

MEMORANDUM

July 3, 2019

TO: Transportation and Environment Committee

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: Bill 8-19, Erosion, Sediment Control and Stormwater Management – High-PAH Sealants

PURPOSE: Worksession – Committee should make recommendations on Bill

Expected attendees:

Stan Edwards, Department of the Environmental Protection

Bill 8-19, Erosion, Sediment Control and Stormwater Management – High-PAH Sealants, sponsored by Lead Sponsor Councilmember Rice and Co-Sponsor Council President Navarro, was introduced on March 19, 2019. Three speakers testified at the public hearing held on April 23, 2019.¹

Bill 8-19 would prohibit the use of a sealant to cover an asphalt or concrete surface, including a driveway or parking area, in the County that contains more than 0.1% PAH. The Bill would also require the Director of the Department of Environmental Protection (DEP) to establish a system to approve alternative sealants that would comply with this law.

Background

Bill 21-12, Erosion, Sediment Control and Stormwater Management – Coal Tar Pavement Products, prohibited the use of asphalt sealing products containing coal tar on or after December 18, 2012 based on a finding that runoff from coal tar sealants created environmental problems for County waterways by introducing high levels of Polycyclic Aromatic Hydrocarbons or PAH into the environment. Since the enactment of Bill 21-12, non-coal tar asphalt sealants have been introduced into the County that also contain high levels of PAH. Runoff from these sealants also results in high levels of PAH in County waterways. PAH has been associated with adverse health effects in humans and animals.

¹#AsphaltSealant

Other search terms: asphalt, driveways and parking lots

Bill 8-19 would expand the ban on coal tar sealants to non-coal tar sealants containing more than 0.1% PAH and require the Director of DEP to establish a system to approve sealants that contain less than 0.1% PAH for use in the County. In order to provide time for the Director to establish a system to approve sealants complying with this law and to give the industry time to adapt, the Bill would have a delayed effective date of July 1, 2020.

Public Hearing

All 3 speakers opposed the Bill. Josh White, an attorney representing the Pavement Coatings Technology Council, Shawn Campbell, Seaboard Asphalt Products Co., and Tom Decker, Seal Master, each argued that the Bill would open a new can of worms because of the randomness of the 0.1% PAH standard. They also argued that products currently used by MCDOT would be banned and that there would only be 1 type of sealant left that could be used in the County. Mr. Decker also argued that asphalt sealants save money by extending asphalt's useful life.

Issues

1. What is the fiscal and economic impact of the Bill?

OMB opined that the Bill would require additional expenditures for public outreach and enforcement. See Fiscal and Economic Impact Statement at ©5-9. OMB pointed out the enforcement would likely increase expenditures because there is no current quick test to determine the level of PAH in a sealant and that a laboratory estimated that a test would cost \$600 per sample. However, OMB was unable to estimate the potential increased costs. Finance estimated that the Bill would have no economic impact on the County's economy.

2. What is being done in nearby jurisdictions?

Prince George's County and the District of Columbia each enacted a ban on coal tar sealants. The District extended its ban to sealants containing coal tar or more than 0.1% PAH in March of 2019. D.C. Code §8-153.01 is at ©10-12. The District's Environment staff's update on the District's new law is at ©13-14. The District's ban is consistent with the definition of a high PAH sealant in Bill 8-19. However, the District has not yet implemented the ban and is currently contracting with a consultant to produce a standard protocol to test for PAH level in a pavement sealant. The District law does not require the Mayor to prepare a list of sealants that would comply. It permits the Mayor to provide a list of possible complying sealants, but it does not make the list all inclusive.

3. Should the Bill require the Director to produce a list of approved sealants and prohibit the use of a sealant that is not on the approved list?

The Bill would require the Director of Environmental Protection to:

- (1) publish a list of alternative products for use on asphalt and concrete that do not contain coal tar or more than 0.1% PAH;
- (2) not approve a coal tar pavement product or a high-PAH sealant;

- (3) establish a system to approve sealants that contain less than 0.1% PAH for use in the County; and
- (4) generally enforce this Section.

Unfortunately, a protocol for testing a product to determine if it contains less than 0.1% PAH is not currently available. The District of Columbia is currently contracting with a consultant to establish a protocol, but they do not expect to be ready before the summer of 2020. This would make it difficult for the Director to produce a list of acceptable products. The Bill, as introduced, would not permit the use of a product that has not been approved by the Director. Coal tar can be determined by looking at the product's label. PAH content is not evident from looking at the label. If the Director can develop a protocol for testing PAH level, a product still may have less than 0.1% PAH and not be on the Director's approved list. The District's solution is to permit, but not require, the Director to list approved products, but does not require this list to be all-inclusive.

4. Would the Bill prohibit all but 1 pavement sealant for use in the County?

The pavement sealant manufacturers who testified at the public hearing argue that the Bill would prohibit all but 1 current pavement sealant. However, the Bill would not take effect for approximately 12 months. DEP believes that manufacturers are likely to develop acceptable products that do not contain coal tar or high-PAH levels if forced to. The environmental damage done by coal tar products is equaled by the environmental damage potentially done by high-PAH pavement sealants. Bill 8-19 is consistent with the law in the District of Columbia. If other local jurisdictions follow this lead, pavement sealant manufacturers are more likely to develop new products that comply.

5. What is the Executive's position on the Bill?

The Executive Branch did not testify at the public hearing but has recently sent the Council a draft Bill with suggested amendments. The Executive supports the Bill with these amendments. Council staff met with DEP staff about the Bill to discuss these recommended changes. DEP has contacted the District of Columbia and believes that the standard testing protocol under development by the District's consultant would be able to permit testing for PAH level in pavement sealants. The Executive recommendations include changing the requirement to create an all-inclusive list of acceptable pavement sealants to requiring the Director to prepare a non-exclusive list of acceptable products that have been tested under a standard protocol for PAH content. See ©15. The Bill's effective date of July 1, 2020 would permit the District's consultant another 12 months to complete the creation of a standard testing protocol. If the Bill takes effect before DEP can use the standard testing protocol to create a list of acceptable pavement sealants, DEP would enforce the ban on a pavement sealant with an ingredient label showing either coal tar or high-PAH.

A proposed Bill 8 with the changes proposed by the Executive is at ©16-19. **Council staff recommendation:** approve the Bill with the amendments shown in Bill 8 recommended by the Executive.

This packet contains:

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Bill 8-19	1
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F:\LAW\BILLS\1908 Erosion, Sediment Control, Stormwater Mgmt.-Asphalt Sealing Products\T&E Memo 7-10-19.Docx

Bill No. 8-19
Concerning: Erosion, Sediment Control
and Stormwater Management – High-
PAH Sealants
Revised: 03/25/2019 Draft No. 7
Introduced: March 19, 2019
Expires: September 19, 2020
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Rice
Co-Sponsor Council President Navarro

AN ACT to:

- (1) prohibit the use of certain high-PAH sealants in the County;
- (2) require the Director of the Department of Environmental Protection to establish a system to approve certain low-PAH sealants; and
- (3) generally amend the laws governing water quality.

By amending

Montgomery County Code
Chapter 19, Erosion, Sediment Control and Storm Water Management
Section 19-68

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. Section 19-68 is amended as follows:**

2 **19-68. [Coal tar pavement] High-PAH sealant products.**

3 (a) *Definitions.* As used in this Section:

4 *Coal tar pavement product* means a material that contains coal tar, coal
5 tar pitch, coal tar pitch volatiles, RT-12, refined tar, or a variation of those
6 substances assigned the chemical abstracts service (“CAS”) number
7 65996-92-1, 65996-93-2, 65996-89-6, or 8007-45-2 and is intended to
8 cover an asphalt or concrete surface, including a driveway or parking
9 area.

10 *Director* means the Director of the Department of Environmental
11 Protection or the Director’s designee.

12 *High-PAH sealant* means a surface-applied product containing:

13 (1) steam-cracked petroleum residues, steam-cracked asphalt,
14 pyrolysis fuel oil, heavy fuel oil, ethylene tar, ethylene cracker
15 residue, or a variation of those substances assigned the CAS
16 number 64742-90-1 or 69013-21-4; or

17 (2) substances containing more than 0.1% (1000 ppm) polycyclic
18 aromatic hydrocarbons, by weight.

19 *PAH* means Polycyclic Aromatic Hydrocarbons.

20 (b) *Use of a coal tar pavement [products] product or high-PAH sealant*
21 *prohibited.*

22 (1) A person must not use in the County:

23 (A) a coal tar pavement product [in the County];

24 (B) a high-PAH sealant; or

25 (C) a sealant that has not been approved by the Director.

26 (2) Both the property owner and the applicator have violated this
27 Section if a coal tar pavement product, a high-PAH sealant, or any

28 unapproved sealant is applied to an asphalt or concrete surface on
29 [the] property in the County.

30 (c) *Sale.* A person must not sell or offer for sale a coal tar pavement product,
31 a high-PAH sealant, or an unapproved sealant in the County.

32 (d) *Enforcement.* The Director must:

33 (1) publish a list of alternative products for use on asphalt and concrete
34 that do not contain coal tar or more than 0.1% PAH; [and]

35 (2) not approve a coal tar pavement product or a high-PAH sealant;

36 (3) establish a system to approve sealants that contain less than 0.1%
37 PAH for use in the County; and

38 (4) generally enforce this Section.

39 **Sec. 2. Effective date.**

40 The amendments in Section 1 take effect on July 1, 2020.

LEGISLATIVE REQUEST REPORT

Bill 8-19

Erosion, Sediment Control and Stormwater Management – Asphalt Sealing Products

- DESCRIPTION:** Bill 8-19 would prohibit the use of a sealant to cover an asphalt or concrete surface, including a driveway or parking area, in the County that contains more than 0.1% PAH. The Bill would also require the Director of the Department of Environmental Protection (DEP) to establish a system to approve alternative sealants that would comply with this law.
- PROBLEM:** The ban on coal tar sealants has led to alternative sealants with dangerous levels of PAH.
- GOALS AND OBJECTIVES:** Eliminate the introduction of PAH into the environment through asphalt sealants.
- COORDINATION:** Department of Environmental Protection, County Attorney
- FISCAL IMPACT:** To be provided
- ECONOMIC IMPACT:** To be provided
- EVALUATION:** To be provided
- EXPERIENCE ELSEWHERE:** The District of Columbia, Prince George's County, and Anne Arundel County are considering a similar ban.
- SOURCE OF INFORMATION:** Robert H. Drummer, Senior Legislative Attorney
- APPLICATION WITHIN MUNICIPALITIES:** To be researched.
- PENALTIES:** Class A violation.



ROCKVILLE, MARYLAND

MEMORANDUM

April 5, 2019

TO: Nancy Navarro, President, County Council

FROM: Richard S. Madaleno, Director, Office of Management and Budget
Alexandre A. Espinosa, Director, Department of Finance *ACE RSM*

SUBJECT: FEIS for Bill 8-19, Erosion, Sediment Control and Stormwater Management – High PAH

Please find attached the Fiscal and Economic Impact Statements for the above-referenced legislation.

RSM:cm

cc: Andrew Kleine, Chief Administrative Officer
Fariba Kassiri, Deputy Chief Administrative Officer
Debbie Spielberg, Special Assistant to the County Executive
Dale Tibbitts, Special Assistant to the County Executive
Lisa Austin, Office of the County Executive
Ohene Gyapong, Acting Director, Public Information Office
David Platt, Department of Finance
Dennis Hetman, Department of Finance
Monika Coble, Office of Management and Budget
Trevor Lobaugh, Office of Management and Budget
Chrissy Mireles, Office of Management and Budget

Fiscal Impact Statement

Council Bill 8-19 Erosion, Sediment Control and Stormwater Management- High PAH

1. Legislative Summary.

This bill would prohibit the use of a sealant to cover an asphalt or concrete surface, including a driveway or parking area, in the County that contains more than 0.1% of Polycyclic Aromatic Hydrocarbons (PAH). The bill would require the Department of Environmental Protection's Director to establish a system to approve alternative sealants that would comply with this law.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

Currently, pavement sealant products do not contain information that would allow an individual to determine whether the PAH concentration was greater than 0.1%. Furthermore, there is currently no accepted testing protocol for pavement sealants to determine if a substance has PAH levels above 0.1%.

The bill requires DEP to:

- a. publish a list of alternative products for use on asphalt and concrete that do not contain coal tar or more than 0.1 % PAH, and
- b. establish a system to approve sealants that contain less than 0.1 % PAH for use in the County.

To meet these requirements, DEP would publish on its website only those products where the manufacturer/distributor could provide testing results from an accredited lab demonstrating that the PAH concentration of their product was below 0.1%. The development of the website page containing this list could be accomplished with existing resources.

There could potentially be costs associated with two aspects of this bill, but the magnitude of these costs is not possible to predict at this time.

- a. Outreach will be required to inform residents, businesses, and pavement sealant applicators of this modification to the sealant ban. When coal tar was banned, several things had occurred which simplified the County's outreach activities associated with this action. First, Washington, DC, had enacted a coal tar ban prior to the County's ban, and had conducted extensive outreach to pavement sealant suppliers and applicators, many of whom work regionally. Therefore, many suppliers and applicators had already begun using products compliant with the ban. Second, major home improvement retailers like Home Depot and Lowe's, responding to concerns raised across the country related to coal tar, had already stopped carrying coal tar-based products. Therefore, many "do-it-yourself" applicators were choosing from products that were compliant with the coal tar ban. Given that the PAH concentration of a product is not readily known

to customers and suppliers, there will likely need to be a greater outreach effort to explain the ban and how to determine if a product is compliant under this bill.

- b. The other area where costs may be incurred is associated with enforcement of the ban. There is a relatively simple and inexpensive field test that can determine if a sample removed from pavement contains coal tar. There is no such test for PAHs. One laboratory that can test potential samples of pavement sealant for the presence of PAHs indicated it would cost approximately \$600 per sample, with a turnaround time of 7-10 days. Given the inability for someone to easily tell if a sealant contains PAHs greater than 0.1%, there may be an increased likelihood that field tests are required on an applied sealant.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

There would be no revenue from the bill. Possible expenses are discussed in #2, although the magnitude of these expenses cannot be determined.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not Applicable

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Not Applicable

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Not Applicable

7. An estimate of the staff time needed to implement the bill.

Uncertain. This depends primarily on the level of field enforcement involved.

8. An explanation of how the addition of new staff responsibilities would affect other duties.

Uncertain. This depends primarily on the level of field enforcement involved.

9. An estimate of costs when an additional appropriation is needed.

Possible expenses are discussed in number 2, although the magnitude of these expenses cannot be determined.

10. A description of any variable that could affect revenue and cost estimates.

The cost of outreach could be affected by the timing of the County's ban compared to other neighboring jurisdictions. The cost of enforcement will depend on the effectiveness of the outreach efforts and the level of field enforcement involved.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

See number 10

12. If a bill is likely to have no fiscal impact, why that is the case.

See number 2 and number 10

13. Other fiscal impacts or comments.

The effectiveness of this bill could be increased, and the costs decreased, if the enactment of this ban were coordinated with other jurisdictions in the region (Washington, DC; Prince George's County, Anne Arundel County, etc.) that currently have a coal tar ban.

14. The following contributed to and concurred with this analysis:

Stan Edwards, Department of Environmental Protection

Trevor Lobaugh, Office of Management and Budget



Richard S. Madaleno, Director
Office of Management and Budget

4/5/2019
Date

Economic Impact Statement
Bill 8-19, Erosion, Sediment Control and Stormwater Management – High PAH

Background:

This legislation would prohibit the use of a sealant to cover an asphalt or concrete surface, including a driveway or parking area, that contains more than 0.1% Polycyclic Aromatic Hydrocarbons (PAH). Bill 8-19 would require the Director of Environmental Protection (DEP) to establish a system to approve alternative sealants that complies with this legislation.

Bill 21-12 prohibited the use of asphalt sealing products containing coal tar on or after December 18, 2012. However, non-coal tar asphalt sealants were not banned and are currently used in the County that contain high levels of PAH. Bill 8-19 would expand the ban on non-coal tar sealants containing more the 0.1% PAH.

1. The sources of information, assumptions, and methodologies used.

There are no sources of information used in the preparation of the economic impact statement. The Department of Finance (Finance) did not make assumptions or develop/use methodologies in the preparation of the economic impact statement.

2. A description of any variable that could affect the economic impact estimates.

There are no economic variables that could affect the economic impact estimates.

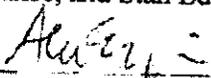
3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.

Bill 8-19 would have no effect on employment, spending, savings, investment, incomes, and property values in the County.

4. If a Bill is likely to have no economic impact, why is that the case?

The alternatives that are in compliance with Bill 8-19 would provide the same protection as banned sealants. Since the alternative sealants have similar prices as banned sealants, there is no economic impact to Bill 8-19.

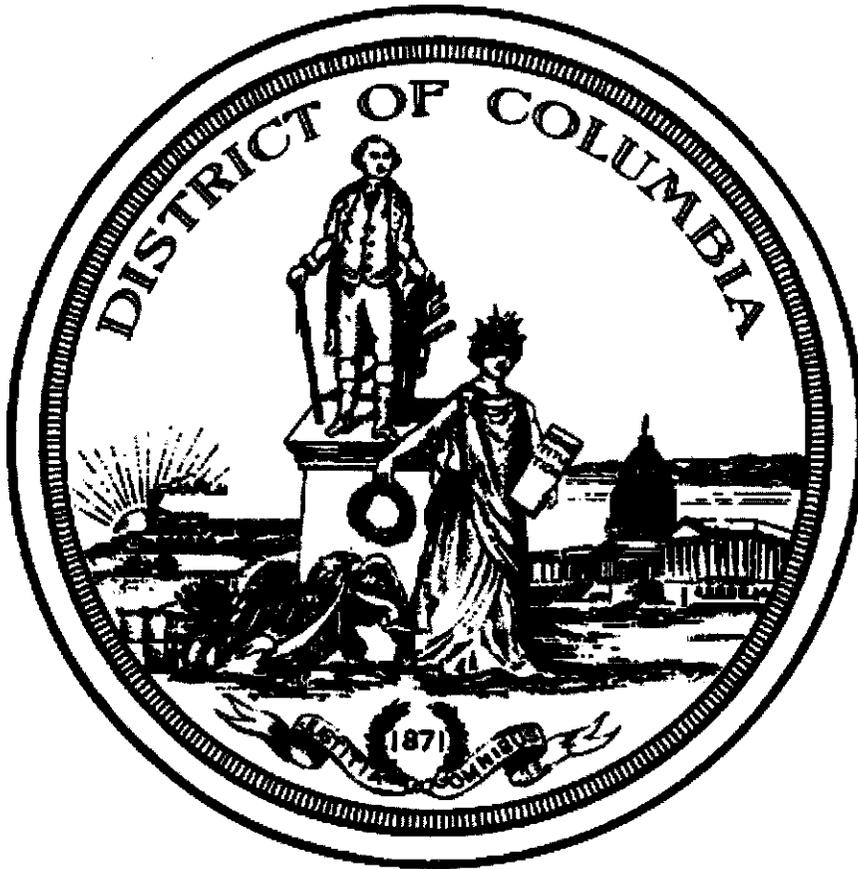
5. The following contributed to or concurred with this analysis: David Platt, Finance, and Stan Edwards, DEP.



Alexandre Espinosa, Director
Department of Finance

4/2/2019

Date



Code of the District of Columbia

You Are Here

- [D.C. Law Library](#)
- [Code of the District of Columbia](#)
- [Title 8. Environmental and Animal Control and Protection.](#)
- [Chapter 1A. District Department of the Environment.](#)
- [Subchapter III. Product Limitation of Stormwater Management.](#)
- [§ 8-153.01. Limitations on products containing polycyclic aromatic hydrocarbons.](#)

Previous

[Subchapter III. Product Limitation of Stormwater Management.](#)

Next

[Chapter 1B. District of Columbia Office of Energy.](#)

Publication Information

Current through Apr. 5, 2019

Last codified D.C. Law:

Law 22-279 effective Apr. 5, 2019

Last codified Emergency Law:

Act 23-112 effective Feb. 28, 2019

Last codified Federal Law:

Public Law approved May 5, 2017

Report Error

Website Feedback

We cannot respond to questions regarding the law.

§ 8–153.01. Limitations on products containing polycyclic aromatic hydrocarbons.

(a) For the purposes of this section, the term "high PAH sealant product" means a material that:

(1) Contains:

(A) Coal tar;

(B) Coal tar pitch, coal tar pitch volatiles, RT-12, refined tar, or a variation of those substances assigned the chemical abstracts service ("CAS") number 65996-92-1, 65996-93-2, 65996-89-6, or 8007-45-2;

(C) A surface-applied product containing steam-cracked petroleum residues, steam-cracked asphalt, pyrolysis fuel oil, heavy fuel oil, ethylene tar, ethylene cracker residue, or a variation of those substances assigned the CAS number 64742-90-1 or 69013-21-4; or

(D) Substances containing more than 0.1% (1000 ppm) polycyclic aromatic hydrocarbons, by weight; and

(2) Is used on, or is intended for use on, an impermeable surface, including bricks, block, metal, roofing material, asphalt, or concrete.

(b) No person shall sell, offer for sale, use, or permit to be used on property he or she owns, a high PAH sealant product.

(c)(1) Any person who violates this section shall be liable to the District for a civil penalty in an amount not to exceed \$ 2,500 for each violation.

(2) For any violation, each day of the violation shall constitute a separate offense and the penalties prescribed shall apply separately to each offense.

(3) Adjudication of any infraction of this section shall be pursuant to Chapter 18 of Title 2 [§ 2-1801.01 et seq.].

(d) Repealed.

(e) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, may issue rules to implement the provisions of this section, including a list of sealant products that are not a high PAH sealant product and rules to establish criteria for demonstrating that a product is not a high PAH sealant product.

(f)(1) For the purposes of enforcing this section or a rule issued pursuant to this section, the Mayor may, at a reasonable time, upon the presentation of appropriate credentials to, and with the consent of, the owner, operator, or agent in charge:

(A) Enter without delay a place where a sealant product is sold, offered for sale, or used;

(B) Inspect and obtain samples of a sealant product or surface to which a sealant product has been applied; and

(C) Inspect and copy a record, report, information, or test result relating to the requirements of this section.

(2) If the Mayor is denied access to enter, inspect and obtain samples, or inspect and copy records pursuant to paragraph (1) of this subsection, the Mayor may apply to the Superior Court for the District of Columbia for a search warrant.

(Feb. 15, 2006, D.C. Law 16-51, § 181; as added Mar. 25, 2009, D.C. Law 17-371, § 2(c), 56 DCR 1353; Sept. 26, 2012, D.C. Law 19-171, § 149(b), 59 DCR 6190; Mar. 29, 2019, D.C. Law 22-278, § 2, 66 DCR 1727.)

Effect of Amendments

The 2012 amendment by D.C. Law 19-171 substituted “permit to be used on property” for “permit to be used, on property” in (b).

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Drummer, Bob

From: Power, Lillian (DOEE) <lillian.power@dc.gov>
Sent: Thursday, May 16, 2019 3:25 PM
To: Drummer, Bob
Subject: RE: District's High PAH Sealant Ban

Good afternoon Mr. Drummer,

Thank you for reaching out about DC's coal tar ban amendments. As of March 29, 2019, the law has been officially amended to include steam cracked asphalt products and any other products that contain PAH concentrations higher than .1% by weight to the list of banned pavement sealant products. You can find the updates [here](#).

We are currently working with the Chesapeake Bay Trust and the Chesapeake Bay Program to award a contractor responsible for developing a standardized protocol for testing pavement sealants for PAHs. The contractor will also be responsible for developing a list of low-PAH products (below the .1% limit). Our goal is to have the protocol finalized by the end of 2019 and a draft list prepared by Spring 2020.

Though the new rules are technically effective, we intend to delay active enforcement of the expanded ban until Summer 2020, to allow time to develop a list of compliant products and for DOEE to complete an extensive education and outreach campaign to the regulated community.

I reviewed the bill language attached to your email, and it looks very similar to the District's, which I think is ideal for ensuring consistent requirements across our respective jurisdictions. One minor issue I'd like to flag though, is that MoCo's bill seems to require your regulatory agency to create a comprehensive list of every available low-PAH sealant. This is a daunting, if not impossible task, and could be a complication for implementation. DC's amendments emphasize that the Mayor may create a list of compliant low-PAH products, but does not require that list to be comprehensive, because we can't guarantee that we will be able to keep up with every new product on the market as they are released. I hope that makes sense, but I'm happy to answer any other questions or to schedule a call if that would be helpful.

Best,

Lillian Power
Environmental Protection Specialist
Watershed Protection Division
Department of Energy & Environment
Government of the District of Columbia
1200 First Street NE, 5th Floor
Washington, DC 20002
Desk: (202)671-0080
Cell: (202)768-0071
Web: doee.dc.gov

From: Drummer, Bob [mailto:Bob.Drummer@montgomerycountymd.gov]
Sent: Thursday, May 16, 2019 2:29 PM
To: Power, Lillian (DOEE)
Subject: District's High PAH Sealant Ban

CAUTION: This email originated from outside of the DC Government. Do not click on links or open attachments unless you recognize the sender and know that the content is safe. If you believe that this email is suspicious, please forward to phishing@dc.gov for additional analysis by OCTO Security Operations Center (SOC).

Ms. Power,

I reviewed the attached DOEE update to COG on the District's potential ban on high PAH sealants. Montgomery County has legislation pending that would amend our current ban on coal tar sealants to include certain high PAH sealants. A copy of the pending Bill is attached. Can you update me on the District's progress on a similar ban?

*Robert H. Drummer
Senior Legislative Attorney
Montgomery County Council
100 Maryland Ave
Rockville, MD 20850
240-777-7895*



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Marc Elrich
County Executive

June 26, 2019

TO: Craig Rice, Councilmember

FROM: Marc Elrich, County Executive

SUBJECT: Bill 8-19, High PAH Sealants

Thank you for introducing the subject bill to further regulate the use of pavement sealants containing polycyclic aromatic hydrocarbons (PAHs), which have been associated with adverse health effects in humans and animals. The bill would limit the use of pavement sealants containing steam-cracked petroleum residues or similar substances, or any products with a PAH level, by weight, of greater than 0.1%. Because other materials that do not contain high PAH levels are available, the adoption of this bill will not limit the ability of property owners to protect their property through the application of pavement sealants.

I have attached some suggested revisions to the proposed bill. These changes are suggested for several reasons. First, they clarify the definition of terms used in the bill. Second, they account for the fact that a testing protocol for determining the PAH level in a particular pavement sealant is not currently available. The District of Columbia Department of Energy & Environment is working to develop such a protocol. Once this protocol is available, which is currently expected to occur in the first half of 2020, the County can utilize this protocol to develop a list of acceptable pavement sealants for use and sale in the County as required by the bill.

Should you have any questions about these suggested revisions, please contact Stan Edwards in the Department of Environmental Protection at stan.edwards@montgomerycountymd.gov or 240-777-7748.

Attachments:

Bill 8-19 (Version 7) - Proposed CE Edits 06-24-19.docx

Bill 8-19 (Version 7) - Proposed CE Edits 06-24-19 - Clean Version.docx

Bill with Executive's Proposed Changes

Bill No. 8-19
Concerning: Erosion, Sediment Control
and Stormwater Management – High-
PAH Pavement Sealants
Revised: 06/25/2019 Draft No. 8
Introduced: March 19, 2019
Expires: September 19, 2020
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Rice
Co-Sponsor Council President Navarro

AN ACT to:

- (1) prohibit the use of certain high-PAH pavement sealants in the County;
- (2) require the Director of the Department of Environmental Protection to establish a [[system to approve certain low-PAH]] list of pavement sealants acceptable for use in the County; and
- (3) generally amend the laws governing water quality.

By amending

Montgomery County Code
Chapter 19, Erosion, Sediment Control and Storm Water Management
Section 19-68

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. Section 19-68 is amended as follows:**

2 **19-68. [Coal tar pavement] High-PAH pavement sealant products.**

3 (a) *Definitions.* As used in this Section:

4 Coal tar pavement ~~[[product]]~~ sealant means a ~~[[material]]~~ pavement
5 sealant that contains coal tar, coal tar pitch, coal tar pitch volatiles, RT-
6 12, refined tar, or a variation of those substances assigned the chemical
7 abstracts service ("CAS") number 65996-92-1, 65996-93-2, 65996-89-6,
8 or 8007-45-2 ~~[[and is intended to cover an asphalt or concrete surface,~~
9 including a driveway or parking area]].

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

12 High-PAH pavement sealant means a ~~[[surface-applied product]]~~
13 pavement sealant containing;

14 (1) steam-cracked petroleum residues, steam-cracked asphalt,
15 pyrolysis fuel oil, heavy fuel oil, ethylene tar, ethylene cracker
16 residue, or a variation of those substances assigned the CAS
17 number 64742-90-1 or 69013-21-4; or

18 (2) ~~[[substances containing]]~~ more than 0.1% (1000 ppm) polycyclic
19 aromatic hydrocarbons, by weight, using a standard testing
20 protocol for determining the PAH content of a pavement sealant
21 approved by the Director.

22 PAH means Polycyclic Aromatic Hydrocarbons.

23 Pavement sealant means a material intended to be surface applied to an
24 asphalt or concrete surface, including a driveway or parking lot, to protect
25 or seal the asphalt or concrete. Pavement sealant does not include
26 material applied to a roof.

(b) *Use of ~~[[a]] coal tar ~~[[pavement]]~~ ~~[[products]]~~ ~~[[product]]~~ or high-PAH ~~[[sealant]]~~ pavement sealants prohibited.~~*

(1) A person must not use a coal tar or high-PAH pavement sealant in the County[[:

(A) a coal tar pavement product [in the County];

(B) a high-PAH sealant; or

(C) a sealant that has not been approved by the Director]].

(2) Both the property owner and the applicator have violated this Section if a coal tar or high-PAH pavement sealant ~~[[product, a high-PAH sealant, or any unapproved sealant]]~~ is applied ~~[[to an asphalt or concrete surface on [the] property]]~~ in the County.

(c) *Sale.* A person must not sell or offer for sale a coal tar ~~[[pavement product,]]~~ or a high-PAH pavement sealant~~[[, or an unapproved sealant]]~~ in the County.

(d) *Enforcement.* The Director must:

(1) publish a list of ~~[[alternative products]]~~ pavement sealants acceptable for use on asphalt and concrete in the County that ~~[[do not contain]]~~ are not coal tar or high-PAH pavement sealants ~~[[more than 0.1% PAH]]~~; [and]

(2) ~~[[not approve a coal tar pavement product or a high-PAH sealant;~~

(3) establish a system to approve sealants that contain less than 0.1% PAH for use in the County]] ensure all pavement sealants on the list in paragraph (1) have been tested using a standard testing protocol for determining the PAH content of a pavement sealant approved by the Director; and

~~[[4]]~~ (3) generally enforce this Section.

Sec. 2. Effective date.

54

The amendments in Section 1 take effect on July 1, 2020.