the rate of compliance and reduce inadvertent violations.

For the District, education about the Pesticide Education and Control Amendment Act was very important right from the start, in garnering support for the Act and getting it passed. Although we had the support of many environmental and community groups in passing the Act, it was initially opposed by the National Pest Management Association, a trade organization which represents local, DC-

based pest management companies. After significant work and outreach by my office to explain and revise the bill, however, the organization withdrew its objections. Their primary concerns stemmed from a misunderstanding of the bill—although they at first saw it as a threat to their ability to provide their services, they came to understand that the bill merely restricted the use of particularly harmful pesticides for which there are safer, effective alternatives.

I believe action on pesticide use at the local level is vital to the protection of people and the environment from the harms of toxic pesticide exposure. The Pesticide Education and Control Amendment Act of 2012 is part of an overarching framework of legislation that I have introduced with the goal of reducing the amount of toxic chemicals circulating in our air, water, and soil. In 2008, I sponsored and the Council passed legislation prohibiting the sale and use of coal tar pavement products in the District. Two years later, I introduced and the Council passed another law limiting the emission of harmful chemicals into our environment, the Human and Environmental Health Protection Act of 2010. This Act regulates the sale and manufacture of products containing bisphenol-A (BPA) and polybrominated diphenyl ethers (PBDEs), phases out the use of perchloroethylene (PERC) in drycleaning, and reduces the percentage of phosphorus permitted in dishwashing detergent. These chemicals are linked to developmental disorders, cancer, and organ damage, among other harmful effects, and they have been increasingly finding their way from consumer products into our air, water, and bodies.

Takoma Park's proposed Safe Grow Act would not only help protect Takoma Park residents, it would also—and this is a big reason I appear before you today—increase the health of District residents and waterways, by reducing the level of toxic pesticides in the Anacostia watershed. I applaud the Takoma Park City Council for its consideration of the proposed Safe Grow Act, and I urge its passage.

To: COE Members
From: Paul Chrostowski
Subject: Safe Grow Ordinance
Date: May 31, 2013

As promised, I have compiled some briefing materials on the Safe Grow Zone (SGZ) ordinance. You will find attached a letter from the ordinance proponents to the COE, the latest draft of the ordinance, a draft of my response to questions from Council members, and some supporting documents.

I believe that Council wants us to advise them if the ordinance will confer a degree of environmental/public health protectiveness over and above that attained by the existing regulatory regime. Council is being advised on other aspects (including social and legal) by the Acting City Manager, City Attorney, and Director of Public Works.

The ordinance only applies to cosmetic uses of 11 specific pesticides (2 insecticides and 9 herbicides) on lawns. Other uses are not affected. For example, 2,4-D could still be used for poison ivy control; any of these products could be used on ornamentals other than lawns consistent with federal and state regulations.

Similar ordinances have been enacted elsewhere. Included in the supporting documentation is an article describing the Toronto experience. Even after short periods, these bans have had a positive effect on the environment. For example, in Ontario after one year, 2,4-D had declined by 81%, dicamba by 83% and MCPP by 71% in urban stream water.

Reduction in chemical pollution is one of the consensus sustainability metrics discussed in the academic community (Rockstrom et al. 2009, Worldwatch 2013): "Chemical pollution For example ,emissions, concentrations, or effects on ecosystem and Earth System functioning of persistent organic pollutants (POPs), plastics, endocrine disruptors, heavy metals, and nuclear Wastes...May act as a slow variable undermining resilience and increase risk of crossing other thresholds".

There is an extensive amount written on this topic especially because these bans have caught on like wildfire in Canada. If you are interested in more material ("Canadian Pesticide Bans in Google yields over 7 million hits):

<http://www.flora.org/healthyottawa/10-06-09%20Prelim%20results%20of%20pesticides%20study.pdf>

[http://www.landscapeontario.com/attach/1295274330.MOE Update - Aaron Todd.pdf](http://www.landscapeontario.com/attach/1295274330.MOE%20Update%20-%20Aaron%20Todd.pdf)

<http://www.nytimes.com/2009/09/24/garden/24garden.html?pagewanted=all& r=0>

[http://www.davidsuzuki.org/publications/downloads/2011/Bilan reglementations pesticides 2011 EN VF.pdf](http://www.davidsuzuki.org/publications/downloads/2011/Bilan%20reglementations%20pesticides%202011%20EN%20VF.pdf)

May 22, 2013

Dear Members of the Committee on the Environment:

Julie Taddeo and I began educating our neighbors about the risks associated with cosmetic lawn pesticides two years ago. We noticed that many lawns and apartments grounds were conventionally and commercially treated with pesticides, including lawns bordering our own. We created a flyer and went to every single door in Long Branch Sligo Neighborhood, and to the apartments. We had a handful of neighbors mention our flyer supportively, but the yellow signs have appeared, three times per season, since that first educational effort.

We have called Scotts, TruGreen, First Impression, etc. We know exactly what is applied to the lawns just three feet from our property, even though the homeowners don't, "I would never put anything dangerous on my grass," we have heard time and again. We have had mixed experiences talking to neighbors who use cosmetic lawn pesticides. Speaking to them about their choice of weed-killer is a little like asking why their mom's cooking stinks—it's a very uncomfortable topic that takes a lot of tact and patience. Not everyone has the time, the courage, the tools, to reach out to a beloved (or not-so-beloved) neighbor to ask them to consider the environment and your children in their actions.

Now try asking Adventist Hospital to hold the 2, 4-D.

We have presented the City Council with myriad materials from Harvard University, from Mt. Sinai Center for Children's Environmental Health, from the EPA, the American Academy of Pediatrics, NIH and their affiliated President's Cancer Panel, the list of credible research on the risks associated with the use of cosmetic lawn pesticides goes on and on. But let's stick to environmental aspects.

As custodians of the environment, precaution goes by the wayside much of the time in favor of convenience. Who knows this for a fact? The Audubon Society, National Wildlife Federation, The Anacostia Watershed Society—these groups constantly ask consumers to consider the alternatives to lawn pesticide use, and they see in the field that despite education, the reliance on toxic lawn pesticides is alive and well right here in our watershed. Julie and I have had great conversations with these groups, though endorsement is not always the outcome. Why? We have heard time and time again that people in the field (literally working in the water) don't like to get involved in policy. It is the job of the activist to bridge this gap. **Groups that are tools for activists, like Beyond Pesticides and the Rachael Carson Council, as well as the Maryland Green Party, have endorsed Safe Grow Zone Initiative.**

In 2012, Curt Spalding, the EPA's Regional Administrator for New England said, and I paraphrase, "The Agency is beleaguered. Engage communities before the Agency." He was speaking at a conference organized by Beyond Pesticides, called Healthy Communities, and he was in a line-up of other speakers applauding activism at a local level, and outlining why it needs to be done, and how to do it.

The environmental risks associated with cosmetic lawn pesticides of the types on sale here at Takoma are: Colony Collapse Disorder in bees, sex-change in aquatic species, birth defects in aquatic species, instantaneous death in native pollinators (Ortho Max kills 150 different insects on contact), soil degradation, earth worm death (yes, that's serious!) contamination of the watershed, die-off in bird populations, drift to non-target areas and species, etc. Also, lawn pesticides do not stay in place, and I am sure each one of you understands how and why. Lawn pesticide products are also mostly composed of inert ingredients—when will those be studied for their impact on the environment, or their potential to cause even more harm when mixed with the active ingredient?

Please think about what we are trying to do very carefully. Think about who stands to gain from this ordinance, and who stands to lose. Take the time to watch the public comments presented before the City Council on May 20th, and those made on earlier dates. Ask yourself this question: Who did long-term impact studies in Takoma Park back in the 1940's when the very first cosmetic lawn care pesticides were applied to the surfaces of our community?

This campaign comes from a good place: a beautiful neighborhood in Takoma Park. Julie and I have done all the outreach, research, and paid for all our materials on our own. We are not headed into politics; Dr. Taddeo is a professor at the University of Maryland, and Catherine Cummings is an artist.

Thank you for participating in this very important and timely discussion.

Sincerely,

Catherine Cummings and Julie Taddeo
Safe Grow Zone Initiative
Takoma Park, MD

I oppose the ordinance, Takoma Park Safe Grow Zone Initiative. I would like to bring to your attention the facts of the benefits of ornamental turfgrass and landscape culture. Well managed turfgrass has many benefits including erosion control, it cleans the air, filters runoff, is a safe place for sports and activity (fewer injuries than synthetic turf), sediment control, creates oxygen, increases property value, and has a cooling effect. Our trees, shrubs and landscape plantings provide beauty and shade to our urban environment. The proper management of turfgrass requires the judicious use of fertilizers and pest control. Trees and shrubs fall victim to a myriad of disease and insect problems that require the use of fungicides and insecticides. Our members are trained and certified lawn and landscape specialists. We know how to diagnose and treat lawn and landscape problems while reducing the amount of pesticides needed.

In addition, contrary to the statements of the ordinance and the studies and comments you cited therein, there is no documented, peer reviewed scientific data that the activity of using general use pesticide products is in anyway linked to increased cancer or to health problems. The only one that is cited in the comments that has any validity is the NIH study. The NIH study cites two pesticides; paraquat and rotenone as being linked to Parkinsons Disease. While there are no official statistics from Maryland, I personally do not know of a lawn care company that uses these products. In personal conversation with my sales representative from John Deere Landscapes, he relates that he has not sold a bottle of either in his entire carreer (20 years). To back that up, in New Jersey in 2010, the pesticide survey for pesticide use on lawn and landscapes reported only 13lbs ai. of paraquat and no rotenone was used by lawn care companies and landscapers in New Jersey in 2010. And, they are not on your banned list. Yet, your statement says that in general ALL pesticides are linked to Parkinsons Disease according to the NIH study. Rotenone is actually a botanical and is on the list of products that can be used in organic farming. So, if you are eating organic vegetables, you are probably ingesting rotenone. This is just one example of the inconsistencies in the testimony that is prompting your action and there are many more.

As a lawn care operator and certified pesticide applicator that provides a quality and essential service to homeowners in your area, I urge you to do more research before blindly banning pesticide use in your city. If you would like professional advice, I would be more than happy to volunteer and supply more professional knowledge to your process. Call me if I can be of service. I am a Master Gardener in Charles County and I help the new MGs by giving a pesticide class every year. I am sure you would find my input valuable.

Richard LaNore
Director, Maryland Turfgrass Council
Owner, MRW Lawns
Work # 301-870-3411
Email rick127928@rocketmail.com

May 22, 2013

ANSWERS TO QUESTIONS FROM COUNCILMEMBERS GRIMES AND MALE

Paul C Chrostowski Ph.D, QEP

1) What gaps are there between EPA & Maryland pesticide regulations and the protections envisioned by the Safe Grow Zone ordinance?

EPA regulates pesticides through the Federal Insecticide Fungicide and Rodenticide Act (FIFRA). It focuses on registration (approving for use), use restrictions, labeling, and disposal of un-used pesticides. Maryland Department of Agriculture (MDA) regulates pesticides at the state level. MDA focuses on applicator training and education in addition to state level enforcement of EPA regulations. Both EPA and MDA are very strong on product approval and labeling, agricultural and commercial use (golf courses, nurseries etc), but fairly weak on residential use. Whenever EPA approves a pesticide it conducts a human health and ecological risk assessment that assesses the health risks to people or the environment that could be exposed to the pesticide. The approval is based on the behavior that is assessed. For example, EPA will conduct a detailed analysis of how a pesticide applicator will be exposed to the material throughout the workday. They will then limit the use based on this assessment. Again with the worker, if the risk assessment shows that he or she can absorb the pesticide through the skin, EPA could require the use of nitrile gloves which would be on the label and the material safety data sheet (MSDS). It would then be a FIFRA violation if the worker did not use these gloves.

One potential problem is that not every exposure scenario can be assessed. For example, a toddler repeatedly crawling through the lawn and putting things in his or her mouth; a dog on a walk stopping and chewing on a bunch of grass; repeated applications of a pesticide by different parties; applications of more than one pesticide with synergistic effects in the same area; using more than specified on the label, etc. All of these could result in un-anticipated adverse impacts.

2, 4-D can be used as an example¹. 2,4-D is associated with hematologic (blood), hepatic (liver), and renal (kidney) toxicity in humans and a wide range of toxic responses in aquatic life. EPA last assessed 2,4-D in 2005² in a document called a reregistration eligibility decision ("RED"). One uncertainty surrounding 2,4-D is that a substantial amount of relevant research has been published since this assessment which could impact our understanding of the environmental effects and behavior of 2,4-D. This chemical is the subject of a significant amount of research since it was a component of the military defoliant known as Agent Orange used in Vietnam. Since EPA closed its RED, over 17,000 potentially relevant scientific articles have been published according to the National Library of Medicine's TOXNET data base. Even a casual perusal of the abstracts of these publications reveals a large amount of toxicological information that is relevant to human health and ecological risk assessments for 2,4-D³. Thus, one uncertainty in the current status of 2,4-D is the inability to incorporate recent science.

EPA uses a metric called the "margin of exposure" or MOE to evaluate the safety of a pesticide. If the MOE for a particular combination of receptor (worker, resident, child, fish) and exposure scenario

¹ 2,4-D is used here because it is first in the list in the proposed ordinance. Similar issues can be raised with all the pesticides on the list, but a detailed analysis is beyond the scope of these questions. 2,4-D is far from the most toxic chemical on the list. That designation goes to bifenthrin which EPA has designated as a possible human carcinogen.

² EPA 2005. Reregistration Eligibility Decision for 2,4-D. EPA 738-R-5-002.

³ For example: Tayeb, W. et al. 2012. Biochemical and histological evaluation of kidney damage after sub-acute exposure to 2,4-D in rats: involvement of oxidative stress. *Toxicol. Mech. Meth.* 22:696-704.

(inadvertent ingestion, dermal contact, inhalation) exceeds the value of 1,000, then the situation is thought to have an acceptable level of risk. In the RED, EPA has assessed a toddler playing outdoors for 2 hours following an application of 2,4-D according to the label with an MOE of 1,100, thus this situation is considered to be safe. If the toddler plays in this area for 3 hours rather than 2, the MOE will be approximately 730 and the situation will be considered to be unsafe. Similar considerations apply to most exposure scenario-receptor combinations evaluated by EPA. If any of the assumptions (for example 2 hours, more than 2 applications per year) are exceeded, the MOE can change substantially. Thus exposure assessment is a second area of uncertainty.

The third example considered here is that EPA has not evaluated all potential receptors. According to a discussion in the RED, 2,4-D is highly toxic to dogs. However, dogs were not evaluated quantitatively in the assessment. Thus, one has no way of knowing if the instructions on the approved label are safe for dogs or other pets. Additionally, EPA declined to require a chronic toxicity study for the impacts of 2,4-D on estuarine/marine invertebrates. Since Takoma Park is part of the vulnerable Chesapeake Bay watershed, such a study would have been highly relevant to our understanding of the potential impact of 2,4-D application to local critical environments. Thus, receptor selection is a third source of uncertainty.

What we call "off-label" use is an additional particular problem. All of the discussion above is based on an assumption that the labels will be strictly followed. The labels are highly detailed (see attached 2,4-D and Speed Zone labels as an example) and people often do not take the time to adequately understand everything on the label (language is also a problem -- note that one of these labels has only one sentence in Spanish and nothing in any language but English; the other label is entirely in English). In addition, anyone handling a potentially hazardous chemical should also read the MSDS which is even more detailed (also attached). Failure to thoroughly read and understand these documents can result in over-application, inappropriate application, hazardous exposure, and inappropriate disposal of unused material.

The label restricts the amount and number of applications of the pesticidal ingredient. For example, in the RED, 2,4-D is limited to an application rate of 1.5 lb ae⁴/acre twice a year. If, inadvertently or intentionally, 2,4-D is applied at a greater rate or more frequently, the assumptions in EPA's risk assessment will be invalidated. Also, if 2,4-D applications are too close together, these conditions could be exceeded. The field dissipation half-life of 2,4-D is 59.3 days. An initial application at 1.5 lb ae/acre will yield a soil concentration of 26 ppm using standard EPA default risk assessment assumptions of 1 cm depth and 0.65 g/mL soil density. After 6 months, this will degrade to less than 1 ppm so a second application would not increase the concentration. If a second application is conducted after only one month, however, the cumulative concentration would be 44 ppm which could result in an unacceptable level of risk. Note that the product Speed Zone (attached label) allows application every 2-6 weeks. This gives very little time for dissipation by biodegradation and will facilitate rapid accumulation to the point where not only would the risk assessment assumptions be exceeded but that there would likely be toxicity to non-target plant species especially woody shrubs and trees.

EPA's risk assessments are based on individual pesticide ingredients not materials of commerce which often contain mixtures. In practice, the material purchased in a garden or hardware store may contain

⁴ "ae" stands for acid equivalent. Since 2,4-D is a derivative of a phenoxy acid that can take many forms, EPA has based this limit on the parent acid compound. Understanding this concept would be a good test for any applicator. Looking at the Speed Kill label, it contains 28.57% 2,4-D, 2-ethylhexyl ester with a 2,4-dichlorophenoxyacetic acid equivalent (a.e.) of 18.95%. How much should be diluted into a gallon of water to not exceed EPA's 1.5 lb ae/acre?

numerous ingredients. For example, Gordon's Speed Zone Lawn Weed Killer (see attached label) contains:

2,4-D-ethylhexyl ester
Mecoprop-p acid
Dicamba acid
Carfentrazone-ethyl
Petroleum distillates
Xylene

Although the individual ingredients may be present at a safe level, this specific mixture has its own human and eco toxicity which would have to be assessed through an extremely complex process. The last two ingredients on this list are considered to be "inert" because they lack pesticidal activity. This does not mean that they are non-toxic to humans or ecological receptors. It is a statutory definition in FIFRA and not a scientific one. As such these chemicals are not risk assessed by EPA. Researchers in the environmental health community have raised serious questions about the toxicity of so-called inert ingredients⁵.

Current law requires neither reporting lawn care pesticide applications nor posting detailed information at application sites. A recent law application in Ward 1 posted a single small sign containing only the name of the company doing the application, the date, and a phone number. The name of the pesticide, amount applied, and re-entry period were not posted.

One way to overcome these uncertainties would be for the City to support the Safe-Grow initiative. By restricting the cosmetic use of these materials, the opportunities for creating an inadvertent hazard would also be reduced. Safe Grow would not place any limits on the use of pesticides for public or environmental health purposes. For example, it would not restrict proper application to a tree for borers or use of pest control materials for invasive species or pests, but would only affect cosmetic applications to lawns. As a final point, many people in Takoma Park grow fruits and vegetables at home and many are interested in organic gardening both for food and ornamental crops. Limiting lawn (especially spray/powder broadcast) use of pesticides will certainly help these folks stay "organic" and not be subject to drift or runoff from places where the pesticides are being applied.

2) Should the draft Safe Grow ordinance include pesticides other than those listed in the May 20, 2013 draft, and are there included pesticides that should be removed? Keep in mind that the application focus is lawns.

Probably the most sweeping cosmetic ban is in Ontario where 108 cosmetic pesticidal ingredients and many hundreds of products containing cosmetic pesticides have been banned. Note that Ontario also has a list of 64 approved cosmetic biopesticides. This list is similar to EPA's minimum risk pesticides⁶.

Some jurisdictions have banned all lawn-care pesticides from places where children might be present. For example, the State of Connecticut has banned all EPA registered pesticides from laws or ornamental

⁵ Cox, C & Sorgan, M. 2006. Unidentified inert ingredients in pesticides: Implications for human and environmental health. Environ Health Perspect 114:1803.

⁶ http://www.epa.gov/oppbopd1/biopesticides/regtools/25b_list.htm

sites in day-care centers and K-8 schools (see attached). This is a *de facto* ban of thousands of products. Connecticut allows the use of EPA's minimum risk pesticides for cosmetic purposes.

In contrast, the proposed ordinance only calls for the ban of 11 pesticide ingredients and does not include a list of approved safe pesticides. There are several common cosmetic lawn care pesticides that were not included. Mecoprop-p (MCP), MCPA, pendimethalin, carbaryl, and permethrin are good examples. 2,4-D, glyphosate, dicamba, and MCP are by far the most common pesticides for cosmetic lawn-care use.

It seems that Takoma Park has a great deal of flexibility here. On one end of the spectrum, it could ban all pesticides in child-contact areas like Connecticut has done. Moving further down the spectrum would be the Ontario list. It would have to be cross-checked to make sure that it is consistent with EPA registration and to eliminate cosmetic uses on plants other than lawns. A third option would be to include the other common cosmetic lawn use pesticides mentioned above or the ordinance could be left to include only the 11 chemicals that are listed in the current draft.

3) Are there means of testing lawns for any of the listed pesticides that can be conducted by a trained non-scientist and provide results sufficiently accurate for municipal-enforcement purposes? If there are, which pesticides, and please provide a brief testing description.

All EPA registered pesticides (which includes all on the list of the proposed ordinance) are required to have testing methods. These are listed in EPA's "Residue Analytical Methods Index" (www.epa.gov/pesticides/methods/ramindex.htm). City employees could readily be trained to obtain the appropriate samples (soil, vegetation), but the analysis needs to be conducted at an accredited analytical lab. Three standard screens would be applicable (standard herbicide, phenoxy herbicide and termiticide, the latter because bifenthrin is registered as a termiticide). Each analysis for each sample would cost somewhere in the neighborhood of \$100 (these costs are very variable and highly negotiable. There are no reliable simple field tests for these pesticides.

4) If the City of Takoma Park were to look to the work of governmental entities with pesticide bans or restrictions similar to Safe Grow's, to guide the inclusion/exclusion of pesticides in/from the city's registry, would that be a justifiable and acceptable approach?

Reliance on the work of other entities would allow Takoma Park to learn from the experiences of others and probably assist with educational efforts. There are literally hundreds of state and municipal pesticide bans throughout the world, however, and one would have to ensure that the regulatory situation there is compatible with that in the US. Since most of the bans are in Canada and Europe, this could take a bit of effort. Canada's federal pesticide regulations are harmonized with those in the US as a consequence of NAFTA thus Canada is probably the most fertile ground for this. The EU is quite different. For example, the EU has recently banned a large group of pesticides that affects bees. EPA has declined to follow suit creating a major divergence in policy.

5) What pesticides are banned for residential-area lawn-care use, possibly with exceptions similar to those envisioned for Safe Grow, by the Provinces of Ontario and Quebec?

There are about 150 jurisdictions in Canada that have banned cosmetic lawn or ornamental use of pesticides (some 80% of Canada's population is covered by a local, municipal, or provincial ban or restriction). The Ontario, Nova Scotia, and Quebec bans are far more inclusive than the proposed

ordinance⁷. Possibly the best model for Takoma Park is the City of Toronto. Not because Toronto and Takoma Park are in anyway similar demographically or geographically, but Toronto has a very well-thought out program of education and communications that has helped make their ban a success and has become widely relied upon in the professional environmental health community. An article detailing the Toronto experience is attached.

6) Does the invocation of the Precautionary Principle as a justification for Safe Grow impose a duty on the City of Takoma Park to take further protective steps in areas unrelated to Safe Grow? [this question also posed to the city attorney.]

This is a highly complex area of regulatory policy. There is no consensus definition of the precautionary principle. The ordinance proponents have included one commonly used definition; however, it has not been universally adopted. In general, the precautionary principle as applied to environmental toxicants holds that uncertainty in toxicology or risk assessment is justifiable ground for preventing exposure entirely until the uncertainty can be resolved through scientific analysis. Thus, a pesticide could be banned on the basis of scientific uncertainty.

EPA is constrained by other considerations. In the US, we have a variety of regulatory policies. Some of these are quite similar to the precautionary principle while others are quite different. The Clean Air Act (CAA) comes close to the precautionary principle in that standard setting under the CAA is based solely on human health and the environment⁸. Some regulatory programs (e.g., radiation standards promulgated by the NRC) utilize a policy known as ALARA or "as low as reasonably achievable". CDC's acceptable blood lead level is also similar to this. In setting this criterion, CDC has concluded that an acceptable blood lead level is that which occurs naturally in the absence of overt contamination. Like Superfund, FIFRA is a risk/benefit balancing statute. EPA is required to take into account economic, social and environmental costs and benefits⁹. In essence, EPA is required to balance risks and benefits.

Governmental entities in the US have banned hazardous substances without invoking the precautionary principle. These include PCBs (banned by Congress), DDT (banned by EPA), Saccharin (banned by FDA), and chemical warfare agents (banned by international treaty).

In the case of the proposed ordinance, the proponents appear to be moving closer to the CAA by invoking the precautionary principle. There is definitely some degree of risk associated with the use of these pesticides. The proponents believe that cosmetic non-essential uses do not convey enough of a benefit to justify the risks. As discussed in Question 1, for example, there is a finite probability of an

⁷A good summary of the various Canadian Provincial bans can be found at:

http://www.dauidsuzuki.org/publications/downloads/2011/Bilan_reglementations_pesticides_2011_EN_VF.pdf

⁸ See Goldstein, BD & Carruth, RS. 2003. Implications of the precautionary principle for environmental regulation in the United States. *Law & Contemporary Problems* 66:246.

⁹ A good overview of this may be found at Cornell's Pesticide Safety Education Program. <http://psep.cce.cornell.edu/issues/eisk-benefit-fifra.aspx>.

adverse health effect from a toddler playing in an area that has been treated with 2,4-D for a period of 3 hours. If there is no perceived benefit from the cosmetic use of 2,4-D this could be considered to be unacceptable. If there is a benefit from an alternative use, such a poison ivy control, it could be considered acceptable.

Can we create a list that would ban carcinogens and/or endocrine disruptors?

This approach could have the unintended consequence of creating an inequity between cosmetic lawn pesticides and other products. For example, 2,4-D and glyphosate have been found to be endocrine disruptors and would fall under this category¹⁰. However, numerous other chemicals including components of plastics, flame retardants, pharmaceuticals etc. are also endocrine disruptors. Using this specific toxicological endpoint could open up a Pandora's box of requests to regulate many broad classes of chemicals. A similar comment would apply to carcinogens. Bifenthrin is listed as a possible human carcinogen, but so are many other perfectly legal chemicals in commerce.

¹⁰ Mnif, W. et al. 2011. Effect of endocrine disruptor pesticides: a review. Int J Environ Res Public Health 8:2265-2303.

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AN ACT
D.C. ACT 19-446

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

AUGUST 9, 2012

*Codification
District of
Columbia
Official Code*

2001 Edition

2012 Fall
Supp.

West Group
Publisher

To further restrict the application of pesticides near waterways, at schools, day care centers, and on District property, to establish publicly available courses on pesticides at the University of the District of Columbia, to require an annual report on pesticide usage, to require pesticide applicators to submit usage data, and to increase the pesticide product registration fee; to amend the Pesticides Operations Act of 1977 to increase penalties; and to amend the Human and Environmental Health Protection Act of 2010 to allow the Mayor to issue rules permitting limited exemptions.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Pesticide Education and Control Amendment Act of 2012".

Sec. 2. Definitions.

For the purposes of this act, the term:

- (1) "Agriculture" means land whose primary purpose and use is to raise crops.
- (2) "Child-occupied facility" means a building or portion of a building which, as part of its function, receives children under the age of 6 years on a regular basis and is required to obtain a certificate of occupancy as a precondition to performing that function. The term "child-occupied facility" includes day care centers, nurseries, pre-school centers, kindergarten classrooms, child development centers, child development homes, child development facilities, child-placing agencies, infant care centers, and similar entities.
- (3) "Department" means the District Department of the Environment.
- (4) "District property" means buildings or land owned, leased, or otherwise occupied by the District government.
- (5) "District restricted use" means a pesticide identified by the Department as requiring additional restrictions for use to prevent a hazard to human health, the environment, or property as set forth in section 3.
- (6) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, approved June 23, 1947 (61 Stat. 163; 7 U.S.C. § 136 *et seq.*).
- (7) "Forestry" means trees on land that is at least one acre in size and at least 10% occupied by forest trees of any size or formerly having had such tree cover and not currently developed for non-forest use.

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(8) "Integrated pest management" or "IPM" means an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM programs use current, comprehensive information on the life cycles of pests and their interaction with the environment. This information, in combination with available pest control methods, is used to manage pest damage economically, and with a strong preference for examining a range of cultural, mechanical, biological, and chemical practices and selecting a method presenting the least possible hazard to people, property, and the environment.

(9) "Minimum risk" means a pesticide registered with the Department, but exempt from federal registration under section 25(b) of the FIFRA.

(10) "Non-essential" means a pesticide that is non-critical to managing pests that threaten health, property, or the environment in the District as set forth in section 3.

(11) "Pest" has the same meaning as provided in section 2299 of Title 20 of the District of Columbia Municipal Regulations (20 DCMR § 2299).

(12) "Pest management" means the control of plants, insects, herbs, or rodents with chemical agents deployed as pesticides.

(13) "Pesticide" has the same meaning as provided in section 2299 of Title 20 of the District of Columbia Municipal Regulations (20 DCMR § 2299); provided, that the definition shall not include:

(A) Fertilizers and other plant supplements whose primary purpose is to provide nutrition to plant-life and not to repel, treat, or control pests;

(B) Pesticides exempt under the FIFRA and its implementing regulations, specifically those pesticides exempted under section 25(b) of FIFRA and 40 C.F.R. 152.25(f), subject to reclassification as set forth in section 3;

(C) Individual repellents, personalized devices, and other agents not necessarily classified under FIFRA but employed by individuals for protection from pests;

(D) Sanitizers, disinfectants, and antimicrobial agents; and

(E) Other chemicals, devices, or substances excluded by the Department in regulations.

(14) "Pesticide application" means the spraying, laying, injecting, delivering, or other action whereby plants, insects, herbs, or other pests are controlled by a registered pesticide or a chemical agent that includes a registered pesticide.

(15) "Pesticide applicator" has the same meaning as provided in section 2299 of Title 20 of the District of Columbia Municipal Regulations (20 DCMR § 2299).

(16) "Pesticide operator" has the same meaning as provided in section 2299 of Title 20 of the District of Columbia Municipal Regulations (20 DCMR § 2299).

(17) "Pesticide registration fee" means the fee set for product registration by section 2506 of Title 20 of the District of Columbia Municipal Regulations (20 DCMR § 2506).

(18) "Reduced risk" has the same meaning as provided in section 2209 of Title 20 of the District of Columbia Municipal Regulations (20 DCMR § 2209).

(19) "Restricted use" means any pesticide or pesticide use classified as restricted

through the process outlined by the Administrator of the United States Environmental Protection Agency in Subpart I of Part 152 of Subchapter E of Chapter 1 of Title 40 of the Code of Federal Regulations (40 C.F.R. § 152.160 *et seq.*), or a pesticide so designated by the Department by the process described in section 3.

(20) "School" means a public or private facility whose primary purpose is to provide K-12 educational services and includes adjacent or contiguous recreation centers or athletic fields owned or maintained by the educational facility.

(21) "University" means the University of the District of Columbia.

(22) "Waterbody" means those waters located within the District that are:

(A) Subject to the ebb and flow of the tide; or

(B) Free flowing, unconfined, and above-ground rivers, streams, or creeks.

(23) "Waterbody-contingent property" means property within 25 feet of a waterbody.

Sec. 3. District restricted-use and non-essential pesticides.

(a) The Department shall create and maintain lists of pesticides classified as District restricted-use or non-essential.

(b) The Department shall, through regulations, designate as non-essential a pesticide that is non-critical to pest management in the District.

(1) Critical pest management includes controlling:

(A) Plants that are poisonous to touch or may cause damage to a structure infrastructure; or

(B) Insects that bite or sting, are venomous or disease-carrying, or that may cause damage to a structure or infrastructure.

(2) The Department shall presume that a pesticide should not be classified as non-essential if it is intended primarily for use on or for:

(A) Agriculture;

(B) Forestry;

(C) Promotion of public health or safety; or

(D) Other prescribed uses set forth in regulation.

(c) The Department shall, through regulations, designate as District restricted-use any pesticide that:

(1) When used as directed or in accordance with commonly recognized practice requires additional restrictions for that use to prevent a hazard to human health, the environment, or property; or

(2) The Department determines presents a significant, scientifically sound basis justifying that reclassification.

(d) The Department shall offer an opportunity for public comment conforming to the conditions set forth in subsection (e) of this section before classifying as District restricted-use

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any pesticide that is not designated as restricted-use under 40 CFR § 152.175 or adding restrictions to a restricted-use pesticide designated under 40 CFR § 152.175.

(e) The opportunity for public comment required by subsection (d) of this section shall include at least one published notice in the District of Columbia Register regarding the proposed reclassification of a particular pesticide and a comment period of at least 30 days; provided, that the agency is required to hold a public hearing only if significant public interest is expressed during the 30-day comment period.

Sec. 4. Prohibited and restricted uses.

(a) No person or entity shall apply non-essential pesticides to schools, child-occupied facilities, waterbody-contingent property, or District property, except as provided in section 5.

(b) The Department may establish restrictions for District restricted-use pesticides when they are to be used on schools, child-occupied facilities, waterbody-contingent property, or District property.

Sec. 5. Exemptions.

(a) Section 4 shall not apply to the use of a pesticide for the purpose of improving or maintaining water quality at:

- (1) Drinking water treatment plants;
- (2) Wastewater treatment plants;
- (3) Reservoirs and swimming pools; and
- (4) Related collection, distribution, and treatment facilities.

(b) A person or entity may apply to the Department for an exemption from section 4 for a District restricted-use pesticide. The Department may grant an exemption if the applicant demonstrates:

- (1) That the applicant has made a good-faith effort to seek effective and economical alternatives to the restricted-use or District restricted-use pesticides, and they are unavailable;
- (2) That providing a waiver will not violate District or federal law; and
- (3) That use of the restricted-use or District restricted-use pesticide on the property prohibited under section 4 is linked to a need to protect health, the environment, or property.

(c) A person or entity may apply to the Department for an exemption from section 4 for a non-essential pesticide. The Department may grant an exemption to apply a non-essential pesticide on property prohibited under section 4 if the applicant demonstrates:

- (1) That effective alternatives are unavailable;
- (2) That providing a waiver will not violate District or federal law; and
- (3) That use of the non-essential pesticide is critical and necessary to protect human health or prevent imminent and significant economic damage.

(d) A person or entity subject to section 4 may apply to the Department for an emergency exemption if an emergency pest outbreak poses an imminent threat to public health or if

significant economic damage would result from the inability to use a pesticide prohibited or restricted by section 4. The Department shall impose specific conditions for the granting of emergency applications.

(e) The Department may, as set forth by the Mayor in regulations, require that an applicant who applies for substantially the same exemption at substantially the same property due to managing pests with proper adherence to IPM principles attend a District-approved IPM course.

Sec. 6. Pesticide education.

The University shall provide:

(1) An educational course on integrated pest management, which shall occur at least once per month and at least once per year in each of the District's 8 wards; and

(2) An educational course on integrated pest management specifically for pesticide applicators, which shall be offered at least once every 90 days.

Sec. 7. Annual reporting.

The University shall prepare and submit a report to the Council on or before January 1, 2015 assessing the effectiveness of the District's pesticide programs. The University shall prepare and submit a new report by January 1 of each subsequent calendar year assessing the effectiveness of the District's pesticide programs. The report shall include:

(1) An assessment of attitudinal changes of District residents toward pesticide use;

(2) An assessment of changes in the cost of pest management in the District; and

(3) An assessment of changes in the number of pesticides registered and used in the District.

Sec. 8. Pesticide applicator reports.

Pesticide applicators shall submit to the Department records of pesticide applications to property in the District on an annual basis in a form that the Department shall prescribe; provided, that applications of minimum-risk and reduced-risk pesticides are exempt from this requirement.

Sec. 9. Pesticide registration fee.

The Department shall set a pesticide registration fee of at least \$200.

Sec. 10. Penalties.

(a) A violation of this act shall be a civil infraction for purposes of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective July 16, 1985 (Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*) ("Civil Infractions Act"). Civil fines, penalties, and fees may be imposed as sanctions for any infraction of the provisions of this act, or the rules issued under authority of this act, pursuant to the Civil Infractions Act. Adjudication of any infractions shall be pursuant to the Civil Infractions Act.

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(b) The Department may, as set forth by the Mayor in regulations, suspend or revoke the license of a pesticide operator or applicator who violates section 4 more than once in a calendar year in a manner that endangers human health or the environment.

Sec. 11. Rules.

(a) Within 570 days of the effective date of this act, the Mayor shall issue rules to implement the provisions of sections 2 through 10.

(b) For rules issued pursuant to section 3, the Department shall afford great weight to the decisions made pursuant to section 18 of the FIFRA.

Sec. 12. The Pesticide Operations Act of 1977, effective April 18, 1978 (D.C. Law 2-70; D.C. Official Code § 8-401 *et seq.*), is amended as follows:

(a) Section 4(b) (D.C. Official Code § 8-403(b)) is amended by adding a new paragraph (9) to read as follows:

Amend
§ 8-403

“(9) When determining the competency of an applicator, the Mayor shall ensure that an applicator demonstrates mastery of the principles of integrated pest management.”.

(b) A new section 4e is added to read as follows:

“Sec. 4e. Notification to abutting properties.

“A certified applicator or registered technician, before applying a restricted-use pesticide outside the confines of an enclosed structure, shall take reasonable actions to give notice of the date and approximate time of any such pesticide application to property that abuts the property to be treated.”.

Amend
§ 8-404

(c) Section 5 (D.C. Official Code § 8-404) is amended to read as follows:

“Sec. 5. Registered technicians.

“(a) No person, except those acting as a private applicator or licensed as a commercial applicator, public applicator, or registered technician shall apply any pesticide in the District for a fee.

“(b) The application to become a licensed registered technician shall be made in writing on a form prescribed by the Mayor, and the registration shall be valid for the time period prescribed by the Mayor. The Mayor shall, by regulation, establish appropriate education and training requirements for registration as a registered technician.

“(c) The Mayor shall provide for the issuance of appropriate credentials for all registrants.”.

Amend
§ 8-411

(d) Section 12(a) (D.C. Official Code § 8-411(a)) as follows:

(1) Designate the existing text as paragraph (1).

(2) A new paragraph (2) is added to read as follows:

“(2) “Within 570 days of the effective date of the Pesticide Education and Control Amendment Act of 2012, passed on 2nd reading on July 10, 2012 (Enrolled version of Bill 19-643), the Mayor shall issue rules to implement the provisions of that amendatory act.”.

Amend
§ 8-418

(e) Section 19 (D.C. Official Code § 8-418) is amended to read as follows:

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“Sec. 19. Penalties.

“(a) A person violating a provision of this act or of a rule or regulation promulgated pursuant thereto, shall be fined according to the schedule set forth in Chapter 32 of Title 16 of the District of Columbia Municipal Regulations, or be imprisoned for not more than 90 days, or both.

“(b) The Department may, as set forth by the Mayor in regulations, revoke or suspend the license of a pesticide operator or applicator who violates section 4 more than once in a calendar year in a manner that endangers human health or the environment.”.

Amend
§ 8-108.02

Sec. 13. Section 3 of the Human and Environmental Health Protection Act of 2010, effective March 31, 2011 (D.C. Law 18-336; D.C. Official Code § 8-108.02), is amended by adding a new subsection (e) to read as follows:

“(e) The Mayor may create or adjust a de minimis exemption for products affected by this section, if feasibility or undue hardship on manufacturing justifies such action. The Mayor may also exempt products from this section for as long as feasibility or undue hardship justifies the exemption.”.

Sec. 14. Applicability.

(a) Sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, and 13 shall apply as of October 1, 2013.

(b) Sections 6 and 7 shall apply upon the inclusion of their fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register, but not before October 1, 2013.

Sec. 15. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 16. Effective date.

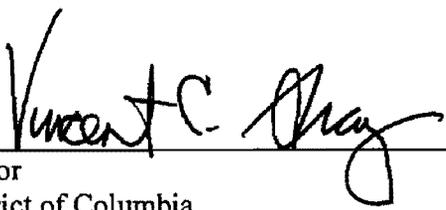
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

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24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
August 9, 2012

Council of the District of Columbia
Committee on the Environment, Public Works, and Transportation

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OFF

Committee Report

1350 Pennsylvania Avenue, N.W., Washington, DC 20004

To: Members of the Council of the District of Columbia

From: Mary M. Cheh, Chairperson
Committee on the Environment, Public Works, and Transportation

Date: June 13, 2012

Subject: Bill 19-643, the "Pesticide Education and Control Amendment Act of 2012"

The Committee on the Environment, Public Works, and Transportation, to which Bill 19-643, the "Pesticide Education and Control Amendment Act of 2012" was referred, reports favorably on the legislation, which the Committee revised to better achieve the aims of the original act, and recommends its approval by the Council of the District of Columbia.

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STATEMENT OF PURPOSE AND EFFECT

Bill 19-643, the "Pesticide Education and Control Amendment Act of 2012," was introduced on January 4, 2012. The legislation would further restrict the application of pesticides near waterways, at schools, at day care centers, and on District Property, establish publicly available courses on pesticides at the University of the District of Columbia, require an annual report on pesticide usage, require pesticide applicators to submit usage data, increase the pesticide product registration fee, amend the Pesticides Operations Act of 1977 to increase penalties, create a designation for registered technicians, and establish advance notification requirements, and to amend the Human and Environmental Health Amendment Act of 2010 to allow the Mayor to issue rules permitting limited exemptions.

LEGISLATIVE HISTORY

January 4, 2012	Introduction of B19-643 by Councilmember Cheh and co-sponsored by Councilmembers Alexander and Graham
January 4, 2012	Referral of B19-643 to the Committee on Environment, Public Works, and Transportation
January 13, 2012	Notice of Intent to Act on B19-643 is published in the <i>District of Columbia Register</i>
February 3, 2012	Notice of Public Hearing on B19-643 is published in the <i>District of Columbia Register</i>
February 27, 2012	Public Hearing on B19-643 held by the Committee on Government Operations and the Environment
June 13, 2012	Consideration and vote on B19-643 by the Committee on the Environment, Public Works, and Transportation

BACKGROUND/COMMITTEE REASONING

I. Background

A. Legislation in the District

More than 30 years ago, the Council passed the Pesticide Operations Act of 1977 (POA), which set requirements for the labeling, distribution, disposal, storage, transportation, use, and application of pesticides in the District. POA remained in effect for more than three decades before undergoing any major changes. Then, in 2008, the Council passed the Loretta Carter Hanes Consumer Notification Amendment Act (LCHA), which added requirements for consumer notifications for when pesticides were to be applied. Although both acts created

measures to help ensure that pesticides are applied in ways that reduced hazards, neither was aimed at examining whether any risk associated with the application of pesticides is necessary.

Since 1977, the District has fallen behind several other jurisdictions with respect to protecting its residents from pesticide-related risks. New York and Connecticut have each prohibited the application of most pesticides on school grounds.¹² San Francisco has prohibited the application of most pesticides on any city-owned property.³

B. Information on Pesticides

Health Risks

Pesticide exposure can occur through inhalation, ingestion, contact with skin, or contact with mucus membranes.⁴ Pesticides may exit the human body through breath, excrement, sweat, saliva, and other natural methods.⁵ If pesticides do not leave the body through natural means, they will begin to accumulate in nerves, cells, linings of cells, and organs, including the brain, liver, pancreas, thyroid, kidneys, lymph nodes, heart and lungs, and gastro-intestinal tract.⁶

Although opinions vary about the necessity of pesticide use, research shows that their application can present serious hazards to human health. As Dr. Jerome Paulson, of Children's National Medical Center, explained in his testimony at the Committee's February 27, 2012 hearing: "A pesticide is a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest Pesticides are poisons that are intentionally applied with the purpose of killing or harming a living organism, the pest."⁷ Given that the purpose of a pesticide is to harm a living organism, it follows that pesticides may have an adverse effect on non-target organisms as well.

At the Committee's hearing, Jay Feldman, of Beyond Pesticides, provided some sobering statistics about pesticide use. Of the 25 pesticides identified by Beyond Pesticides as commonly used to manage facilities: "11 are linked to cancer, 12 are associated with neurological effects, 10 are associated with reproductive effects, 12 are sensitizers or irritants, 10 cause liver or kidney damage [,] and 6 are suspected endocrine disruptors."⁸ Of the 13 pesticides identified by Beyond Pesticides as commonly used in turf and landscape management: "2 potentially leach and contaminate groundwater, 8 are toxic to birds, 8 are toxic to fish, 10 are toxic to aquatic organisms, and 3 are toxic to bees."⁹

¹ NY CLS Educ § 409-k

² Conn. Gen. Stat. § 10-231b

³ San Francisco, California Environment Code SEC. 302

⁴ Dr. Alan R. Vinitzky, Committee on the Environment, Public Works, and Transportation Hearing, February 27, 2012, at 3. See Attachment F.

⁵ *Id.*

⁶ *Id.*

⁷ Dr. Jerome A. Paulson Testimony, Committee on the Environment, Public Works, and Transportation Hearing on B19-643, February 27, 2012, at 2. See Attachment F.

⁸ Jay Feldman Testimony, Committee on the Environment, Public Works, and Transportation Hearing on B19-643, February 27, 2012, at 4. See Attachment F.

⁹ *Id.*

Elevated Risk for Children

“Children are uniquely vulnerable to the adverse health consequences of pesticide exposure.”¹⁰ More so than adults, children consume food covered in residue on their hands picked up from crawling around or playing on floor at residences, schools, or other areas. The residues may contain pesticides. The residue can enter a child’s mouth by rubbing off on food or when a child sticks a hand in its mouth—behavior rarely exhibited by adults.¹¹ Children are also especially vulnerable because they can eat more per pound of food in relationship to their body weight than adults generally can.¹²

Gaps in EPA registration process

The Environmental Protection Agency (EPA) reviews a significant amount of safety data before a pesticide can be registered for use in the United States.¹³ The data includes tests on acute, chronic, sub-chronic, and ecological toxicity on multiple species.¹⁴ As Dr. Jennifer Sass, of the Natural Resources Defense Council, pointed out at the Committee’s Hearing, the EPA’s review process—while substantial—is not exhaustive. For example, the toxicity studies “do not include many disease endpoints such as immune system toxicity, endocrine or hormone system disruptions, learning deficits, or chronic diseases such as Parkinson’s Disease.”¹⁵ Peer-reviewed science has, however, linked all of the above to pesticide exposure.¹⁶

Part of the issue is that the data is supplied by the registrant (the entity trying to get the pesticide approved for use) and is generally based on tests performed by the chemical industry.¹⁷ Dr. Sass criticized the information as often “very outdated” and not reflective of current science.¹⁸

The process also evaluates pesticides on their individual merits rather than against other pesticides or substances available for the same purpose. Registrants, therefore, have an incentive to apply for the greatest number of potential uses, even if much safer alternatives are available.¹⁹ Dr. Sass cited 2,4-dichlorophenoxy acetic acid (2,4-D), which was an ingredient in Agent Orange, as a pesticide applied despite the presence—in many instances—of safer alternatives.²⁰

Another problem with relying solely on EPA designations is that the review process required under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) is not actually a

¹⁰ Paulson Testimony on B19-643 at 2.

¹¹ *Id.*

¹² *Id.*

¹³ http://www.epa.gov/opp00001/regulating/data_requirements.htm

¹⁴ Dr. Jennifer Sass Testimony, Committee on the Environment, Public Works, and Transportation Hearing on B19-643, at 3. See Attachment F.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 4.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

health-based assessment. Rather, it is a risk-benefit assessment.²¹ Even if a pesticide cannot meet the requisite safety standard—despite maximum restrictions and mitigations—the EPA may still register it if the economic value seems to outweigh the health risk(s).²²

C. Reaction to Introduced Bill

As introduced, the Pesticide Education and Control Amendment Act of 2012 (PECA) directed DDOE to review all pesticides registered in the District and to determine whether they ought to be classified as Restricted Use or Minimum Risk. If a pesticide were classified as Restricted Use under the legislation, then a person or entity would have been prohibited from applying it at schools, at child-occupied facilities, on public-use property, on District property, and near waterways.

The introduced legislation also established new educational and reporting requirements. Prior to being licensed, pesticide applicators would now need to demonstrate mastery of principles of integrated pest management. And for the first time, the University of the District of Columbia (UDC) would produce an annual report on pesticide use. The introduced version elicited some very strong reactions from environmental advocates and industry lobbyists.

Chemical Industry

Responsible Industry for a Sound Environment (RISE), a trade association representing chemical pesticide manufacturers, testified in opposition to the bill. RISE argued that the bill greatly restricted the use of EPA-approved pesticides and could cause health problems.²³ The organization also asserted that the EPA's registration process for pesticides is robust and "viewed as a model for the world."²⁴ Further, RISE contended that "by prohibiting the use of many EPA-approved pesticides, the legislation will lead to increased pest populations and increase the exposure of District residents."

After the hearing, the Councilmember Cheh received some form letters—the first of which came from RISE's paid representative in her personal capacity—asking that Councilmember Cheh oppose the bill. The letter stated, among other things:

"The proposed measure would take away U.S. Environmental Protection Agency (EPA) approved pest control products that I rely on to protect my family and property from pests such as rats, mice, cockroaches and bed bugs. These pests can carry diseases and cause unsafe living and working conditions."²⁵

²¹ *Id.*

²² *Id.* at 7.

²³ Kate Shenk Testimony, Committee on the Environment, Public Works, and Transportation Hearing on B19-643, February 27, 2012, at 1. See Attachment F.

²⁴ *Id.* at 3.

²⁵ See Attachment G.

Another letter sent on behalf of some chemical product manufacturers expressed concern that the bill would limit or prohibit the use of “sanitizers or disinfectants,” products that protect against health threats.²⁶

The criticism lacked an understanding or objective reading of the bill. As introduced, PECA did not prohibit the application of a single pesticide anywhere. Rather, it directed DDOE to review each registered pesticide to determine if more protections were needed. If DDOE determined that more protections were required and that effective, economical alternatives to the pesticide were available, then the agency would prohibit a pesticide’s application at schools, at child-occupied facilities, on public-use property, on District property, and near waterways. And even if a pesticide were prohibited at those sites, a person or entity could apply to DDOE for an exemption.

In the case of sanitizers and disinfectants, they were—and are—excluded from the definition of pesticide included in the legislation. Consequently, they would already be exempt from this legislation.

RISE also criticized the bill for requiring DDOE to perform a review of all registered pesticides when EPA already performed one.²⁷ Although as explained above, the EPA’s review process is not without its faults, it is a substantial process. Asking the District to perform a review for approximately 6,000 registered pesticides that goes above and beyond the EPA’s process would likely require additional staff at DDOE.

Pest Management Industry

In addition to echoing concerns about requiring re-review of EPA-registered pesticides, the pest management industry expressed concern that the process for applying for exemptions might not be sufficiently expeditious.²⁸ As a result, they were concerned that they might have difficulty responding to something like a bed bug infestation in a timely manner. They also expressed concern that the law directed DDOE to revoke a pesticide operator’s license for two violations in a calendar year.²⁹

DDOE stated at the hearing that it was confident in its ability to provide timely exemptions. Moreover, agencies possess discretionary authority about whether to impose as significant a penalty as is permitted legislatively.

Environmental & Public Health Advocates

Environmental advocates representing organizations like NRDC, Children’s National Medical Center, and Safe Lawns strongly supported the bill. Several witnesses, however, pointed out areas where the bill could be stronger or more strategic. For example, Paul Tukey, of

²⁶ Attachment G.

²⁷ Shenk Testimony on B19-643 at 2.

²⁸ National Pest Management Association Testimony, Committee on the Environment, Public Works, and Transportation, February 27, 2012, at 2. See Attachment F.

²⁹ *Id.*

Safe Lawns, suggested in oral testimony that the bill include a prohibition on cosmetic pesticides.³⁰ Cosmetic pesticides would those used to control aesthetic pests like dandelions. Other witnesses supported the suggestion as well.

Alan Cohen, a pesticide applicator, suggested the creation of a pesticide-sensitivities registry, which would create special notification requirements prior to the application of pesticides near someone with special sensitivities.

II. Legislative Action: Description & Analysis

A. Classifications

The Committee Print directs DDOE to classify appropriate pesticides as Cosmetic or District Restricted Use. The Print would prohibit the application of Cosmetic pesticides at schools, at child-occupied facilities, on District property, and near waterways, absent an exemption. The Print would enable DDOE to further restrict the application of District Restricted-Use pesticides in any of the aforementioned areas.

However flawed its process may be, the EPA does invest considerable resources into its registration process. Establishing a requirement that DDOE undertake a partly duplicative review process for approximately 6,000 pesticides may not be the most efficient use of resources. Nevertheless, the clear dangers presented by pesticides and the identified gaps in EPA review process warrant action to help protect District residents from unnecessary exposure to pesticides.

Cosmetic

In the Committee Print, a Cosmetic pesticide is defined as one that is "non-essential to manage pests that threaten health, property, or the environment in the District." It clarifies that essential pest management includes controlling: "(A) Plants that are poisonous to touch or may cause damage to a structure infrastructure; or (B) Insects that bite or sting, are venomous or disease carrying, or that may cause damage to a structure or infrastructure." Thus, non-essential pesticides would either not address or be inessential to addressing a pest that threatens health, property, or the environment.

The new category addresses some major concerns raised at the Committee's hearing. First, it allows DDOE to examine an individual pesticide against other available products, which EPA's review process does not do. For example, DDOE could determine that a particular pesticide with average effectiveness is inessential to pest management in the District because of the presence of equally effective alternatives that do not present health concerns.

Second, the definition limits Cosmetic pesticides to those pesticides that are not necessary to control potentially harmful pests. A pesticide necessary, for example, to control a bed bug infestation would not be classified as Cosmetic. Consequently, concerns about whether the exemption process would occur as quickly as desired should be alleviated. Any pesticide necessary to control a potentially harmful pest would not be classified as cosmetic.

³⁰A video recording of the hearing can be viewed at oct.dc.gov.

District Restricted Use

The Committee Print also creates a pesticide category known as District Restricted Use. A District Restricted-Use pesticide is one that even when used as directed may require additional restrictions to prevent harm to persons or property. This is a designation that will be available to DDOE if, in the course of business, it determines that a pesticide is not safe for use under existing restrictions.

To classify a pesticide as District Restricted Use, notice would be required to be filed in the DC Register and if significant public comment is received, a public hearing would be required as well. The substantial and transparent process should alleviate any industry concerns that determinations would be arbitrary or opaque.

Restrictions/Exemptions

The definition of pesticide excludes several commonplace product types and uses that will help to avoid confusion. The following types of products or uses are exempt from the definition of pesticides: sanitizers, disinfectants, individual repellants, fertilizers, and other products or substances exempted by DDOE through regulations.³¹ Thus, the legislation would generally exclude an individual's use of an over-the-counter spray-can repellant or over-the-counter spray disinfectant. The legislation also exempts pesticides or chemicals when they are used for water quality treatment.

Although the exemptions in the pesticide definition and the revised categories for pesticides should minimize the need for one-time type exemptions issued by the agency, they would be available if an unforeseen or emergency circumstance arises. The Committee Print permits DDOE to issue an exemption for the use of a Cosmetic or District Restricted-Use pesticide otherwise prohibited by this legislation if effective, economic alternatives are unavailable, the use would not otherwise violate District or federal law, and the use is necessary to avoid harm to persons, the environment, or property. Consequently, although applicants are strongly encouraged to seek out non-toxic alternatives first, no pesticide application is outright precluded by this legislation.

B. Education

Research shows that pesticide policies are most effective when by-laws and educational programs work in tandem.³² One study concludes that “[o]nly those communities that passed a by-law and supported it with education . . . were successful in reducing the use of pesticides by a high degree (51-90%).”³³ To ensure that this legislation achieves maximum effectiveness, the Committee Print includes educational components to support the legal requirements.

³¹ B19-756, the Sustainable DC Act of 2012 would restrict the use of fertilizers in the District. The Committee has, as of June 13, 2012, not yet held a hearing on that bill.

³² <http://www.ipminstitute.org/Articles/PesticidesBestPracticeReview-FINAL040324.pdf>

³³ *Id.* at 3.

First, the legislation would establish new education requirements for pesticide applicators. Before becoming licensed, the applicators would need to demonstrate a mastery of principles of integrated pest management. As the Print's definition suggests, IPM principles direct an applicator to consider a "range of cultural, mechanical, biological, and chemical practices" and select "a method presenting the least possible hazard to people, property, and the environment." Ensuring that applicators are well trained to manage pests with a range of practices will also help applicators responsibly comply with any new legal requirements.

Along the same lines, a new category is established for any person who will be applying pesticides for a fee in the District. Currently, employees of pesticide operators could apply pesticides without special educational requirements.³⁴ Given the risks inherent in pesticide applications, the lack of any prerequisites is irresponsible. Consequently, the Committee Print would replace the term "registered employee" with the term "registered technician" and direct DDOE to establish appropriate licensure requirements for them.

Finally, the legislation would create educational opportunities for District residents. The Committee Print would direct UDC to hold free public courses for District residents at least once per month and at least once per year in every ward to help educate the public on pesticide use and integrated pest management.

C. Notification

The Committee Print would establish a requirement that when pesticide applicators apply Restricted-Use pesticides to a property that abutting properties are notified in advance.

Public witnesses at the Committee's hearing advocated for the creation of a pesticides-sensitivities registry. A pesticide-sensitivities registry, which is in place in some other jurisdictions, would establish a list of residents with pesticide sensitivities. Applicators would consult the list before making certain applications and provide notification if an application were performed nearby their residence.

Through outreach to other jurisdictions, the Committee learned that registries may only include a few hundred names, despite requiring significant time from government employees. Thus, adding a sensitivities registry in the District did not seem the most efficient use of resources. Nevertheless, advance notification for residents of nearby pesticide applications does offer residents additional protection against exposure and is a worthwhile goal. Consequently, the Committee Print simply requires advance notification for abutting properties of any applications of Restricted-Use pesticides. Given that Restricted-Use pesticides have been deemed by the EPA as requiring a professional to apply, the extra precaution seems warranted.

D. Registration Fee

The Committee Print raises the District's registration fee for pesticides from \$130 to \$200. Despite streamlining to ensure the most efficient implementation of this legislation, increased demands on agency staff—however minor—often requires additional funding. One

³⁴ D.C. Official Code § 8-404

source of revenue for the implementation of pesticide programs in the District is the registration fee for pesticides. In order to sell or distribute a pesticide product in the District, the product must be registered with DDOE.³⁵ Currently, that registration carries with it a \$130 fee.

Other nearby jurisdictions are charging more for registering pesticides than the District. Registration fees in some nearby jurisdictions are as follows: New York \$600; New Jersey \$300; Virginia \$160; Connecticut \$188; Rhode Island \$200; and Massachusetts \$300.³⁶ Even with the increase, the District's fee will be considerably less than New York, New Jersey, and Massachusetts—and generally on par with Rhode Island and Connecticut, which are smaller jurisdictions like the District. Raising the registration fees to comparable levels with surrounding jurisdictions to fund a more protective regulatory program is appropriate.

E. Human and Environmental Health Amendment

The Committee Print would amend the Human and Environmental Health Amendment Act of 2010 to allow DDOE to establish de minimus exemptions for the District's restrictions on polybrominated diphenyl ethers (PBDE). Despite the fact that manufacturers are phasing the chemicals use out of products, some equipment manufactured from older, recycled equipment may contain trace levels of PBDEs. Other jurisdictions with similar restrictions, like Maryland, have included an exemption for de minimus levels.³⁷

SECTION-BY-SECTION ANALYSIS

Section 1 provides the long and short title of the legislation.

Section 2 provides definitions of specific terms used in the legislation.

Section 3 directs DDOE to maintain a list of District Restricted-Use and Cosmetic pesticides. This section empowers DDOE to promulgate regulations to designate as Cosmetic those pesticides which are non-essential to pest management, as defined in the legislation. It also empowers DDOE to promulgate regulations to designate as District Restricted-Use those pesticides which are inherently hazardous. The Department must provide a scientific basis and opportunity for public comment before a designation as District Restricted-Use.

Section 4 prohibits the use of Cosmetic pesticides in certain sensitive areas and empowers DDOE to establish limitations on the use of District Restricted-Use pesticides in certain sensitive areas.

Section 5 exempts from prohibitions in Section 4 the use of pesticides for maintaining water quality at certain specified facilities. This section also empowers DDOE to grant exemptions from the prohibitions in Section 4 upon a showing of significant hardship or if an exemption is necessary for the protection of public health. This section also empowers DDOE to

³⁵ 20 DCMR § 2200

³⁶ Feldman Testimony on B19-643 at 7.

³⁷ Md. ENVIRONMENT Code Ann. § 6-1202

require applicators who apply for substantially the same exemptions multiple times to attend a District-approved pest management course.

Section 6 directs UDC to provide an educational course on integrated pest management annually in each ward. This section also directs UDC to provide an educational course at least once every 90 days specifically for pesticide applicators. The requirements of this section are subject to appropriation.

Section 7 directs to UDC to prepare an annual report on pesticide use in the District.

Section 8 requires pesticide applicators to transmit reports of pesticide applications to the Department.

Section 9 raises the pesticide registration fee in the District from \$130 to \$200.

Section 10 establishes penalties for violations of this act.

Section 11 amends the Pesticide Operations Act of 1977:

Paragraph (a) establishes a requirement that licensed applicators demonstrate mastery of the principles of integrated pest management.

Paragraph (b) establishes a requirement that pesticide applicators provide advance notification to abutting properties when applying Restricted-Use pesticides.

Paragraph (c) replaces the term "registered employee" with the term "registered technician" and directs DDOE to establish requirements for that licensure.

Section 12 directs DDOE to promulgate rules to implement this legislation.

Section 13 amends the Human and Environmental Health Amendment Act of 2010 to allow the Mayor to create a de minimus exemption for the restrictions on polybrominated diphenyl ethers.

Section 14 contains the applicability date.

Section 15 contains the fiscal impact statement.

Section 16 contains the effective date.

SUMMARY OF PUBLIC HEARING

On Monday, February 27, 2012, the Committee on the Environment, Public Works, and Transportation held a hearing on Bill 19-643, the "Pesticide Education and Control Amendment Act of 2012." A video recording of the hearing can be viewed at oct.dc.gov. A copy of the witness list is included as Attachment D.

FISCAL IMPACT

A fiscal impact statement prepared by the Chief Financial Officer and dated July 12, 2012 is attached to this report. The fiscal impact statement notes that B19-643 would have no adverse fiscal impact.

IMPACT ON EXISTING LAW

Bill 19-643 would amend the Pesticide Operations Act of 1977 (D.C. Law 2-70; D.C. Official Code § 8-403 *et seq.*). B19-643 would require that certified pesticide applicator demonstrate mastery of principles of integrated pest management before being licensed, would require paid applicators to provide advance notice to abutting properties when Restricted-Use pesticides are to be applied, and would require that anyone applying pesticides in the District for a fee be at least a registered technician.

COMMITTEE ACTION

On June 13, 2012, the Committee on the Environment, Public Works, and Transportation convened a mark-up on Bill 19-643, the "Pesticide Education and Control Amendment Act of 2012." Present and voting were Chairperson Mary M. Cheh, Councilmember Jim Graham, Muriel Bowser, Tommy Wells, and Yvette Alexander. Chairperson Cheh gave a brief opening statement on the bill, and Councilmember Graham provide some opening remarks as well. Councilmember Graham proposed an amendment to change the word "Cosmetic" to "Non-Essential." The amendment was accepted as friendly, and the Committee Print and Report reflect that change.

Chairperson Cheh then moved for approval of the Committee report of Bill 19-643. The Committee voted 5-0 to approve the Committee print with the members voting as follows

YES: Cheh, Alexander, Bowser, Graham, and Wells

NO: 0

PRESENT: 0

Chairperson Cheh then moved for approval of the Committee print on Bill 19-643. The Committee voted 5-0 to approve the Committee report with members voting as follows:

YES: Cheh, Alexander, Bowser, Graham, and Wells

NO: 0

PRESENT: 0