

Resolution No.:	<u>18-788</u>
Introduced:	<u>May 2, 2017</u>
Adopted:	<u>May 2, 2017</u>

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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Lead Sponsor: County Council

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**SUBJECT:**    Executive Regulation 23-16AM, Pesticides - Invasive Species

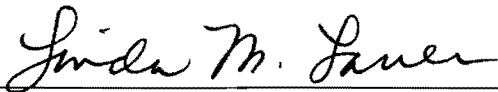
**Background**

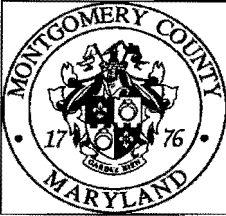
1.    On December 12, 2016, the County Council received Executive Regulation 23-16, Pesticides – Invasive Species.
2.    This regulation is established as a result of the Council enacting Bill 52-14, Pesticides – Notice Requirements – Cosmetic Pesticide Use Restrictions. Bill 52-14 was enacted on October 6, 2015 and allows for the use of only certain organic or minimum risk pesticides on lawns in the County and within 25 feet of a waterbody on property owned by Montgomery Parks. Bill 52-14 provides for an exception to this restriction to control “invasive species that may be detrimental to the environment in the County.” Bill 52-14 requires the County Executive to develop a list of the species that would be exempt under this criterion.
3.    On January 19, 2017, the Council’s Transportation, Infrastructure, Energy & Environment Committee discussed Executive Regulation 23-16 and supported revisions to the regulation.
4.    On February 7, 2017, the Council approved Resolution 18-712, which extended the deadline for action on Executive Regulation 23-16 to June 30, 2017.
5.    On March 29, 2017, the County Executive transmitted Executive Regulation 23-16AM, “Pesticides – Invasive Species.”
6.    On April 21, 2017, the Council’s Transportation, Infrastructure, Energy & Environment Committee discussed Executive Regulation 23-16AM and recommended approval.

**Action**

The County Council for Montgomery County, Maryland approves Executive Regulation 23-16AM, Pesticides – Invasive Species.

This is a correct copy of Council action.

  
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Linda M. Lauer, Clerk of the Council



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

<b>Subject</b> Pesticides—Invasive Species	<b>Number</b> 23-16AM
<b>Originating Department</b> Environmental Protection	<b>Effective Date</b> May 2, 2017

Montgomery County Regulation on:  
PESTICIDES – INVASIVE SPECIES  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Issued by: County Executive  
Regulation No. 23-16AM  
COMCOR No. 33B.00.01

Authority: Code Section 33B-5  
Supersedes: 32-01AMII  
Council Review: Method (2) under Code Section 2A-15  
Register Vol. 33 No. 10  
Comment Deadline: 10/31/16  
Effective Date: May 2, 2017  
Sunset Date: None

**Summary:** This regulation, which amends Executive Regulation 32-01AMII, establishes a list of invasive species that, due to their potential detrimental effect on the environment, a person may apply a registered pesticide to control notwithstanding the County's restrictions on the use of registered pesticides on private or County-owned property.

Additional research continues on other species for potential inclusion on this list. Specifically, a decision on the inclusion or exclusion of Japanese Stiltgrass with regard to lawns is being deferred while more research and evaluation is conducted. Background information about this effort is available at <http://www.montgomerycountymd.gov/lawns>.

**Staff Contact:** For further information or to obtain a copy of this regulation, contact Stan Edwards at [stan.edwards@montgomerycountymd.gov](mailto:stan.edwards@montgomerycountymd.gov) or (240) 777-7748.

**Address:** Written comments on this regulation should be sent to:  
Stan Edwards, Chief  
Division of Environmental Policy & Compliance  
Department of Environmental Protection  
255 Rockville Pike, Suite 120  
Rockville, Maryland 20850  
[stan.edwards@montgomerycountymd.gov](mailto:stan.edwards@montgomerycountymd.gov)



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## 33B.00.01.01 General Provisions

- A. **Authority.** In accordance with the authority conferred under Chapter 33B, Section 33B-5, of the Montgomery County Code, 2014, 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.
- C. **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.

**Landscaped Environment** - An area of land covered by a lawn or altered from its natural state by a playground, mulched recreation area, or other improvement that is subject to the pesticide use restrictions under Section 33B-10 of the Code.

**Waterbody Environment** - Any area of land managed by the Parks Department within 25 feet of a waterbody that is subject to the pesticide use restrictions under Section 33B-14 of the Code.

**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.



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**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.



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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

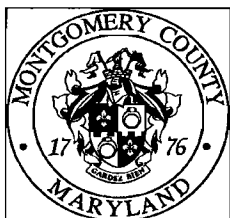
- A. The Director of Health and Human Services must routinely inspect food service facilities for compliance with County pesticide laws in the regular course of performing any food safety inspection required under Chapter 15 of the Code.
- B. The Director of Environmental Protection must investigate 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 Invasive Species – Landscaped Environments

The following table lists invasive species designated by the Executive as detrimental to a landscaped environment under Section 33B-5(c) of the Code. A landscaped environment includes any area of land covered by a lawn or altered from its natural state by a playground, mulched recreation area, or other improvement that is subject to the pesticide use restrictions under Section 33B-10 of the Code. A person may apply a registered pesticide to control these designated species in a landscaped environment. Registered pesticides may only be applied directly to these species when they are present, and must not be used in anticipation of these species being present or applied to any area of a landscaped environment where they are not present.



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Scientific Name	Common Name
<i>Fallopia japonica</i>	Japanese Knotweed
<i>Ficaria verna</i>	Lesser Celandine
<i>Houttuynia cordata</i>	Chameleon Plant
<i>Microstegium vimineum</i> *	Japanese Stiltgrass*
<i>Oplismenus undulatifolius</i>	Wavyleaf Basketgrass

\* The evaluation of this species is ongoing.

## 33B.00.01.08 Invasive Species – Waterbody Environments

The following table lists invasive species designated by the Executive as detrimental to a waterbody environment under Section 33B-5(c) of the Code. A waterbody environment is any area of land managed by the Parks Department within 25 feet of a waterbody that is subject to the pesticide use restrictions under Section 33B-14 of the Code. A person may apply a registered pesticide to control these species in a waterbody environment. Registered pesticides may only be applied directly to these species when they are present, and must not be used in anticipation of these species being present or applied to any area of a waterbody environment where they are not present.

Scientific Name	Common Name
<i>Aegopodium podagraria</i>	Bishop Weed; Goutweed
<i>Ailanthus altissima</i>	Tree of Heaven
<i>Ampelopsis brevipedunculata</i>	Porcelain Berry
<i>Berberis thunbergii</i>	Japanese Barberry
<i>Celastrus orbiculatus</i>	Oriental Bittersweet
<i>Elaeagnus umbellata</i>	Autumn Olive
<i>Euonymus fortunei</i>	Winter Creeper
<i>Fallopia japonica</i>	Japanese Knotweed
<i>Ficaria verna</i>	Lesser Celandine
<i>Hedera helix</i>	English Ivy
<i>Houttuynia cordata</i>	Chameleon Plant
<i>Humulus japonicus</i>	Japanese Hops
<i>Iris pseudacorus</i>	Yellow Flag Iris
<i>Lonicera japonica</i>	Japanese Honeysuckle
<i>Lonicera maackii</i>	Amur Honeysuckle
<i>Lonicera morrowi</i>	Morrow's Honeysuckle



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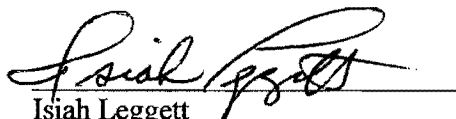
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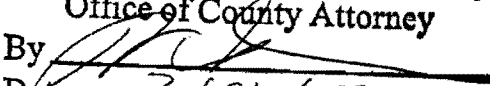
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Lonicera standishii	Standish's Honeysuckle
Lonicera tatarica	Tatarian Honeysuckle
Microstegium vimineum	Japanese Stiltgrass
Oplismenus undulatifolius	Wavyleaf Basketgrass
Pennisetum alopecuroides	Fountain Grass
Persicaria perfoliata	Mile-a-Minute
Phyllostachys spp.	Running Bamboo
Pyrus calleryana 'Bradford'	Callery/Bradford Pear
Rosa multiflora	Multiflora Rose
Wisteria sinensis	Chinese Wisteria
Wisteria floribunda	Japanese Wisteria

## 33B.00.01.09 Severability

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

  
Isiah Leggett  
County Executive

Approved as to Form and Legality  
Office of County Attorney  
By   
Date 3/24/17  
Walter F. Wilson