

Bill No. 52-14
Concerning: Pesticides – Notice
Requirements – Cosmetic Pesticide
Use Restrictions
Revised: October 6, 2015
Draft No. 11
Introduced: October 28, 2014
Enacted: October 6, 2015
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Lead Sponsors Council Vice President Leventhal and Councilmembers Elrich, Hucker, Riemer,
and Navarro
Co-sponsor: Councilmember Floreen

AN ACT to:

- (1) require posting of notice for certain applications of pesticide;
- (2) prohibit the use of certain pesticides on lawns;
- (3) prohibit the use of certain pesticides on playgrounds, children's facilities, and certain County-owned property;
- (4) require the County to adopt an integrated pest management program for certain County-owned property;
- (5) require the Parks Department to take certain steps to reduce the use of certain pesticides;
- and
- (6) generally amend County law regarding pesticides.

By amending

Montgomery County Code
Chapter 33B, Pesticides
Sections 33B-1, 33B-2, 33B-3, 33B-4, 33B-5, 33B-6, and 33B-7

By adding

Montgomery County Code
Chapter 33B, Pesticides
Articles 2, 3, and 4
Sections 33B-8, 33B-9, 33B-10, 33B-11, 33B-12, 33B-13, and 33B-14

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

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

1 **Sec. 1. Sections 33B-1, 33B-2, 33B-3, 33B-4, 33B-5, 33B-6 and 33B-7 are**
2 **amended, and Sections 33B-8, 33B-9, 33B-10, 33B-11, 33B-12, 33B-13, and 33B-**
3 **14 are added as follows:**

4 **ARTICLE 1. General Provisions**

5 **33B-1. Legislative findings and purpose.**

6 (a) The County Council finds that:

7 (1) pesticides have value when they are used to protect the public
8 health, the environment, and our food and water supply;

9 (2) pesticides, by definition, contain toxic substances, many of which
10 may have a detrimental effect on human health and the
11 environment and, in particular, may have developmental effects
12 on children;

13 (3) exposure to certain pesticides has been linked to a host of serious
14 conditions in children including pediatric cancers, decreased
15 cognitive function, and behavioral problems such as ADHD, and
16 the following conditions in adults: Parkinson's disease, diabetes,
17 leukemia, lymphoma, lupus, rheumatoid arthritis, dementia,
18 reproductive dysfunction, Alzheimer's disease, and a variety of
19 cancers including breast, colon, prostate and lung cancer;

20 (4) clean water is essential to human life, wildlife and the
21 environment, and the unnecessary use of pesticides and
22 herbicides for cosmetic purposes contributes to the deterioration
23 of water quality, as substantiated by several studies including the
24 2014 USGS study which found that 90% of urban waterways
25 have pesticide levels high enough to harm aquatic life;

26 (5) bees and other pollinators are crucial to our ecosystem, and the
27 use of neonicotinoid insecticides, which have been repeatedly and

28 strongly linked with the collapse of honey bee colonies, as well
29 as harm to aquatic insects and birds, pose an unacceptable risk to
30 beneficial organisms;

31 (6) there are non- and less-toxic alternatives and methods of
32 cultivating a healthy, green lawn that do not pose a threat to
33 public health, and that use of pesticides for cosmetic purposes is
34 not necessary for the management of lawns, especially in light of
35 the risks associated with their use;

36 (7) pesticide regulations at the federal and State level, and the risk
37 assessments that inform them, do not mimic real world exposure
38 scenarios and fail to account for synergistic or cumulative effects
39 of multiple chemicals acting on the same pathway; do not include
40 sufficient evaluation of a pesticide's "inert" ingredients and the
41 pesticide formulations that are sold to consumers; and often fail
42 to take sensitive populations like children and pollinators into
43 account;

44 (8) in the absence of adequate regulation at the federal or State level,
45 the County is compelled to act to protect the health of children,
46 families, pets and the environment.

47 (b) The purpose of this Chapter is to protect the public health and welfare
48 and to minimize the potential pesticide hazard to people and the
49 environment, consistent with the public interest in the benefits derived
50 from the safe use and application of pesticides. The goal is to inform
51 the public about pesticide applications and minimize the use of
52 pesticides for cosmetic purposes, while not restricting the ability to use
53 pesticides in agriculture, for the protection of public health, or for other
54 public benefit.

55 **33B-2. Definitions.**

56 In this Chapter:

57 Agriculture means the business, science, and art of cultivating and managing
 58 the soil, composting, growing, harvesting, and selling sod, crops and livestock,
 59 and the products of forestry, horticulture and hydroponics; breeding, raising, or
 60 managing livestock, including horses, poultry, fish, game and fur-bearing
 61 animals; dairying, beekeeping and similar activities, and equestrian events and
 62 activities.

63 Children's facility means a building or part of a building which, as part of its
 64 function, is regularly occupied by children under the age of 6 years and is
 65 required to obtain a certificate of occupancy as a condition of performing that
 66 function. Children's facility includes a child day care center, family day care
 67 home, nursery school, and kindergarten classroom.

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

70 *Department* means the Department of Environmental Protection.

71 *Director* means Director of the Department of Environmental Protection or the
 72 Director's designee.

73 Garden means an area of land used to cultivate food crops, flowers, or other
 74 ornamental plants.

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

- 76 (1) mostly covered by grass, other similar herbaceous plants, shrubs,
 77 or trees; and
 78 (2) kept trim by mowing or cutting.

79 Lawn does not include a:

- 80 (1) playing field;
 81 (2) golf course;

- 82 (3) garden; or
- 83 (4) tree or shrub..

84 Listed pesticide means:

- 85 (1) a pesticide the active ingredients of which are recommended by
86 the National Organic Standards Board (NOSB) pursuant to 7
87 U.S.C. § 6518, as amended, and published as the National List at
88 7 C.F.R. §§ 205.601 and 205.602; or
- 89 (2) a pesticide designated a “minimum risk pesticide” under the
90 Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) §
91 25(b) and listed in 40 C.F.R. § 152.25(f).

92 Mulched recreation area means an area of land covered with natural or
93 synthetic mulch or wood chips that is not a playground, but is open to the
94 public for picnic or other recreation use.

95 Neonicotinoid means a class of neuro-active pesticides chemically related to
96 nicotine. Neonicotinoid includes acetamiprid, clothianidin, dinotefuran,
97 imidacloprid, nitenpyram, nithiazine, thiacloprid, and thiamethoxam.

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

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

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

106 However, *pesticide* does not include an antimicrobial agent, such as a
107 disinfectant, sanitizer, or deodorizer, used for cleaning that is not considered a
108 pesticide under any federal or state law or regulation.

109 Playground means an outdoor children's play area that is on the premises of a
 110 children's facility, school, apartment building or complex, common ownership
 111 community, or park. Playground includes a mulched path that is used to enter
 112 a children's play area.

113 Playing field means:

- 114 (1) an athletic field maintained by the Montgomery County
 115 Department of Parks; or
 116 (2) an area of land on private property maintained exclusively for
 117 sporting use.

118 Private lawn application means the application of a pesticide to a lawn on
 119 property owned by or leased to the person applying the pesticide. Private
 120 lawn application does not include:

- 121 (1) applying a pesticide for the purpose of engaging in agriculture; or
 122 (2) applying a pesticide around or near the foundation of a building
 123 for the purpose of indoor pest control.

124 Registered pesticide means a pesticide registered by the United States
 125 Environmental Protection Agency and labeled pursuant to FIFRA for use in
 126 lawn, garden and ornamental sites or areas.

127 Vector or disease vector means an animal, insect, or microorganism that
 128 carries and transmits an infectious pathogen into another organism.

129 Waterbody means waters located within the County that are:

- 130 (1) subject to the ebb and flow of the tide; or
 131 (2) free flowing, unconfined, and above-ground rivers, streams or
 132 creeks.

133 **33B-3. Signs with retail purchase of pesticide.**

134 A person who sells at retail a pesticide or material that contains a pesticide
 135 must:

- 136 (a) make available to a person who buys the pesticide or material that
 137 contains a pesticide:
- 138 (1) notice signs and supporting information that are approved by the
 139 Department;
- 140 (2) the product label or other information that FIFRA requires for
 141 sale of the pesticide; and
- 142 (3) materials approved or distributed by the Department that:
- 143 (A) explain the dangers of contamination that may occur from
 144 pesticide use; and
- 145 (B) inform buyers of the availability of alternative products;
 146 and
- 147 (b) display a sign or signs in each area of the retail establishment where
 148 registered pesticides are available to consumers, with language
 149 approved by the Department, that:
- 150 (1) informs buyers of the County law on the use of registered
 151 pesticides on lawns; and
- 152 (2) identifies pest control options that are permissible for lawn
 153 application under the law.

154 The Department must enforce this Section and must annually inspect each
 155 person who sells at retail a pesticide or material that contains a pesticide.

156 **33B-4. Storage and handling of pesticides.**

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

- 158 (a) transport, display, and store each pesticide in a secure, properly labeled
 159 container that resists breakage and leakage, and promptly clean up and
 160 either repackage or properly dispose of any pesticide that escapes from
 161 its container;

- 162 (b) display and store each pesticide separately from any food, medicine, or
 163 other product that a human being or animal may ingest; and
- 164 (c) transport each pesticide separately from any food, medicine, or other
 165 product that a human being or animal may ingest unless the pesticide is
 166 in a secure container that resists breakage and leakage.

167 The Department, the Health and Human Services Department, and any other
 168 agency designated by the County Executive, must enforce this Section.

169 **33B-5. Regulations.**

- 170 (a) The Executive must adopt regulations to carry out this Chapter under
 171 method (2).
- 172 (b) The Executive must include in the regulations adopted under this
 173 Section the minimum size or quantity, and type of pesticide subject to
 174 Section 33B-3.
- 175 (c) The Executive must include in the regulations adopted under this
 176 Section a list of invasive species that may be detrimental to the
 177 environment in the County.
- 178 (d) The Executive must review and update the list of invasive species
 179 designated under subsection (c) by July 1 of each year.

180 **33B-6. Penalty for violating chapter.**

- 181 (a) Any violation of this Chapter is a class C violation.
- 182 (b) Each day a violation continues is a separate offense.

183 **ARTICLE 2. Notice Requirements.**

184 **33B-7. Notice about pesticides to customer.**

- 185 (a) In this Section:
- 186 (1) Customer means a person who makes a contract with a custom
 187 applicator to have the custom applicator apply a pesticide to a
 188 lawn.

- 189 (2) New customer includes a customer who renews a contract with a
190 custom applicator.
- 191 (b) A custom applicator must give to a new customer:
- 192 (1) before application, a list of:
- 193 (A) the trade name of each pesticide that might be used;
- 194 (B) the generic name of each pesticide that might be used; and
- 195 (C) specific customer safety precautions for each pesticide that
196 might be used; and
- 197 (2) after application, a list of:
- 198 (A) the trade name of each pesticide actually used; and
- 199 (B) the generic name of each pesticide actually used; and
- 200 (3) a written notice about pesticides prepared by the Department
201 under subsection (c).
- 202 (c) The Department must prepare, keep current, and provide to a custom
203 applicator a written notice about pesticides for the custom applicator to
204 give to a customer under subsection (b).
- 205 (d) The notice prepared by the Department under subsection (c) must
206 include:
- 207 (1) government agency phone numbers to call to:
- 208 (A) make a consumer complaint;
- 209 (B) receive technical information on pesticides; and
- 210 (C) get assistance in the case of a medical emergency;
- 211 (2) a list of general safety precautions a customer should take when a
212 lawn is treated with a pesticide;
- 213 (3) a statement that a custom applicator must:
- 214 (A) be licensed by the Maryland Department of Agriculture;
215 and

- 216 (B) follow safety precautions; and
 217 (4) a statement that the customer has the right to require the custom
 218 applicator to notify the customer before each treatment of the
 219 lawn of the customer with a pesticide.

220 **33B-8. Posting signs after application by custom applicator.**

- 221 (a) Immediately after a custom applicator treats a lawn with a pesticide, the
 222 custom applicator must place markers within or along the perimeter of
 223 the area where pesticides have been applied.
 224 (b) A marker required under this Section must:
 225 (1) be clearly visible to persons immediately outside the perimeter of
 226 the property;
 227 (2) be a size, form, and color approved by the Department;
 228 (3) be made of material approved by the Department;
 229 (4) have wording with content and dimensions approved by the
 230 Department; and
 231 (5) be in place on the day that the pesticide is applied.

232 **33B-9. Posting signs after application by property owner or tenant.**

- 233 (a) A person who performs a private lawn application treating an area
 234 more than 100 square feet, or an area of any size within five feet of a
 235 property line, must place markers within or along the perimeter of the
 236 area where pesticides have been applied.
 237 (b) A marker required under this Section must:
 238 (1) be clearly visible to persons immediately outside the perimeter of
 239 the property;
 240 (2) be a size, form, and color approved by the Department;
 241 (3) be made of material approved by the Department; and

- 242 (4) have wording with content and dimensions approved by the
- 243 Department; and
- 244 (5) be in place on the day that the pesticide is applied.

245 **ARTICLE 3. Application restrictions.**

246 **33B-10. Prohibited applications.**

- 247 (a) On County-owned property and private property, except as provided in
- 248 subsection (b), a person must not apply a registered pesticide other than
- 249 a listed pesticide to:
 - 250 (1) a lawn;
 - 251 (2) a playground;
 - 252 (3) a mulched recreation area;
 - 253 (4) a children’s facility; or
 - 254 (5) the grounds of a children’s facility.
- 255 (b) A person may apply any registered pesticide to:
 - 256 (1) control weeds as defined in Chapter 58, Weeds;
 - 257 (2) control invasive species listed in a regulation adopted under
 - 258 subsection 33B-5(c);
 - 259 (3) control disease vectors;
 - 260 (4) control biting or stinging insects or stinging plants;
 - 261 (5) control organisms that threaten the health of trees or shrubs;
 - 262 (6) maintain property as part of efforts by a public utility to comply
 - 263 with applicable vegetation management provisions of any
 - 264 federal, state, or local law or regulation;
 - 265 (7) control indoor pests, if applied around or near the foundation of
 - 266 a building;
 - 267 (8) control pests while engaged in agriculture; and

268 (9) control a pest outbreak that poses an imminent threat to human
 269 health or prevent significant economic damage if a registered
 270 pesticide is not used.

271 (c) If a pesticide is applied under paragraph (b)(9) of this Section, the
 272 person applying the pesticide must:

273 (1) within seven days after a pesticide is applied on private property,
 274 notify the Department of the application and the reasons for the
 275 use of the pesticide; or

276 (2) within 30 days after a pesticide is applied on County-owned
 277 property, inform the Council of the application and the reasons
 278 for the use of the pesticide.

279 **33B-11. Outreach and education campaign.**

280 (a) The Executive must implement a public outreach and education
 281 campaign before and during implementation of the provisions of this
 282 Article.

283 (b) The outreach and education campaign must include the provision of the
 284 following resources:

285 (1) the National Organic Standards Board National List or the
 286 Organic Materials Review Institute (OMRI) listed products
 287 which are the NOSB National list products categorized by use;

288 (2) FIFRA § 25(b) minimum risk pesticides, listed in 40 C.F.R. §
 289 152.25(f); and

290 (3) guidance on best practices for organic and pesticide-free lawn
 291 care.

292 (c) The outreach and education campaign should include:

293 (1) informational mailers to County households;

- 294 (2) distribution of information through County internet and web-
295 based resources;
- 296 (3) radio and television public service announcements;
- 297 (4) news releases and news events;
- 298 (5) information translated into Spanish, French, Chinese, Korean,
299 Vietnamese, and other languages, as needed;
- 300 (6) extensive use of County Cable Montgomery and other Public,
301 Educational, and Government channels funded by the County;
302 and
- 303 (7) posters and brochures made available at County events, on Ride-
304 On buses and through Regional Service Centers, libraries,
305 recreation facilities, senior centers, public schools, Montgomery
306 College, health care providers, hospitals, clinics, and other
307 venues.

ARTICLE 4. County Property and Parks

33B-12. Neonicotinoid pesticides on County-owned property.

(a) Prohibition. Except as provided in subsection (b), a County employee or County contractor must not use a neonicotinoid pesticide on property owned by the County.

(b) Exceptions.

(1) A County employee or County contractor may use a neonicotinoid pesticide on County-owned property to control pests while engaged in agriculture.

(2) This Section does not apply to County-owned property that the Parks Department operates or manages for the County.

33B-13. Integrated pest management on County property.

- 320 (a) Adoption of program. The Department must adopt an integrated pest
 321 management program for all property owned by the County.
- 322 (b) Requirements. Any program adopted under subsection (a) must require:
- 323 (1) monitoring the turf or landscape as appropriate;
- 324 (2) accurate record-keeping documenting any potential pest problem;
- 325 (3) evaluating the site for any injury caused by a pest and
 326 determining the appropriate treatment;
- 327 (4) using a treatment that is the least damaging to the general
 328 environment and best preserves the natural ecosystem;
- 329 (5) using a treatment that will be the most likely to produce long-
 330 term reductions in pest control requirements and is operationally
 331 feasible and cost effective in the short and long term;
- 332 (6) using a treatment that minimizes negative impacts to non-target
 333 organisms;
- 334 (7) using a treatment that is the least disruptive of natural controls;
- 335 (8) using a treatment that is the least hazardous to human health; and
- 336 (9) exhausting the list of all non-chemical methods and listed
 337 pesticides for the targeted pest before using any other treatments.
- 338 (c) The Department must provide training in integrated pest management
 339 for each employee who is responsible for pest management.

340 **33B-14. County parks.**

- 341 (a) Policy. It is the policy of Montgomery County to promote
 342 environmentally sensitive landscape pest management in its parks by
 343 phasing out the use of the most hazardous pesticides and reducing
 344 overall pesticide use while preserving landscape assets, maintaining
 345 functionality of playing fields, and protecting the health and safety of
 346 the public and County employees. To carry out this policy, the Parks

347 Department must, subject to appropriation, implement the provisions of
348 this Section.

349 (b) *Pesticide-free parks.* The Parks Department must implement a
350 pesticide-free parks program that, at a minimum, consists of:

351 (1) the maintenance of certain parks entirely without the use of
352 registered pesticides other than listed pesticides;

353 (2) a program for reducing the use of registered pesticides other than
354 listed pesticides on playing fields that includes:

355 (A) a pilot program consisting of at least five playing fields
356 maintained without the use of registered pesticides other
357 than listed pesticides that:

358 (i) is conducted in consultation with an expert in
359 organic turf management, with experience in
360 successful transitions from conventional to organic
361 turf management; and

362 (ii) includes a publicly available plan describing the
363 practices and procedures used;

364 (B) maintenance of all other playing fields using an integrated
365 pest management program; and

366 (C) a plan submitted to the Council by September 2019 for
367 transitioning to maintenance of all playing fields without
368 the use of registered pesticides other than listed pesticides
369 by 2020; and

370 (3) a public communication campaign to inform the public of the
371 existence and progress of the pesticide-free parks program.

372 (c) *Pesticide usage protocols.* The Parks Department must develop usage
373 protocols which limit the use of registered pesticides other than listed

374 pesticides to the maximum extent possible and, subject to the exceptions
 375 in subsection (d):

376 (1) do not permit the use of registered pesticides other than listed
 377 pesticides within 25 feet of a waterbody;

378 (2) except where immediate application is necessary to protect
 379 human health or prevent significant economic damage, include
 380 the posting of notice of each planned application of a registered
 381 pesticide other than a listed pesticide on the appropriate Parks
 382 Department website and in the area where the pesticide is to be
 383 applied, from at least 48 hours before application through at least
 384 48 hours after application, that includes:

385 (A) the common name of the pesticide;

386 (B) the location of the application;

387 (C) the planned date and time of the application; and

388 (D) the reason for the use of the pesticide; and

389 (3) provide for pesticide application information required under
 390 paragraph (c)(2) to be made available to the public in real-time
 391 and in a manner consistent with the Montgomery County Open
 392 Data Act, Chapter 2, Article XIV of this Code.

393 (d) *Exceptions.* The pesticide-free parks program and pesticide usage
 394 protocols may generally permit the application of a registered pesticide
 395 to:

396 (1) control weeds as defined in Chapter 58, Weeds;

397 (2) control invasive species listed in a regulation adopted under
 398 subsection 33B-5(c);

399 (3) control disease vectors;

400 (4) control biting or stinging insects or stinging plants;

- 401 (5) control organisms that threaten the health of trees or shrubs;
 402 (6) remove weeds as part of the renovation of a playing field;
 403 (7) control pests while engaged in agriculture; and
 404 (8) otherwise protect human health or prevent significant economic
 405 damage.
- 406 (e) Reporting requirement. The Parks Department must submit semi-
 407 annual reports to the County Executive and County Council on or
 408 before January 15 and July 15 of each year that:
- 409 (1) detail registered pesticide usage, other than listed pesticide usage,
 410 in County parks during the preceding year, including:
- 411 (A) the common name of each registered pesticide used;
 412 (B) the location of each application;
 413 (C) the date and time of each application; and
 414 (D) the reason for each use of a registered pesticide;
- 415 (2) describe the status of the pesticide-free parks program
 416 implemented under this Section; and
- 417 (3) are available to the public in a manner consistent with the
 418 Montgomery County Open Data Act, Chapter 2, Article XIV of
 419 this Code.

420 **Sec. 2. Initial List of Invasive Species.** The Executive must submit the list of
 421 invasive species required by Subsection 33B-5(c) to the Council for approval by
 422 March 1, 2016

423 **Sec. 3. Effective Date.** The prohibitions and requirements related to the use
 424 of registered pesticides and neonicotinoids on County-owned property and in County
 425 parks contained in Sections 33B-10, 33B-12, 33B-13 and 33B-14 take effect on July
 426 1, 2016; the prohibitions on the use of registered pesticides on private property
 427 contained in Section 33B-10 take effect on January 1, 2018.

428 *Approved:*

429

George Leventhal, President, County Council

Date

430 *Approved:*

431

Isiah Leggett, County Executive

Date

432 *This is a correct copy of Council action.*

433

Linda M. Lauer, Clerk of the Council

Date