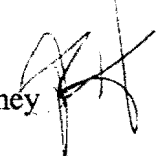


**MEMORANDUM**

October 2, 2015

TO: County Council

FROM: Josh Hamlin, Legislative Attorney 

SUBJECT: **Action:** Bill 52-14, Pesticides – Notice Requirements – Non-Essential Pesticides – Prohibitions

**Transportation, Infrastructure, Energy and Environment Committee recommendation (2-1, Councilmember Hucker opposed): Enact Bill 52-14 with amendments**

Bill 52-14, Pesticides – Notice Requirements – Non-Essential Pesticides – Prohibitions, sponsored by then Council Vice President Leventhal and Councilmembers Elrich, Riemer, Floreen, and Navarro was introduced on October 28. Public hearing on the Bill began on January 15, and was continued on February 12. The Transportation, Infrastructure, Energy and Environment (T&E) Committee has held worksessions on March 16, March 30, June 15 and September 17.

As introduced, Bill 52-14 would:

- (1) require posting of notice for certain lawn applications of pesticide;
- (2) prohibit the use of certain pesticides on lawns;
- (3) prohibit the use of certain pesticides on certain County-owned property;
- (4) require the County to adopt an integrated pest management program for certain County-owned property; and
- (5) generally amend County law regarding pesticides.

**Background**

***Bill 52-14***

As introduced, Bill 52-14 included provisions related to the application of pesticides on County-owned and private property, and requires the County to adopt an Integrated Pest Management (IPM) plan. IPM is a method of pest control which minimizes the use of chemical pesticides by focusing on pest identification, monitoring and assessing pest numbers and damage, and using a combination of biological, cultural, physical/mechanical and, when necessary, chemical management tools.<sup>1</sup> Council President Leventhal explained the purpose of this Bill in his October 22, 2014 memorandum to Councilmembers (See ©14-17).<sup>2</sup>

<sup>1</sup> <http://www.epa.gov/opp00001/factsheets/ipm.htm>

<sup>2</sup> For additional background on this Committee's recent consideration of pesticides and pesticide use in Montgomery County, see the packet for the September 9, 2013 discussion at:

As introduced, Bill 52-14 would have:

- 1) Required the posting of notice when a property owner applies a pesticide to an area of lawn more than 100 square feet, consistent with the notice requirements for when a landscaping business treats a lawn with a pesticide;
- 2) Required the Executive to designate a list of “non-essential” pesticides including:
  - all pesticides classified as “Carcinogenic to Humans” or “Likely to Be Carcinogenic to Humans” by the U.S. EPA;
  - all pesticides classified by the U.S. EPA as “Restricted Use Products;”
  - all pesticides classified as “Class 9” pesticides by the Ontario, Canada, Ministry of the Environment;
  - all pesticides classified as “Category 1 Endocrine Disruptors” by the European Commission; and
  - any other pesticides which the Executive determines are not critical to pest management in the County.
- 3) Generally prohibited the application of non-essential pesticides to lawns, with exceptions for noxious weed and invasive species control, agriculture and gardens, and golf courses;
- 4) Required the Executive to conduct a public outreach and education campaign before and during the implementation of the Bill;
- 5) Generally prohibited the application of non-essential and neonicotinoid pesticides to County-owned property; and
- 6) Required the County to adopt an Integrated Pest Management plan.

As introduced, Bill 52-14 had an expiration date of January 1, 2019.

### **Public Hearings and Correspondence**

The Committee held public hearings on the Bill on January 15 and February 12, with 38 people testifying in January, and 30 speaking in February. In addition to the public hearing testimony, the Bill has been, and continues to be, the subject of a huge amount of written correspondence. The testimony and correspondence have coalesced around several recurring themes, which frame major issues for the Committee to examine as it considers the Bill. These themes include: (1) existing regulation of pesticides, particularly at the State and federal level is, or is not, sufficient; (2) chemical pesticides pose, or do not pose, serious threats to human health; (3) pesticides threaten, or do not threaten, the health of pollinators and the Chesapeake Bay watershed; and (4) it is, or is not, possible or feasible to maintain lawns and playing fields without the use of chemical pesticides.

As mentioned above, the Council has received a large amount of correspondence from constituents, as well as concerned individuals outside of the County. An analysis of correspondence received as of September 11 has indicated that approximately 1699 unique individual County residents have submitted correspondence in support of Bill 52-14, and 663 have

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[http://www6.montgomerycountymd.gov/content/council/pdf/agenda/cm/2013/130909/20130909\\_TE3.pdf](http://www6.montgomerycountymd.gov/content/council/pdf/agenda/cm/2013/130909/20130909_TE3.pdf). Video of the discussion is available, beginning at 22:10, at:  
[http://montgomerycountymd.granicus.com/MediaPlayer.php?view\\_id=6&clip\\_id=5704](http://montgomerycountymd.granicus.com/MediaPlayer.php?view_id=6&clip_id=5704).

submitted correspondence in opposition. In addition to individual correspondence, the Council has received a number of petitions related to Bill 52-14, with 3011 County residents signing petitions in support of the Bill and 157 in opposition.

Since the September 17 worksession, in addition to the continued stream of correspondence from residents and businesses, the Council received correspondence from the Agricultural Preservation Advisory Board (©35-39), the Agricultural Advisory Committee (©40), and the Montgomery Soil Conservation District (©41-44), all stating opposition to the Bill both as introduced and as amended. Also, the Council received a letter from Eric Velasquez, partner and owner of MegaMart, stating opposition to the Bill in part because many MegaMart customers work in the landscaping and lawn care business (©45). Garden expert Mike McGrath, on the other hand, has expressed strong support for the Bill, saying that chemical pesticides are unnecessary for lawn care purposes.<sup>3</sup>

### **March 16 Worksession**

The T&E Committee held a worksession on Bill 52-14 on March 16. At that worksession, the Committee heard from regulators working at the County, State, and federal levels of government.<sup>4</sup> Representatives of the County's Department of Environmental Protection (the Department), the Maryland Department of Agriculture (MDA), and the U.S. Environmental Protection Agency (EPA) described the roles of their respective agencies in the regulation of pesticides in the County. A second panel at the March 16 worksession consisted of physicians with expertise in environmental health and toxicology, and an environmental chemist specializing in environmental and human risk assessment, with a focus on pesticides. The physicians, Dr. Jerome Paulson and Dr. Lorne Garrettson, informed the Committee of their views of the human health risks, particularly to children, of exposure to chemical pesticides. The chemist, Dr. Stuart Cohen, asserted that the testing protocols used by the EPA are sufficient to determine that registered pesticides are generally safe when used as directed.

### **March 30 Worksession**

In its March 30 worksession, the Committee heard from experts in environmental impacts of pesticides and turf management, as well as public- and private-sector landscaping professionals.<sup>5</sup> Two faculty members at the University of Maryland, Dr. Dennis vanEngelsdorp, an Assistant Professor of Entomology and Dr. Mark Carroll, an Assistant Professor of Plant Science and Landscape Architecture, spoke about pesticides and pollinator health and attenuation of pesticides applied to turf, respectively. Dr. Carroll directed the Committee to the Maryland Fertilizer Law, and its implications for compost application. The Committee also heard from representatives of the County Parks Department and the Director of Grounds and Environmental Management at the Maryland Soccerplex, about their current turf management practices. Chip Osborne, an expert in natural turf management, described how turf can be maintained without the use of chemical pesticides. Finally, the Committee heard from four landscaping professionals

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<sup>3</sup> See interview at <https://youtu.be/hzhxNkQo2YY>

<sup>4</sup> The packet for the March 16 worksession can be accessed at:  
[http://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2015/150316/20150316\\_TE1.pdf](http://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2015/150316/20150316_TE1.pdf)

<sup>5</sup> The packet for the March 30 worksession can be accessed at:  
[http://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2015/150330/20150330\\_TE1.pdf](http://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2015/150330/20150330_TE1.pdf)

working in the County, using both traditional and chemical pesticide-free methods, about their practices and results.

### **June 15 Worksession**

On June 15, the Committee held its third worksession on Bill 52-14.<sup>6</sup> The June 15 worksession was structured to address issues that had been raised in the two prior worksessions: (1) is the County preempted under State law from implementing a ban on the lawn application of certain pesticides?; (2) what are the implications of the State's fertilizer law to pesticide-free lawn care?; (3) what are the specific criteria which lead to a particular pesticide's designation as "non-essential?; and (4) how are other jurisdictions working to reduce or minimize pesticide use? The Committee discussed the question of preemption, considering two letters from Assistant Attorney General Kathryn M. Rowe to members of the General Assembly which concluded that "to the extent that the bill bars application of a non-essential pesticide to a lawn, subject to certain exceptions, it is likely to be found to be preempted." Council staff offered a contrary view, that a very strong argument against preemption could be made.<sup>7</sup>

Kelly Love, Urban Nutrient Management Specialist with the Maryland Department of Agriculture discussed the implications of the State fertilizer law as it pertains to the application of compost, a key component in pesticide-free lawn care. Zack Kline, of A.I.R. Lawn Care, and Chip Osborne joined the Committee again to describe how they practice turf management without non-essential pesticides while in compliance with the law, and Jody Fetzer of Montgomery Parks offered the Parks Department's perspective. Environmental Chemist Paul Chrostowski spoke to the Committee about the means by which pesticides subject to any use restriction could be identified, and recommended a selection process that linked any restriction to specific policy objectives. Finally, the Committee heard about approaches taken to reduce pesticide use in jurisdictions that are preempted from imposing restrictions on private property.

### **Issues/Committee recommendations**

In its September 17 worksession, the T&E Committee considered a proposal offered by Councilmember Berliner. In a memorandum dated June 16, 2015, Councilmember Berliner directed staff to draft a series of amendments that would not ban pesticide use on private property, but would "provide alternative means by which we can address the serious health concerns raised by pesticide exposure" (©46-48). In the memorandum, Councilmember Berliner cited a number of reasons why he believed that an alternative to a ban is advisable, including: the County's obligation to lead on the issue, through education and practice on County property; concern about the possibility of preemption; lack of "definitive" links to specific health risks; challenges in enforcing a ban; and uncertainty as to the costs and efficacy of organic lawn care in the County.

Councilmember Berliner circulated his proposal to Councilmembers on September 9, noting that it would "represent an aggressive and proactive stance towards significantly reducing pesticide use in the County (See memorandum and fact sheet at ©49-51). The Committee

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<sup>6</sup> The packet for the June 15 worksession can be accessed at:

[http://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2015/150615/20150615\\_TE3.pdf](http://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2015/150615/20150615_TE3.pdf)

<sup>7</sup> For a full discussion of the preemption question, see page 5 and © 26-52 of the packet for the June 15 worksession: [http://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2015/150615/20150615\\_TE3.pdf](http://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2015/150615/20150615_TE3.pdf)

considered an “alternative” draft of Bill 52-14, reflecting the changes proposed by Councilmember Berliner. While the proposal did not include a prohibition on the application of pesticides on private property, it did include a number of measures aimed at reducing the use of pesticides on both public and private property. The Berliner proposal also retained some parts of Bill 52-14 as introduced with little or no change.<sup>8</sup>

### ***The T&E Committee recommended Bill***

The T&E Committee recommended (2-1, Councilmember Hucker opposed) an amended Bill (©1-21) that reflects most aspects of the Berliner proposal, with a few key changes. The Committee-recommended Bill *does not* include the ban on private lawns and on playing fields, but would prohibit the use of certain pesticides on playgrounds and in and on the grounds of children’s facilities such as childcare centers. It also would require the Department to develop a pesticide use reduction plan, with a goal of reducing Countywide use of certain pesticides by 50% by 2018.

The Committee-recommended Bill also incorporates Councilmember Berliner’s proposed requirements that common ownership communities get unit owner approval before applying these pesticides to common elements and permit unit owners to opt out of applications to individual units. The amended Bill would also require the Parks Department to take certain steps to reduce pesticide use, including a playing field pilot, a 25 foot buffer area around streams and waterways, and an annual reporting requirement timed to coincide with Parks’ proposed operating budget. Finally, the Committee amended the Bill to change the method for determining which pesticides were subject to restrictions and approval requirements to be more directly linked to carcinogenicity and toxicity.

The T&E Committee-recommended Bill includes the introduced Bill’s provisions requiring:

- the designation of certain pesticides as “non-essential pesticides,” although the definition of term “non-essential pesticides” was amended by the Committee (3-0) to be that of “restricted lawn care pesticides.”
- that notice be posted for private lawn applications to areas of more than 100 square feet;
- an outreach and education campaign, with the addition of a survey of pesticide use in the County; and
- the use of integrated pest management on County property.

As mentioned above, the Committee-recommended Bill removed the introduced Bill’s restriction on certain pesticide applications to private lawns, and playing fields. In addition to this change, the Bill includes the following changes to the Bill as introduced.

#### **1. Notice**

The Committee adopted the Berliner proposal’s provisions that would increase the information required as part of the notice provided by custom applicators to new customers. The

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<sup>8</sup> The Berliner proposal is discussed at length in the packet of the September 17 worksession, which can be accessed at: [http://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2015/150917/20150917\\_TE1.pdf](http://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2015/150917/20150917_TE1.pdf)

Bill would now require the notice to include all potential health risks associated with the pesticide identified by the EPA and the World Health Organization (©9, lines 166-168). Also, a custom applicator would now be required to provide certain information to a new customer about the existence of alternative pest control methods and the practice of IPM (©10, lines 197-204). Finally, a custom applicator would be required to obtain written acknowledgement from the customer of the receipt of the required disclosures, and direction whether or not to use IPM practices (©10-11, lines 205-213).

## **2. Children's facilities and playgrounds**

The Berliner proposal would have generally required more exhaustive, advance notice of pesticide applications to playgrounds and children's facilities. The Committee approved the proposal's definitions of "children's facility" (©3, lines 13-17) and "playground" (©5, lines 68-71), but voted (3-0) to amend the Bill to generally prohibit the application of "restricted lawn care pesticides" to playgrounds and children's facilities, with certain exceptions (©12-14, lines 257-293).

## **3. Countywide pesticide use reduction plan**

The Committee approved Councilmember Berliner's proposal to require the Director of the Department of Environmental Protection to develop a Countywide restricted lawn care pesticide use reduction plan (©12, lines 242-256). The pesticide use reduction plan would consist of: (1) a baseline estimate of non-essential pesticide use in the County; and (2) a goal of reducing the non-agricultural use of non-essential pesticides in the County by 50% by 2018. If the goal is not achieved, the Director would be required to implement additional measures to further reduce the use of restricted lawn care pesticides.

## **4. Common ownership communities**

The Committee also approved Councilmember Berliner's proposals to give residents in common ownership communities greater control over the application of restricted lawn care pesticides to their individual units and to common elements within their communities (©14-15, lines 312-343). As recommended by the Committee, Bill 52-14 now includes an opt-out provision for unit owners prior to the application of restricted lawn care pesticides to their individual units (©14-15, lines 316-322). The Bill would also require prior approval, by a majority of votes cast in person or by proxy, of the application of a non-essential pesticide to a common element, and would require a community association to post the notice currently required of custom applicators (©15, lines 323-343).

## **5. County-owned property**

Councilmember Berliner proposed, and the Committee approved, a few amendments to Bill 52-14 with regard to the use of non-essential pesticides on County-owned property (©16-18, lines 344-406). As recommended by the Committee, the Bill would retain the requirement that the Department adopt an IPM plan for County property, but would delete the requirement that the

plan be adopted by regulation (©17, lines 385-386). A general prohibition on the use of restricted lawn care pesticides and neonicotinoids on County owned property would remain, but would be limited to “lawns.”<sup>9</sup> This change would be consistent with the intent of the original Bill, and would avoid prohibiting the use of restricted lawn care pesticides for interior and other non-cosmetic pest control.

The amended Bill also limits the prohibition to County employees and County contractors, to avoid entanglements with outside entities, such as common ownership communities that may have agreements to maintain certain county owned property, and protect individuals that may apply pesticide to County owned property under the mistaken assumption that the individual is the owner of the property. The amended Bill incorporates the exceptions in Bill 52-14 as introduced (©16, lines 361-369), but adds an exception “for the maintenance of medians and islands in County rights-of-way” (©17, lines 370-371). Finally, the amended Bill excludes from the prohibition “County-owned property that the Parks Department operates or manages for the County.” Such property would be governed by the provisions related to the use of pesticides in County parks, discussed below.

## **6. County parks**

The Committee-recommended Bill also includes a number of provisions proposed by Councilmember Berliner to decrease the use of restricted lawn care pesticides and neonicotinoids in County parks. The provisions would require the Parks Department, subject to appropriation, to take certain steps to achieve a stated policy to phase out the “use of the most hazardous pesticides and reduce overall pesticide use while preserving landscape assets, maintaining functionality of playing fields, and protecting the health and safety of the public and County employees” (©18, lines 407-415). The steps to be taken by the Parks department would include development and implementation of a “pesticide-free parks” program and pesticide usage protocols, and annual reporting to the County Executive and County Council on pesticide usage and the status of the pesticide-free parks program. In a memorandum to Councilmember Berliner dated September 15, Parks Director Michael Riley stated his support for these steps, and offered a detailed proposal describing how the Parks Department would achieve them (© 52-56).

### *Pesticide-free parks*

Under the amended Bill, the Parks Department would be required to implement a pesticide-free parks program, consisting of at least three specific requirements (©18-19, lines 416-428). First, certain parks must be maintained entirely without the use of restricted lawn care pesticides or neonicotinoids. The program must also include a program for reducing the use of restricted lawn care pesticides and neonicotinoids on playing fields, including a pilot program consisting of at least five playing fields maintained without the use of any restricted lawn care pesticides or neonicotinoids. Under the program, all other playing fields must be maintained using an IPM

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<sup>9</sup> The Committee-recommended Bill also includes an amendment to the definition of “lawn” to exclude playing fields; the implications of this change are addressed in the amended Bill’s provisions related to County parks.

program.<sup>10</sup> Finally, the program would be required to include a public communication campaign to inform the public of the program's existence and progress.

### *Pesticide usage protocols*

The Parks Department would also be required to develop pesticide usage protocols that would not permit the use of restricted lawn care pesticides or neonicotinoids on parkland within 25 feet of streams in the County (©19, lines 433-434). These protocols would also not permit the application of restricted lawn care pesticides or neonicotinoids to playgrounds in County parks (©19, lines 435-436), and would require, except in emergencies, that the Parks Department post advance notice of pesticide applications on its website (©19, lines 437-446). These protocols should have the effect of reducing restricted lawn care pesticide use in County parks as well as providing additional transparency as to when and why such pesticides are used.

### *Exceptions*

The Committee also approved Councilmember Berliner's proposal to allow the pesticide-free parks program and pesticide usage protocols to generally permit the use of restricted lawn care pesticides and neonicotinoids for several specific purposes (©20, lines 447-458). These purposes include the control of noxious weeds and invasive species, the control of disease vectors and stinging insects or plants, the protection of tree health, playing field renovation, and where otherwise necessary to protect human health or prevent significant economic damage.

### *Annual reporting*

The Parks Department would also have to submit an annual report to the County Executive and County Council on or before the date that its proposed annual operating budget must be submitted (©20, lines 459-471). This report would include detailed information on non-essential pesticide and neonicotinoid usage in County parks, and update the Executive and Council on the status of the pesticide-free parks program. The timing of the report would allow the County and the Parks Department to engage in dialog about the state of pesticide use in County parks, and would allow the consideration of program improvements, and any associated costs, in the context of budget discussions.

## **7. The list of restricted lawn care pesticides**

As introduced, Bill 52-14 provided that the Executive must establish by regulation a list of non-essential (now "restricted lawn care") pesticides, which are then subject to the application prohibition in the Bill. The list would be comprised of: (1) all pesticides classified as "Carcinogenic to Humans" or "Likely to Be Carcinogenic to Humans" by the U.S. Environmental Protection Agency; (2) all pesticides classified by the U.S. Environmental Protection Agency as a "Restricted Use Product"; (3) all pesticides classified as a "Class 9" pesticide by the Ontario, Canada, Ministry of the Environment; (4) all pesticides classified as a "Category 1 Endocrine

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<sup>10</sup> A necessary component of this approach to regulating pesticide use on playing fields is the amendment of the definition of "lawn" to exclude playing fields (©4, lines 42-44).



Disruptor” by the European Commission; and (5) any other pesticides which the Executive determines are not critical to pest management in the County.

At the June 15 worksession, environmental chemist Paul Chrostowski advised the Committee of the problems of relying on the Ontario and European Commission lists, and recommended the selection of pesticides to be restricted be more directly tied to the County’s public health and environmental objectives. At Council President Leventhal’s direction, staff worked with Dr. Chrostowski to draft language implementing such an approach. Under the approach prepared by staff and approved by the Committee (3-0) (©7-8, lines 106-140), the list would be directly aligned with the policy goals of reducing exposure to carcinogenic or otherwise toxic pesticides, by looking to research done by the EPA and IARC. Starting with a group of pesticides (“lawn care pesticides”) registered with the EPA and labelled pursuant to FIFRA for lawn, garden, and ornamental sites or areas, several filters are applied to generate a list that is tailored to achieve specific policy objectives.

The filters that identify pesticides on the list are EPA and IARC carcinogenicity classifications, EPA aquatic toxicity data, and EPA (and USGS, FDA, etc.) non-carcinogenic human toxicity data. Under the Bill as amended by the Committee, all EPA restricted use pesticides, and any “lawn care pesticide” that is classified by EPA or IARC<sup>11</sup> as anything other than not likely to be (or probably not) carcinogenic to humans be included on a list of restricted lawn care pesticides. This would include those pesticides for which there is insufficient evidence to determine the likelihood of carcinogenicity, consistent with the precautionary principle. In addition to these pesticides, the non-essential pesticide list would include all pesticides which are in the top 25% most toxic of pesticides evaluated by the EPA or other federal authority for systemic non-carcinogenic human toxicity, chronic fish toxicity, and chronic toxicity to aquatic invertebrates. A list generated in this way is not subject to determinations by foreign governments or institutions, but would directly reflect a desire to avoid or reduce unnecessary human exposure to, and release into the environment of, known or possible carcinogens and other highly toxic substances.

## **8. Clarifying amendments**

At the January 15 public hearing, and in subsequent correspondence, questions were raised regarding the definition of “lawn” in the Bill as it is critical to the scope of any prohibition on non-essential pesticide application. The Committee made two clarifying amendments that would improve the Bill. First, the Committee added a definition of a “garden,” which is excluded from the definition of “lawn” (©3, lines 23-24).

Questions were also raised at the public hearing as to whether trees and shrubs were included in the definition of “lawn” in the Bill. The Committee amended the definition of “lawn” at ©4, lines 38-47, to expressly exclude trees and shrubs from the definition of “lawn.”

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<sup>11</sup> EPA’s classifications are: Group A Carcinogenic to humans; Groups B1 and B2 Likely to be carcinogenic to humans; Group C Suggestive evidence of carcinogenic potential; Group D Inadequate information to assess carcinogenic potential; and Group E Not likely to be carcinogenic to humans.

IARC’s classifications are: Group 1 Carcinogenic to humans; Group 2A Probably carcinogenic to humans; Group 2B Possibly carcinogenic to humans; Group 3 Not classifiable as to its carcinogenicity to humans; and Group 4 Probably not carcinogenic to humans.

## **Proposed amendments to Bill 52-14 as recommended by the T&E Committee**

On October 2, Council President Leventhal and Councilmembers Elrich, Hucker, Riemer, and Navarro circulated a memorandum and package of amendments to Bill 52-14 in the form of a substitute bill (©57-87). The amendments would restore the restriction on the use of certain pesticides on both County-owned and private property, but would substantially alter the method of determining which pesticides are subject to the restriction. The amendments would also incorporate the majority of the Committee-recommended Bill's provisions related to County parks, but with a few significant additions. Finally, the amendments would provide for a phasing of effective dates, with provisions related to County-owned property and County parks taking effect July 1, 2016, and provisions related to private property taking effect on January 1, 2017. The memorandum includes a section-by-section description of the proposed amendments' effects on Bill 52-14. The key new components of the proposed amendments are discussed below.

### **1. The proposed new approach to identifying pesticides subject to the use restriction**

The most significant proposed amendments to the Bill relate to the restoration of use restrictions that apply to both County-owned and private property. Preliminarily, it is worth noting that the proposed amendments also include a new section setting forth legislative findings and purpose. This new section sets forth the Council's reasons for action, and recognize the value of pesticides when used to protect the public health, the environment, and the food and water supply.

Since the introduction of the Bill staff has worked to try to find a method of identifying pesticides subject to any use restriction. The introduced Bill had defined sets of pesticides that would be subject to the restrictions, but relied on determinations made by the Ontario, Canada, ministry of the Environment and the European Commission. As the Committee heard from a risk assessment expert, relying on these determinations was not appropriate either because they are made in a wholly different context (Ontario's comprehensive provincial pesticide regulation) or because they are out-of-date and not necessarily relevant from a risk assessment perspective (European Commission endocrine disruptors). The Committee amended the Bill to include a more directly risk-based determination process (discussed above), but at the September 17 worksession and since, the Department has expressed continued concerns over how it would administer the selection process. It is also virtually impossible for a consumer or business to predict or understand what pesticides might appear on the list.

The proposed amendments would greatly simplify the process, starting with the general proposition that pesticides registered with the EPA and labelled pursuant to FIFRA for use on lawn, garden, and ornamental sites or areas should not be used for cosmetic purposes on lawns, playgrounds, mulched recreation areas,<sup>12</sup> or children's facilities.<sup>13</sup> While "cosmetic purposes" is not defined in the Bill in a positive sense, it is effectively defined by the proposed exceptions to any use restrictions (©76-77, lines 361-376). These exceptions, which are the same for both

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<sup>12</sup> "Mulched recreation area" is defined in the proposed amendments to mean "an area of land covered with natural or synthetic mulch or wood chips that is not a playground, but is open to the public for picnic or other recreation use."

<sup>13</sup> Both the longstanding Connecticut ban on the use of pesticides on athletic fields at public and private schools grades pre-K through 8, and the New Jersey bill which has been considered in recent years, use this categorization as the definition of the pesticides subject to use restrictions.

County-owned and private property, include use of pesticides to: (1) control noxious weeds; (2) control invasive species listed in a regulation adopted under Subsection 33B-5(c); (3) control disease vectors; (4) control biting or stinging insects or stinging plants; (5) control organisms that threaten the health of trees or shrubs; (6) maintain property as part of efforts by a public utility to comply with applicable vegetation management provisions of any federal, state, or local law or regulation; (7) control indoor pests, if applied around or near the foundation of a building; (8) control pests while engaged in agriculture; and (9) control a pest outbreak that poses an imminent threat to human health or prevent significant economic damage if a registered pesticide is not used.

In addition to the above use-specific exceptions, under the proposed amendments “listed pesticides” defined under the Bill would also be expressly permitted for any use without restriction. “Listed pesticides” would be defined as “(1) a pesticide, the active ingredients of which are recommended by the National Organic Standards Board<sup>14</sup> pursuant to 7 U.S.C. § 6518, as amended, and published as the National List at 7 C.F.R. §§ 205.601 and 205.602 (see ©88-99); or (2) a pesticide designated a “minimum risk pesticide”<sup>15</sup> under FIFRA § 25(b) and listed in 40 C.F.R. § 152.25(f) (see ©100-103).

By narrowly restricting use of registered pesticides other than listed pesticides for specific cosmetic purposes, the amendments seek to balance the need for ease of administration and clarity for consumers and businesses with the desire to minimize risks associated with pesticide exposure. The Department has indicated that this proposed approach would be acceptable from an administrative standpoint.

## **2. Additional provisions related to County parks**

The proposed amendments largely incorporate the T&E Committee’s treatment of County parks and playing fields. The amendments do add a requirement that the Parks Department develop a *plan* for transitioning to the maintenance of all playing fields without registered pesticides by 2020 (©85, lines 582-584). This plan is expected to evolve as the playing field pilot program<sup>16</sup> progresses, and a clearer picture emerges as to both the fiscal and functional feasibility of the transition. It is important to note that the amendment requires a plan, but does not set a deadline, *per se*. A related addition in the proposed amendments is the inclusion of a requirement that the playing field pilot be conducted in consultation with an expert in organic turf management, with experience in successful transitions from conventional to organic turf management (©84, lines 574-577). The Parks Department has already stated the pilot would use an outside consultant, but this addition is intended to ensure that the consultant is experienced in the specific field.

The proposed amendments also add a requirement that the advance notice of registered pesticide applications, required to be on a Parks Department website in the current Bill, also be posted in the area of the application, and be in place for at least 48 hours after the application. Also, the

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<sup>14</sup> Information about the NOSB’s process can be accessed here: <http://www.nal.usda.gov/afsic/pubs/ofp/ofp.shtml>

<sup>15</sup> Information about EPA’s minimum risk pesticide determination process can be accessed here: <http://www2.epa.gov/minimum-risk-pesticides/minimum-risk-pesticide-definition-and-product-confirmation>

<sup>16</sup> In a letter to Council President Leventhal, dated October 1, 2015, Parks Director Riley indicated that the Parks Department “is amenable to including one regional/recreational field in the athletic field pilot program.” The Parks Department had previously said that the pilot program would consist of five local fields. See ©104.

amendments would add certain open data requirements to information related to the Parks Department's use of pesticides (©86, lines 609-612, and ©87, lines 640-642).

### 3. Effective dates

The amendments propose phased effective dates, with the County taking the first steps. Under the proposed amendments, provisions applicable to County-owned property – those restricting the cosmetic use of pesticides on certain County-owned property and generally prohibiting the use of neonicotinoid pesticides on County-owned property – are effective on July 1, 2016. The provisions of the Bill requiring the Parks Department to take the steps described above to reduce pesticide use would also take effect on July 1, 2016. The Bill's cosmetic use restrictions applicable to private property would not take effect until January 1, 2017. This phased approach should allow time for training of landscape professionals in methods of lawn care for cosmetic purposes allowed under the Bill, and should allow the outreach and education campaign, already provided for in the Bill, to be effective.

The proposed amendments would expand the outreach and education campaign to include clear information about what pesticides are allowed and best practices for organic and pesticide-free lawn care (©79, lines 427-435). The Councilmembers supporting the amendments also noted that the nonprofit Beyond Pesticides has indicated that it “is committed to underwriting the cost of training both county staff and landscapers, commercial operators, and homeowners, and provide ongoing technical assistance in evaluating soil to make management decisions” (©105-106). This approach should increase the likelihood of a successful transition to healthy lawns in the County using fewer toxic chemicals.

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Bill No. 52-14  
Concerning: Pesticides – Notice  
Requirements – [[Non-essential  
Pesticides – Prohibitions]] Restricted  
Lawn Care Pesticides  
Revised: September 17, 2015  
Draft No. \_\_\_\_\_  
Introduced: October 28, 2014  
Expires: April 28, 2016  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: January 1, 2019  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council Vice President Leventhal and Councilmembers Elrich, Riemer, Floreen, and Navarro

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**AN ACT to:**

- (1) require posting of notice for certain ~~[[lawn]]~~ applications of pesticide;
- (2) ~~[[prohibit the use of certain pesticides on lawns]]~~ require a Countywide pesticide use reduction plan;
- (3) require common ownership communities to take certain steps before the application of certain pesticides;
- (4) prohibit the use of certain pesticides on playgrounds, children's facilities, and certain County-owned property;
- ~~[[(4)]]~~(5) require the County to adopt an integrated pest management program for certain County-owned property; ~~[[and]]~~
- ~~[[(5)]]~~(6) require the Parks Department to take certain steps to reduce the use of certain pesticides; and
- (7) 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, 4, and 5  
Sections 33B-8, 33B-9, 33B-10, 33B-11, 33B-12, ~~[[and]]~~ 33B-13, 33B-14, 33B-15, 33B-16  
and 33B-17

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

Sec. 1. Sections 33B-1, 33B-2, 33B-4, 33B-5, 33B-6 and 33B-7 are amended, and Sections 33B-8, 33B-9, 33B-10, 33B-11, 33B-12, [[and]] 33B-13, 33B-14, 33B-15, 33B-16 and 33B-17 are added as follows:

**ARTICLE 1. General Provisions**

**33B-1. Definitions.**

In this [chapter] Chapter:

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

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

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.

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

Integrated pest management means a process for managing pests that:

- (1) uses monitoring to determine pest injury levels;

(2) combines biological, cultural, mechanical, physical, and chemical tools and other management practices to control pests in a safe, cost effective, and environmentally sound manner that contributes to the protection of public health and sustainability;

(3) uses knowledge about pests, such as infestations, thresholds, life histories, environmental requirements, and natural control of pests; and

(4) uses non-chemical pest-control methods and the careful use of least-toxic chemical methods when non-chemical methods have been exhausted or are not feasible.

Larvicide means a pesticide designed to kill larval pests.

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

(1) [Mostly] mostly covered by grass, other similar herbaceous plants, shrubs, or trees; and

(2) [Kept] kept trim by mowing or cutting.

[[Lawn includes an athletic playing field other than a golf course.]] Lawn does not include a:

(1) playing field;

(2) golf course; [[or]]

(3) garden; or

(4) tree or shrub..

Lawn care pesticide means a pesticide registered by the United States Environmental Protection Agency and labeled pursuant to the Federal Insecticide, Fungicide and Rodenticide Act for use in lawn, garden and ornamental sites or areas.



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

[[Non-essential pesticide means a pesticide designated as a non-essential pesticide under Section 33B-4.]]

*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.

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

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

- (1) applying a pesticide for the purpose of engaging in agriculture;
- (2) applying a pesticide around or near the foundation of a building for purpose of indoor pest control;
- (3) applying a pesticide to a golf course or turf farm.

Restricted lawn care pesticide means a pesticide designated as a restricted lawn care pesticide under Section 33B-4.

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

Waterbody means waters located within the County that are:

(1) subject to the ebb and flow of the tide; or

(2) free flowing, unconfined, and above-ground rivers, streams or creeks.

**[33B-4.] 33B-2. 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] notice signs and supporting information that are approved by the [department] Department; and

(b) [The] the product label or other information that the federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) [, 7 U.S.C. 136 et seq.,] requires for sale of the pesticide.

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

**[33B-5] 33B-3. Storage and handling of pesticides.**

\* \* \*

**[33B-6] 33B-4. 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] Section the minimum size or quantity of pesticide subject to [section 33B-4] Section 33B-2.

(c) The Executive must include in the regulations adopted under this Section a list of ~~[[non-essential]]~~ restricted lawn care pesticides. The list of ~~[[non-essential]]~~ restricted lawn care pesticides must be based on an evaluation of all lawn care pesticides and must include:

(1) [[all pesticides]] each pesticide classified ~~[[as “Carcinogenic to Humans” or “Likely to Be Carcinogenic to Humans”]]~~ by the U.S. Environmental Protection Agency as:

(A) “carcinogenic to humans” (Group A);

(B) “likely to be carcinogenic to humans” (Groups B1 and B2);

(C) “suggestive evidence of carcinogenic potential” (Group C); or

(D) inadequate information to assess carcinogenic potential” (Group D);

(2) [[all pesticides]] each pesticide classified by the U.S. Environmental Protection Agency as a “Restricted Use Product”;

(3) [[all pesticides classified as a “Class 9” pesticide by the Ontario, Canada, Ministry of the Environment]] each pesticide classified by the International Agency for Research on Cancer as:

(A) “carcinogenic to humans” (Group 1);

(B) “probably carcinogenic to humans” (Group 2A);

(C) “possibly carcinogenic to humans” (Group 2B); or

(D) “not classifiable as to its carcinogenicity to humans” (Group 3);

(4) [[all pesticides classified as a “Category 1 Endocrine Disruptor” by the European Commission]] each pesticide in the top quartile of toxicity for pesticides evaluated by the U.S. Environmental

Protection Agency or other federal government authority for systemic non-carcinogenic human toxicity; and

(5) [[any other pesticides which the Executive determines are not critical to pest management in the County]] each pesticide in the top quartile of toxicity for pesticides evaluated by the U.S. Environmental Protection Agency for:

(A) chronic toxicity to fish; and

(B) chronic toxicity to aquatic invertebrates.

(d) The Executive must include in the regulations adopted under this Section a list of invasive species that may be detrimental to the environment in the County.

(e) The Executive must review and update the lists of [[non-essential]] restricted lawn care pesticides and invasive species designated under subsections (c) and (d) by July 1 of each year.

**[33B-7] 33B-5. 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.

**ARTICLE 2. Notice Requirements.**

**[33B-2] 33B-6. Notice about pesticides to customer; acknowledgement and direction by customer.**

(a) In this [section] 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] before application, a list of:

[a.](A) [The] the trade name of each pesticide that might be used;

[b.](B) [The] the generic name of each pesticide that might be used; and

[c.](C) [Specific] specific customer safety precautions, including all potential health risks identified by the United States Environmental Protection Agency and the World Health Organization for each pesticide that might be used; and

(2) [After] after application, a list of:

[a.](A) [The] the trade name of each pesticide actually used; and

[b.](B) [The] the generic name of each pesticide actually used; and

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

(c) The [department] 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] Department under subsection (c) [of this section] must include:

(1) [Government] government agency phone numbers to call to:

[a.](A) [Make] make a consumer complaint;

[b.](B) [Receive] receive technical information on pesticides; and

- 186 [c.] (C) [Get] get assistance in the case of a medical  
 187 emergency;
- 188 (2) [A] a list of general safety precautions a customer should take  
 189 when a lawn is treated with a pesticide;
- 190 (3) [A] a statement that a custom applicator must:
- 191 [a.](A) [Be] be licensed by the Maryland Department of  
 192 Agriculture; and
- 193 [b.](B) [Follow] follow safety precautions; and
- 194 (4) [A] a statement that the customer has the right to require the  
 195 custom applicator to notify the customer before each treatment of  
 196 the lawn of the customer with a pesticide.
- 197 (e) Before applying a pesticide to a lawn, a custom applicator must:
- 198 (1) inform a new customer of:
- 199 (A) the existence of other means of pest control without the use  
 200 of restricted lawn care pesticides; and
- 201 (B) the practice of integrated pest management (IPM),  
 202 including a description of the process of IPM that is  
 203 consistent with that of the U.S. Environmental Protection  
 204 Agency; and
- 205 (2) obtain from a new customer, in writing or other electronic format  
 206 approved by the Director :
- 207 (A) acknowledgement that the customer received the  
 208 information required under this subsection and subsection  
 209 (b); and
- 210 (B) direction from the customer as to whether or not to use  
 211 IPM practices.

- (f) A custom applicator must retain a acknowledgement from a new customer obtained under subsection (e) for at least one year.

**[33B-3] 33B-7. Posting signs after application by custom applicator.**

- (a) Immediately after a custom applicator treats a lawn with a pesticide, the custom applicator must [post a sign on the lawn] place markers within or along the perimeter of the area where pesticides [[will be]] have been applied.
- (b) A [sign posted] marker required under this [section] Section must:
- (1) [Be] be clearly visible [from the principal place of access to] to persons immediately outside the perimeter of the property;
  - (2) [Be] be a size, form, and color approved by the [department] Department;
  - (3) [Be] be made of material approved by the [department] Department; [and]
  - (4) [Have] have wording with content and dimensions approved by the [department] Department[.]; and
  - (5) be in place on the day that the pesticide is applied.

**33B-8. Posting signs after application by property owner or tenant.**

- (a) A person who performs a private lawn application treating an area more than 100 square feet must place markers within or along the perimeter of the area where pesticides [[will be]] have been applied.
- (b) A marker required under this Section must:
- (1) be clearly visible to persons immediately outside the perimeter of 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; and
- (5) be in place on the day that the pesticide is applied.

**ARTICLE 3. [[Application restrictions.]] Pesticide use reduction.**

**33B-9. [[Prohibited application.]] Countywide use reduction plan.**

[[A person must not apply a non-essential pesticide to a lawn.]]

(a) The Director must by July 1, 2016 provide a report to the County Executive and County Council that outlines options for:

- (1) determining a baseline estimate of the use of restricted lawn care pesticides in the County; and
- (2) measuring changes in the use of restricted lawn care pesticides in the County over time.

(b) The Director must then develop a restricted lawn care pesticide use reduction plan, with a goal of reducing, by 2018, the use in the County of restricted lawn care pesticides other than in agriculture by at least 50% from the baseline established under subsection (a).

(c) If the reduction goal is not achieved, the Director must implement additional measures to further reduce the use of restricted lawn care pesticides.

**33B-10. [[Exceptions and exemptions]] Playgrounds and Children's Facilities.**

[[a) A person may apply a non-essential pesticide for the following purposes:

- (1) for the control of weeds as defined in Chapter 58, Weeds;
- (2) for the control of invasive species listed in a regulation adopted under Subsection 33B-4(d);
- (3) for pest control while engaged in agriculture; and
- (4) for the maintenance of a golf course.



(b) A person may apply to the Director for an exemption from the prohibition of Section 33B-9 for a non-essential pesticide. The Director may grant an exemption to apply a non-essential pesticide on property where application is prohibited under Section 33B-9 if the applicant shows that:

- (1) effective alternatives are unavailable;
- (2) granting an exemption will not violate State or federal law; and
- (3) use of the non-essential pesticide is necessary to protect human health or prevent significant economic damage.

(c) A person may apply to the Director for an emergency exemption from the prohibition in Section 33B-9 if a pest outbreak poses an imminent threat to public health or if significant economic damage would result from the inability to use a pesticide prohibited by Section 33B-9. The Director may impose specific conditions for the granting of emergency exemptions.]]

(a) Except as provided in subsection (b), a person must not apply a restricted lawn care pesticide to a playground, children's facility, or the grounds of a children's facility.

(b) A person may apply a restricted lawn care pesticide to a playground, children's facility, or the grounds of a children's facility only to:

- (1) control weeds as defined in Chapter 58, Weeds;
- (2) control invasive species listed in a regulation adopted under subsection 33B-4(d);
- (3) control disease vectors;
- (4) control biting or stinging insects or stinging plants;
- (5) control organisms that threaten the health of trees or shrubs; or

- (6) control a pest outbreak that poses an imminent threat to human health or prevent significant economic damage if a restricted lawn care pesticide is not used.

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

The Executive must implement a public outreach and education campaign before and during implementation of the provisions of this Article. This campaign should include:

- (a) informational mailers to County households;
- (b) distribution of information through County internet and web-based resources;
- (c) radio and television public service announcements;
- (d) news releases and news events;
- (e) information translated into Spanish, French, Chinese, Korean, Vietnamese, and other languages, as needed;
- (f) extensive use of County Cable Montgomery and other Public, Educational, and Government channels funded by the County; [[and]]
- (g) posters and brochures made available at County events, on Ride-On buses and through Regional Service Centers, libraries, recreation facilities, senior centers, public schools, Montgomery College, health care providers, hospitals, clinics, and other venues; and
- (h) a survey of pesticide use by County residents and custom applicators.

**ARTICLE 4. Common Ownership Communities.**

**33B-12. Definitions.**

In this article the terms association document, common element, community association, owner, and unit have the meanings attributed to them in Section 10B-8.

**33B-13. Application of pesticide to individual units.**

(a) Beginning July 1, 2016, each year, a community association must provide owners an opportunity to decline to have a restricted lawn care pesticide applied to the owner's unit.

(b) If a unit owner declines to have a restricted lawn care pesticide applied, the community association or its agent must not apply the restricted lawn care pesticide to the unit.

**33B-14. Application of pesticide to common elements.**

(a) Beginning July 1, 2016, each year, the owners in a common ownership community must approve, by a majority of votes cast, in person or by proxy, the application of a restricted lawn care pesticide to a common element during the following year.

(b) A community association may apply to the Director for an emergency exemption from the prohibition or restrictions under this Section if a pest outbreak poses an imminent threat to public health or if significant economic damage would result from the inability to use a restricted lawn care pesticide. The Director may impose specific conditions on each emergency exemption.

(c) A community association must post notice of each pesticide application to the common elements. The notice required under this subsection must consist of signs that:

- (1) are clearly visible to persons immediately outside the perimeter of the property;
- (2) are in place on the day that the pesticide is applied;
- (3) are of a size, form, and color approved by the Department;
- (3) are made of material approved by the Department; and
- (4) have wording with content and dimensions approved by the Department.

**ARTICLE [[4.]] 5. County Property and Parks**

**[[33B-12]] 33B-15. Prohibition on County-owned property.**

(a) Prohibition. Except as provided in subsection (b), a [[person]] County employee or County contractor must not apply to any lawn on property owned by the County:

(1) a [[non-essential]] restricted lawn care pesticide; or

(2) a neonicotinoid.

(b) Exceptions.

(1) A [[person]] County employee or County contractor may use any larvicide or rodenticide on a lawn on property owned by the County as a public health measure to reduce the spread of disease vectors under recommendations and guidance provided by the Centers for Disease Control and Prevention, the United States Environmental Protection Agency, or the State Department of Agriculture. Any rodenticide used must be in a tamper-proof product, unless the rodenticide is designed and registered for a specific environment inaccessible to humans and pets.

(2) A [[person]] County employee or County contractor may use a [[non-essential]] restricted lawn care pesticide or neonicotinoid on a lawn on property owned by the County for the following purposes [[set forth in Subsection 33B-10(a).]]:

(A) for the control of weeds as defined in Chapter 58, Weeds;

(B) for the control of invasive species listed in a regulation adopted under Subsection 33B-4(d);

(C) for pest control while engaged in agriculture;

(D) for the maintenance of a golf course; and

(E) for the maintenance of medians and islands in County rights-of-way.

(3) A [[person]] County employee or County contractor may use a [[non-essential]] restricted lawn care pesticide or neonicotinoid on a lawn on property owned by the County if the Director determines, after consulting the Directors of General Services and Health and Human Services, that the use of the pesticide is necessary to protect human health or prevent imminent and significant economic damage, and that no reasonable alternative is available. If a pesticide is used under this paragraph, the Director must, within 30 days after using the pesticide, report to the Council on the reasons for the use of the pesticide.

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

**[[33B-13]]33B-16. Integrated pest management on County property.**

(a) Adoption of program. The Department must adopt[[, by a method (2) regulation,]] an integrated pest management program for all property owned by the County.

(b) Requirements. Any program adopted under subsection (a) must require:

- (1) monitoring the turf or landscape;
- (2) accurate record-keeping documenting any potential pest problem;
- (3) evaluating the site for any injury caused by a pest and determining the appropriate treatment;
- (4) using a treatment that is the least damaging to the general environment and best preserves the natural ecosystem;

- (5) using a treatment that will be the most likely to produce long-term reductions in pest control requirements and is operationally feasible and cost effective in the short and long term;
- (6) using a treatment that minimizes negative impacts to non-target organisms;
- (7) using a treatment that is the least disruptive of natural controls;
- (8) using a treatment that is the least hazardous to human health; and
- (9) exhausting the list of all non-chemical and organic treatments available for the targeted pest before using any synthetic chemical treatments.

- (c) The Department must provide training in integrated pest management for each employee who is responsible for pest management.

### **33B-17. County parks.**

- (a) *Policy.* It is the policy of Montgomery County to promote environmentally sensitive landscape pest management in its parks by phasing out the use of the most hazardous pesticides and reducing overall pesticide use while preserving landscape assets, maintaining functionality of playing fields, and protecting the health and safety of the public and County employees. To carry out this policy, the Parks Department must, subject to appropriation, implement the provisions of this Section.
- (b) *Pesticide-free parks.* The Parks Department must implement a pesticide-free parks program that, at a minimum, consists of:
  - (1) the maintenance of certain parks without the use of restricted lawn care pesticides or neonicotinoids;
  - (2) a program for reducing the use of restricted lawn care pesticides and neonicotinoids on playing fields that includes:

(A) a pilot program consisting of at least five playing fields maintained without the use of restricted lawn care pesticides or neonicotinoids; and

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

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

(c) *Pesticide usage protocols.* The Parks Department must develop usage protocols which limit the use of restricted lawn care pesticides and neonicotinoids to the maximum extent possible and, subject to the exceptions in subsection (d):

(1) do not permit the use of restricted lawn care pesticides or neonicotinoids within 25 feet of a waterbody; and

(2) do not permit the application of restricted lawn care pesticides or neonicotinoids to playgrounds in County parks; and

(3) except where immediate application is necessary to protect human health or prevent significant economic damage, include the posting of notice of each planned application of restricted lawn care pesticide or neonicotinoid on the appropriate Parks Department website, at least 48 hours before application, that includes:

(A) the common name of the pesticide;

(B) the location of the application;

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

(D) the reason for the use of the pesticide.

(d) Exceptions. The pesticide-free parks program and pesticide usage protocols may generally permit the application of a restricted lawn care pesticide or neonicotinoid to:

- (1) control weeds as defined in Chapter 58, Weeds;
- (2) control invasive species listed in a regulation adopted under subsection 33B-4(d);
- (3) control disease vectors;
- (4) control stinging insects or plants;
- (5) control organisms that threaten the health of trees or shrubs;
- (6) remove weeds as part of the renovation of a playing field; and
- (7) otherwise protect human health or prevent significant economic damage.

(e) Reporting requirement. The Parks Department must submit a report to County Executive and County Council on or before January 15 of each year that:

- (1) details restricted lawn care pesticide and neonicotinoid usage in County parks during the preceding year, including:
  - (A) the common name of each restricted lawn care pesticide and neonicotinoid used;
  - (B) the location of each application;
  - (C) the date and time of each application; and
  - (D) the reason for each use of restricted lawn care pesticide and neonicotinoid; and
- (2) describes the status of the pesticide-free parks program implemented under this Section.

**Sec. 2. Initial Lists of [[Non-Essential]] Restricted Lawn Care Pesticides and Invasive Species.** The Executive must submit the lists of [[non-essential]]



restricted lawn care pesticides and invasive species required by Subsections 33B-4(c) and (d) to the Council for approval by ~~[[January]]~~ March 1, 2016

**Sec. 3. Effective Date.** The ~~[[prohibitions on]]~~ requirements for the use of ~~[[non-essential]]~~ restricted lawn care pesticides in common ownership communities contained in ~~[[Section 33B-9]]~~ Sections 33B-12 and 33B-13, and the prohibitions and requirements related to the ~~[[on]]~~ use of ~~[[non-essential]]~~ restricted lawn care pesticides and neonicotinoids contained in ~~[[Section 33B-14]]~~ Sections 33B-15 and 33B-17 take effect on ~~[[January]]~~ July 1, 2016.

**[[Sec. 4. Expiration.** This Act and any regulation adopted under it expires on January 1, 2019.]]

*Approved:*

---

George Leventhal, President, County Council

Date

*Approved:*

---

Isiah Leggett, County Executive

Date

*This is a correct copy of Council action.*

---

Linda M. Lauer, Clerk of the Council

Date

## LEGISLATIVE REQUEST REPORT

Bill 52-14

*Pesticides – Notice Requirements – Non-Essential Pesticides - Prohibitions*

<b>DESCRIPTION:</b>	This Bill would require posting of notice for certain lawn applications of pesticide, prohibit the use of certain pesticides on lawns, prohibit the use of certain pesticides on certain County-owned property and require the County to adopt an integrated pest management program for certain County-owned property.
<b>PROBLEM:</b>	Long term use of and exposure to certain chemical pesticides has been linked to several health problems, including birth defects, cancer, neurological problems, immune system problems, and male infertility.
<b>GOALS AND OBJECTIVES:</b>	To protect the health of families, especially children, from the unnecessary risks associated with the use of certain pesticides that have been linked to a wide-range of diseases.
<b>COORDINATION:</b>	Department of Environmental Protection
<b>FISCAL IMPACT:</b>	To be requested.
<b>ECONOMIC IMPACT:</b>	To be requested.
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched.
<b>SOURCE OF INFORMATION:</b>	Josh Hamlin, Legislative Attorney
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	To be researched.
<b>PENALTIES:</b>	Class C violation



MONTGOMERY COUNTY COUNCIL  
ROCKVILLE, MARYLAND

GEORGE LEVENTHAL  
COUNCILMEMBER  
AT-LARGE

MEMORANDUM

October 22, 2014

TO: Councilmembers

FROM: George Leventhal, Council Vice President *George Leventhal*

SUBJECT: Pesticide Legislation

This coming Tuesday, October 28, I will be introducing legislation aimed at protecting the health of families – and especially children - from the unnecessary risks associated with the use of certain cosmetic pesticides that have been linked to a wide-range of diseases, and which provide no health benefits.

As you know, for the better part of the last year, I have been working towards introducing legislation on this matter. Since the September 2013 meeting of the T&E committee, I have met with countless stakeholders, on both sides of the issue, to learn more about how pesticides are being applied in the county, what other governments are doing to ensure that the public's health is being protected, and what the latest research tells us about their risks. The legislation that I am introducing on Tuesday incorporates feedback I received from proponents and opponents on the previous draft of the bill, which I shared with your offices back in May. The result is a bill that balances the rights of homeowners to maintain a beautiful lawn with the rights of residents who prefer to not be exposed to chemicals that have known health effects; I view this bill as a starting point in our discussion which can be tweaked along the way.

I want to preface my concerns by affirming the value of pesticides when they are used to protect public health, the environment, our food or our water supply, but when pesticides are used solely to improve the appearance of landscapes, they can cause more harm than good. In my view, cosmetic pesticides present a substantial threat to the health of today's children. The American Academy of Pediatrics states that children face the greatest risk from the chemicals they contain, and that epidemiologic evidence demonstrates associations between early life exposure to pesticides and pediatric cancers, decreased cognitive function and behavioral problems such as ADHD.<sup>1</sup> Certain toxic chemicals can cause permanent brain damage in children even at low levels of exposure that would have little to no adverse effect in an adult.<sup>2</sup> A child doesn't even

<sup>1</sup> *Pediatrics*, Pesticide Exposure in Children, Volume 130, No. 6, 1757 – 1763, December, 2012

<sup>2</sup> Dr. Phillippe Grandjean, MD, Dr. Phillip Landrigan, MD, *The Lancet Neurology*, Neurobehavioral Effects of Developmental Toxicity, Volume 13, Issue 3, 330-338, March 2014

have to be directly exposed to a pesticide to suffer negative health outcomes. During pregnancy, chemicals in women can cross the placenta and result in higher fetal exposure than the mother has been exposed to. Prenatal exposure to certain chemicals has been documented to increase the risk of cancer in childhood.<sup>3</sup> Virtually every pregnant woman in the United States is exposed to multiple chemicals during a sensitive period of fetal development that have been linked to adverse reproductive and developmental outcomes.<sup>4</sup>

Adults are also at risk of developing serious health problems due to pesticide exposure. Researchers at the National Institutes of Health have linked pesticide use to a wide range of diseases and conditions. Exposure to certain pesticides has been linked to Parkinson's disease, diabetes, leukemia, lymphoma, lupus, rheumatoid arthritis, dementia, reproductive dysfunction, Alzheimer's disease, and variety of cancers including breast, colon, prostate and lung cancer.<sup>5</sup>

In addition to the adverse health effects to humans, pesticides can also affect animals, both pets and wildlife, and our waterways. A recent study by the United States Geological Survey has found that 90% of urban area waterways now have pesticide levels high enough to harm aquatic life, and moreover, the USGS said the harm to aquatic life was likely understated in their report.<sup>6</sup> Terrestrial wildlife is also being harmed by the use of certain pesticides. The most concerning example involves honeybees, which pollinate nearly one-third of the food we eat, and a particular class of pesticides called neonicotinoids. Neonicotinoids have been repeatedly and strongly linked with the collapse of honey bee colonies. In just the last year, Maryland lost nearly 50 percent of its honeybee population, an increase over previous years, which averaged about a one-third loss annually.<sup>7</sup>

Before I describe what this bill does, let me describe what this bill does not do. This bill does not ban the use of all pesticides; it would, however, restrict the use of certain toxic chemicals that are most dangerous to human health. This bill does not prohibit the use of any pesticide for gardens. And this bill would not prohibit the use of any pesticide for agricultural use. What this bill does do is seek to limit children's exposure to harmful pesticides in places where children are most likely to be exposed to them. That being said, the major provisions of the bill are:

- 1) Require the posting of notice when a property owner applies a pesticide to an area of lawn more than 100 square feet, consistent with the notice requirements for when a landscaping business treats a lawn with a pesticides;
- 2) Require the Executive to designate a list of "non-essential" pesticides including:
  - all pesticides classified as "Carcinogenic to Humans" or "Likely to Be Carcinogenic to Humans" by the U.S. EPA;
  - all pesticides classified by the U.S. EPA as "Restricted Use Products;"

<sup>3</sup> American College of Obstetricians & Gynecologists, Committee Opinion No. 575. American College of Obstetricians and Gynecologists. 931-5. October 2013

<sup>4</sup> *Environmental Health Perspectives*, Environmental Chemicals in Pregnant Women in the United States: NHANES 2003-2004, Tracey J. Woodruff, Ami R. Zota, Jackie M. Schwartz, Volume 119, No. 6, 878-885. June 2011

<sup>5</sup> Jan Ehrman, *NIH Record*, Pesticide Use Linked to Lupus, Rheumatoid Arthritis, [http://nihrecord.nih.gov/newsletters/2011/03\\_18\\_2011/story4.htm](http://nihrecord.nih.gov/newsletters/2011/03_18_2011/story4.htm) (accessed August 3, 2014)

<sup>6</sup> U.S. Geological Survey, An Overview Comparing Results from Two Decades of Monitoring for Pesticides in the Nation's Streams and Rivers, 1992-2001 and 2002-2011, Wesley W. Stone, Robert J. Gilliom, Jeffrey D. Martin, <http://pubs.usgs.gov/sir/2014/5154/pdf/sir2014-5154.pdf> (accessed October 20, 2014)

<sup>7</sup> Tim Wheeler, Mysterious bee die-off continues, extends beyond winter, *Baltimore Sun*, [http://articles.baltimoresun.com/2014-05-15/features/bal-mysterious-bee-dieoff-continues-nearly-half-maryland-hives-lost-20140515\\_1\\_bee-informed-partnership-honey-bee-beekeepers](http://articles.baltimoresun.com/2014-05-15/features/bal-mysterious-bee-dieoff-continues-nearly-half-maryland-hives-lost-20140515_1_bee-informed-partnership-honey-bee-beekeepers) (accessed October 20, 2014)

- all pesticides classified as “Class 9” pesticides by the Ontario, Canada, Ministry of the Environment; and
  - all pesticides classified as “Category 1 Endocrine Disruptors” by the European Commission
- 3) Generally prohibit the application of non-essential pesticides to lawns, with exceptions for noxious weed and invasive species control, agriculture and gardens, and golf courses;
  - 4) Require the Executive to conduct a public outreach and education campaign before and during the implementation of the Bill;
  - 5) Generally prohibit the application of a non-essential or neonicotinoid pesticide to County-owned property; and
  - 6) Require the County to adopt an Integrated Pest Management program.
  - 7) Sunset the act and any regulation adopted under it on January 1, 2019

The pesticide industry will respond to this legislation by saying “the science isn’t there” and that “all pesticides are extensively tested and approved as safe by the EPA,” but while both statements sound believable, they belie the truth. In response to the charge that the science isn’t there to legislate, the absence of incontrovertible evidence does not justify inaction. As evidenced by this memo, the number of studies from respected institutions of science linking pesticides to a variety of cancers, neurodevelopmental disorders and diseases is abundant and persuasive. Furthermore, due to the inestimable number of chemical combinations possible from the thousands of products on the market and the complex interactions with the human body, the research that opponents to this legislation will demand will never be possible within the ethical confines of research. The real danger lies not in being exposed to one chemical, but a mixture of chemicals. The EPA risk assessment fails to look at the synergistic effects of multiple chemicals, even though studies show that exposure to multiple chemicals that act on the same adverse outcome can have a greater effect than exposure to an individual chemical.<sup>8</sup>

And to the charge that a pesticide must be safe if it has been approved by the EPA, the Government Accountability Office (GAO) has found that many pesticides are currently being approved for consumer use by the EPA without receipt and review of data that the manufacturer is required to provide on the safety of the chemicals.<sup>9</sup> Alarming, in some cases the manufacturer was given two years to submit studies on the effects of a pesticide, and ten years later no studies had been received or reviewed by the EPA.<sup>10</sup> What’s more, the EPA itself publishes an entire manual – *Recognition and Management of Pesticide Poisonings* - for healthcare professionals that acknowledges the toxic nature and effects of many pesticides. As an educated populace, we like to think that we have a high bar for pesticide safety in this country, but sadly, when a pesticide has been approved by the EPA, it connotes little about its safety.

Lawn care does not have to be poisonous to people, pets, wildlife, or our waterways. It is simply false to say that you can’t have a lush, green lawn - free of weeds - without the use of toxic pesticides. Through proper management of the soil, along with the use of natural, organic alternatives to synthetic pesticides, a high quality landscape can be achieved. And under my

<sup>8</sup> National Research Council. Committee on Improving Risk Analysis Approaches Used by the U.S. EPA. Science and Decisions: Advancing Risk Assessment. Washington, DC: National Academies Press; 2008

<sup>9</sup> United States Government Accountability Office. Pesticides – EPA Should Take Steps to Improve its Oversight of Conditional Registrations, <http://www.gao.gov/assets/660/656825.pdf> (accessed October 20, 2014)

<sup>10</sup> United States Government Accountability Office. Pesticides – EPA Should Take Steps to Improve its Oversight of Conditional Registrations, <http://www.gao.gov/assets/660/656825.pdf> (accessed October 20, 2014)

legislation, residents will still be free to hire any lawn care professional to treat their lawn or to manage their own lawn care.

Much like the public debate that occurred in the 1950's before cigarettes were found to be cancer-causing, I believe we are approaching a similar turning point in the discourse on pesticides as the public is made more aware of the known health effects. In a poll taken earlier this year, more than three-quarters of Marylanders expressed concern about the risk that pesticides pose to them or their families, and when respondents learned of the adverse health effects that pesticides are linked to, 90% of Marylanders expressed concern.<sup>11</sup>

America lags behind by the rest of the developed world in recognizing the serious risks that certain pesticides pose to health and life. The GAO's report confirms that the regulatory approach taken by the EPA is broken and failing the public. In the face of mounting scientific evidence, and in the absence of action on the federal level, I find it impossible not to act now to protect the health of our children. In Montgomery County, we regularly take a precautionary approach to public health and environmental issues, such as with the forthcoming legislation on e-cigarettes and the Council's action on Ten Mile Creek. Our approach to pesticides should be no different.

I have attached all of the studies that I have cited in this memo for your reference, but I hope you will take time to review research beyond what I have provided. If, after reviewing the research, you feel compelled to act as I do, I would welcome your co-sponsorship on this bill.

This issue is among the most technically complex which the Council has ever faced. Therefore, it is critical that we approach this in a thoughtful manner and that we consult with a variety of experts who are knowledgeable in the field so we can make a well-informed decision regarding this important public health issue.

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<sup>11</sup> *OpinionWorks*, Maryland Voter Survey on Pesticides <http://www.mdpestnet.org/wp-content/uploads/2014/02/Pesticide-Poll-Memo-2-10-14.pdf> (Accessed on October 20, 2014)



ROCKVILLE, MARYLAND

MEMORANDUM

January 26, 2015

TO: George Leventhal, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget  
Joseph F. Beach, Director, Department of Finance

SUBJECT: FEIS for Bill 52-14, Pesticides -Notice Requirements -Non-Essential Pesticides Prohibitions

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer  
Lisa Austin, Offices of the County Executive  
Joy Nurmi, Special Assistant to the County Executive  
Patrick Lacefield, Director, Public Information Office  
Fariba Kassiri, Acting Director, Department of Environmental Protection  
Joseph F. Beach, Director, Department of Finance  
David Platt, Department of Finance  
Matt Schaeffer, Office of Management and Budget  
Alex Espinosa, Office of Management and Budget  
Felicia Zhang, Office of Management and Budget  
Naeem Mia, Office of Management and Budget

## **Fiscal Impact Statement**

### **Bill 52-14: Pesticides – Notice Requirements – Non-Essential Pesticides – Prohibitions**

#### **1. Legislative Summary.**

The bill would update county law with regard to pesticides application in the following manner:

- (1) require posting of notice for certain lawn applications of pesticide;
- (2) prohibit the use of certain pesticides on lawns;
- (3) prohibit the use of certain pesticides on certain County-owned property;
- (4) require the County to adopt an integrated pest management program for certain County-owned property;
- (5) generally amend County law regarding pesticides; and
- (6) require the creation of a media campaign to inform residents and businesses of the change in county law related to non-essential pesticides.

#### **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.**

County revenues are not expected to be impacted by Bill 52-14. The Maryland-National Capital Park and Planning Commission (M-NCPPC) did report that there is a potential for lost revenues if playing fields are not able to be adequately maintained – this revenue has traditionally come in in the form of field rental from athletic leagues.

County departments and agencies performed a fiscal impact analysis of the major provisions and conclude the following:

- o Section 33B-4 requires the county to develop a list of non-essential pesticides and invasive species which would be detrimental to the environment. The Department of Environmental Protection (DEP) does not envision a fiscal impact as a result of these tasks given that many jurisdictions have taken the similar action with regards to non-essential pesticides and significant documentation exists related to successful implementation of this type of prohibition. If classification becomes difficult, a consultant may need to be brought in to assist with this task.
- o Section 33B-13 requires the County Executive to create an Integrated Pest Management (IPM) program. The Department of General Services (DGS) reported no fiscal impact and is currently operating under an IPM and the Executive branch would utilize this plan across county departments under Bill 52-14.
- o Enforcement of Bill 52-14 is not clarified in great detail within the legislation. Similar to other prohibition legislation, executive staff recommends a complaint-driven enforcement model to control costs of implementation. It is likely that complaint-driven enforcement would have a minimal fiscal impact on county departments while estimates for a proactive enforcement effort include a dedicated inspector with estimated personnel costs of \$75,000 and vehicle costs of approximately \$40,000 for a total of \$115,000 per inspector.
- o Bill 52-14 would also require county departments and agencies to convert to approved landscaping practices outside of the list of banned non-essential pesticides



in the cases wherein prohibited pesticides are being used.

Montgomery County Public Schools (MCPS) reported that it is likely that pesticides prohibited under Bill 52-14 are being used currently and that a conversion cost estimate would be available after an agreed list of prohibited pesticides is established. Based on estimates of conversion costs for M-NCPPC fields, the costs of maintaining similar fields within MCPS are expected to be significant. Montgomery College reported no fiscal impacts as a result of Bill 52-14. To maintain the quality of fields at the current level, M-NCPPC reported the following conversion costs associated with the move to allowable treatment methods on fields:

**Athletic Fields:**

- 40 athletic fields can be organically treated at the following cost:  
\$648,048 in supplies and labor costs;  
\$327,062 to provide a top dressing;  
\$100,000 for the purchase of two aerators;  
for a total first year cost of \$1,075,110.  
Additional costs in subsequent years also include:  
Sod replacement every two years at a cost of \$20,440 per field or \$817,600 and additional grading every four years at a total of \$10,000 per field or \$400,000.
- Five Bermuda playing fields cannot be organically treated and would need to be replaced with treatable sod for \$102,200 per field or a total cost of \$511,000.
- *Optional* replacement costs for a synthetic turf option are \$1,400,000 per field with \$3,700 in annual maintenance or a total capital cost of \$56,000,000 and a \$148,000 annual maintenance cost for all forty fields.

**Regional Fields:**

- 35 regional fields will need irrigation installed to maintain organic maintenance standards at the following cost:  
\$3,500,000 in capital costs for system installations;  
\$231,000 in annual water costs;  
\$350,000 in annual maintenance costs;  
for a first year cost of \$4,081,000.

**Local Fields:**

- 300 local fields would require manual or mechanical weed elimination at a total annual cost of \$229,860.

In total, implementation costs to bring M-NCPPC fields into compliance (absent a total conversion to synthetic turf) would be:

Total first year costs to M-NCPPC would be \$5,896,970.

Recurring annual costs for M-NCPPC would be \$810,860.

Sod Replacement costs every two years would be \$817,600.

Additional grading costs every four years for M-NCPPC would be \$400,000.

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

Total conversion costs to allowable landscaping practices for the county would include an undetermined amount for MCPS to replace current pesticides in inventory and a six year

total of \$12,804,070 for M-NCPPC as a part of converting maintenance practices on current fields to allowable practices under Bill 52-14.

M-NCPPC's six-year estimate of \$12,804,070 in conversion costs consists of:  
\$5,896,970 in first year costs  
\$4,054,300 in subsequent annual expenses [ $\$810,860 \times 5$  years]  
\$2,452,800 in sod replacement costs on athletic fields [ $\$817,600 \times 3$  applications]  
\$400,000 in additional grading costs

If it is determined that a proactive enforcement effort is needed to enforce the bill, a dedicated inspector would be required at a personnel cost of \$75,000 and a vehicle cost would of \$40,000, for a total of \$115,000 for the first year and a six year total of \$490,000. The County Executive recommends a complaint-driven enforcement program.

Bill 52-14 also requires the County Executive to establish an awareness campaign related to the prohibitions noted in the bill. Costs related to the media campaign will depend on the scope and size of the media campaign. The County Executive recommends an education and outreach program of minimal cost to the county.

- 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.**

The impact of implementation of Bill 52-14 on staff time will depend on the extent of the enforcement required for the provisions in the bill. Inspections on lawns, commercial sales establishments for signage, and other general enforcement actions will have an impact on various county departments similar to other countywide ban legislation.

If Bill 52-14 requires an enforcement inspector, approximate personnel costs of an inspector would be \$75,000 and a vehicle would be \$40,000 for a total of \$115,000 per inspector.

If enforcement of Bill 52-14 is complaint-driven, there would be an impact to current inspection operations by increasing the extent of some existing inspection protocols but would result in minimal fiscal impact to the county.

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

Depending on the enforcement model of Bill 52-14, the bill would impact the total number of inspection hours required. An inspector carrying out an inspection in a retailer for health code and other violations, for example, could be required to add on additional inspections for checks of signage and other sales requirements of pesticides to their normal inspection process.

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

There are three potential areas of cost related to Bill 52-14:

1) Conversion costs related to replacing old pesticides or converting contracts to include compliant pesticide application- County departments reported no fiscal impacts considering DGS already operates an IPM. MCPS reported that there would be costs associated with converting to approved pesticides from pesticides currently in use and that the extent of these conversion costs will not be known until a final list of banned pesticides has been established by DEP.

M-NCPPC estimates their conversion costs to allowable landscaping practices (excluding a conversion to artificial turf) to be \$12,804,070 over the next six years. See item 3 for additional information on M-NCPPC's estimated conversion costs.

2) Costs associated with a media campaign-Bill 52-14 requires that the County Executive establish a media campaign to publicize the ban on certain non-essential pesticides. Costs related to this media campaign will vary depending on the scope and size of the campaign; and

3) Costs associated with enforcement of Bill 52-14-If dedicated enforcement personnel are needed to enforce the provisions of Bill 52-14, approximate personnel costs of an inspector would be \$75,000 and a vehicle would be \$40,000 for a total of \$115,000 per inspector.

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

See Item 9 above.

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

M-NCPPC reports that loss of revenue is likely to occur if the spraying of certain non-essential pesticides prohibited in Bill 52-14 is eliminated as a part of the current playing field maintenance program. M-NCPPC reports that other jurisdictions have seen a loss of revenue from athletic tournaments leagues choose to take outside of the county.

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


Not Applicable.

**13. Other fiscal impacts or comments.**

Both M-NCPPC and the Department of Recreation (REC) are also concerned about how this prohibition will impact recreational and sport fields throughout the county. There are multiple jurisdictional studies suggesting a prohibition of this type on sport fields leads to degradation of the playing field and may lead to injury.

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

Stan Edwards, Department of Environmental Protection  
James Song, Montgomery County Public Schools  
David Vismara, Maryland-National Capital Park and Planning Commission  
Beryl Feinberg, Department of General Services  
Matt Schaeffer, Office of Management and Budget

  
Jennifer A. Hughes, Director  
Office of Management and Budget

1/26/15  
Date

**Economic Impact Statement**  
**Bill 52-14, Pesticides – Notice Requirements - Non-Essential Prohibitions**

**Background:**

This legislation would require the posting of a notice when a property owner applies a pesticide to an area of lawn more than 100 square feet. Bill 52-14 requires the County Executive to designate a list of “non-essential” pesticides that include the following:

- All pesticides classified as “Carcinogenic to Humans” or “Likely to Be Carcinogenic to Humans” by the United States Environmental Protection Agency (USEPA);
- All pesticides classified by USEPA as “Restricted Use Products”;
- All pesticides classified as “Class 9” by the Ministry of the Environment and Climate Change, Government of Ontario, Canada
- All pesticides classified as “Category 1 Endocrine Disrupters” by the European Commission; and
- Other pesticides which the County Executive determines are not critical to pest management in the County.

The Bill would prohibit the application of non-essential pesticides to lawns, with exceptions for noxious weed and invasive species control, agriculture and gardens, and golf courses. The Bill would also require the County Executive to conduct a public outreach and education campaign during the implementation of Bill 52-14, and would prohibit the application of non-essential and neonicotinoid pesticides to County-owned property.

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

Department of Environmental Protection (DEP)  
SafeLawns.org  
Diffen.org  
The Fertilizer Institute (TFI)  
Grassroots Environmental Education

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

The variable that could affect the economic impact estimates is the cost differential between organic pesticides and chemical pesticides. However, according to SafeLawns.org, the cost differential is comparing apples to oranges since one product provides a short-term solution while the other product aims to provide a long-term solution. Organic products “function by building up life in the soil (soil biology) and their payoff is long-term and lasting” while synthetic products, which are instantaneous, are applied frequently and in greater amounts. Therefore, SafeLawns.org indicates that the users of organic products will spend less money on lawn care over a two-year period than users of chemical or synthetic pesticides.

**Economic Impact Statement**  
**Bill 52-14, Pesticides – Notice Requirements - Non-Essential Prohibitions**

According to Diffen.org, organic pesticides are much more expensive than synthetic or chemical pesticides because synthetic or chemical pesticides have more concentrated levels of nutrients per weight of product than organic pesticides. The user of organic pesticides needs several pounds of organic pesticide that would provide the same nutrient levels as synthetic or chemical pesticide. That differential in the amounts would result in a higher cost of organic pesticide.

Therefore, there is a conflict between the information provided by SafeLawns.org and Diffen.org regarding the cost differential between organic and synthetic/chemical pesticides. SafeLawns.org suggests there is less application of organic to synthetic/chemical pesticide while according to Diffen.org, one needs a higher quantity of organic pesticide to synthetic/chemical pesticide to achieve the same nutrient level.

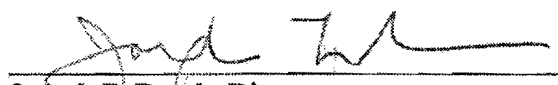
**3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.**

Because of the differences of opinions in terms of the amount of application of organic versus synthetic/chemical pesticide as stated in paragraph #2, it is uncertain whether Bill 52-14 would have economic impact on employment, spending, saving, investment, incomes, and property values in the County. Because of the specific climate and soil type endemic to Montgomery County, more consultation with the experts and research are needed to determine the economic effect on the County.

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

It is uncertain if Bill 52-14 has an economic impact.

**5. The following contributed to or concurred with this analysis: David Platt and Rob Hagedoorn, Finance, and Stan Edwards, Department of Environmental Protection.**

  
\_\_\_\_\_  
Joseph F. Beach, Director  
Department of Finance

1/23/15  
Date



**AGRICULTURAL PRESERVATION ADVISORY BOARD**

September 16, 2015

The Honorable Roger Berliner, Chair  
Montgomery County Council  
Transportation, Infrastructure, Energy & Environment Committee (T & E)  
100 Maryland Avenue  
Rockville, Maryland 20856

RE: Amendments to Bill 52-14 Pesticides-Notice Requirements-Non-Essential  
Pesticides-Prohibitions

Dear Councilmember Berliner:

On behalf of the Agricultural Preservation Advisory Board (APAB), please accept this correspondence from the APAB regarding the amendments to Bill 52-14 – Pesticides-Notice Requirements-Non-Essential Pesticides-Prohibitions. The APAB met on September 15, 2015 to review the amendments proposed to Bill 52-14 for the T & E Committee on September 17, 2015. We respectfully request our comments be considered as part of the public record.

As you may be aware, the APAB is in opposition to Bill 52-14 as drafted by the bill's sponsor (attachment A). We understand that the amendments are being offered to help ease the concerns of the agricultural community and make Bill 52-14 more palatable overall. The APAB is appreciative of your efforts to improve the bill and we recognize that your amendments represent an improvement. Unfortunately after discussing the amendments and our continuing concern about the potential of future amendments to the law that would prohibit certain pesticides for agricultural use, we cannot support any bill that would circumvent the authority of State (Maryland Department of Agriculture) and Federal (Environmental Protection Agency) government in the area of pesticide regulation and use. This bill represents a slippery slope where future impacts cannot be mitigated once this bill is adopted into law. We strongly feel that any bill that prohibits pesticide use and application would be disastrous for Montgomery County's agricultural future.

As a legislator and a lawyer, you understand that no bill once adopted into law can prevent future Councilmembers from introducing changes to law that could expand prohibitions to agriculture. These concerns must be thoroughly vetted before adopting Bill 52-14 into law. In reality, the only way to ensure the prohibitions being considered under Bill 52-14 do not result in

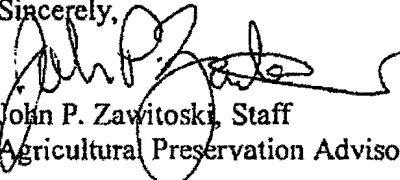
mission creep that would negatively affect agricultural lands in the future would be not to adopt Bill 52-14 at all.

The APAB believes rather than the Council pursuing the prohibition of certain pesticides in the County, a better approach would be to aid in enforcement of existing State and Federal laws that are already in place. The APAB also believes the County should undertake a major public awareness and educational campaign to educate County residents on pesticide use. The best way to change public perception about these chemicals is through education. We have already seen the impact educational outreach efforts can have on public behavioral change. Many resisted recycling waste at first, but as the County increased the awareness of the importance and impact of recycling through outreach and education, greater acceptance followed and this resulted in more people taking personal responsibility to recycle.

The APAB believe if a similar public awareness campaign is promoted that every resident can be better informed as well as gain better an understanding on the safe handling and application of pesticides. Education, not prohibition, is the key to success on how these chemicals can be used safely in our County.

The APAB would like to thank you for the opportunity to present our views on the amendments to Bill 52-14, unfortunately as indicated above, we respectfully cannot support any bill that would circumvent the authority of State and Federal government in the area of pesticide regulation. Please let us know if you have any questions.

Sincerely,



John P. Zawitoski, Staff  
Agricultural Preservation Advisory Board.

Attachments

cc: County Council  
APAB  
Jeremy V. Criss, DED





**AGRICULTURAL PRESERVATION ADVISORY BOARD**

January 5, 2015

The Honorable George Leventhal, President  
Montgomery County Council  
100 Maryland Avenue  
Rockville, Maryland 20856

RE: Agricultural Preservation Advisory Board (APAB) Written Testimony:  
Bill 52-14 Pesticides-Notice Requirements-Non-Essential Pesticides-Prohibitions

Dear Council President Leventhal:

On behalf of the Agricultural Preservation Advisory Board (APAB), please accept this correspondence as APAB testimony in opposition to Bill 52-14 – Pesticides-Notice Requirements-Non-Essential Pesticides-Prohibitions.

As with most legislation, there are generally individuals and special interest groups that take positions of both for and against and Bill 52-14 is no exception. Some view the Bill as being of paramount importance because it takes steps to provide for the safety and protection of our children. Others view concerns that this Bill as being unnecessary as pesticides are already regulated at the State and Federal level where labeling and other required record keeping practices for use are already in place. Thereby ensuring the safe use and handling of these pesticides. Bill 52-14 however goes much further than state and federal regulations by outright prohibiting the use of certain non-essential pesticides within the County.

While Bill 52-14 currently provides for an agricultural exemption, if this legislation is adopted and becomes law, nothing can prevent future council's from introducing amendments for the purpose of prohibiting the use of certain pesticides on agricultural land despite being approved for use by State and Federal Government.

While the APAB believes the intent behind Bill 52-14 is to provide a means to reduce exposure of certain pesticides among at risk individuals, it also provides for a slippery slope

whereby public perception could influence lawmakers to ignore the scientific research on how to safely use and handle pesticides for agricultural use.

This potential outcome is of great concern to the agricultural community. The agricultural community in partnership with Montgomery County has worked to make the County's Agricultural Reserve a cherished resource. Through making the agricultural reserve a working agricultural landscape in tandem with perpetual agricultural and conservation easements, we have over 70,000 acres that have been protected for agricultural use for future food and fiber production. As our population continues to grow, the need for boosting yield production on a per acre basis will be driven by an ever growing and hungry population. Over the past 100 years, efficiency in agricultural production has increased significantly and this outcome can be directly linked to both advanced agricultural research and the use of pesticides to reduce losses brought on by agricultural pests. The APAB understands that the Agricultural Advisory Committee recommends that more education and less regulation are needed in the County for Pesticide usage. The APAB is also in agreement with this recommendation.

Pesticides if properly applied can result in improved agricultural crop production. They can reduce productions costs; increase crop yields which results in increased agricultural profitability. No one knows better than the agricultural community that if pesticides are not properly used that they can create negative impact to the environment. It is important to understand, that regulations for pesticides applications and applicators are already a matter of State and Federal law. Just as with any commercial applicator, farmers also must be certified to use pesticides.

While the Bill's sponsors cannot guarantee what the future may hold for this Legislation and its impact on agricultural land uses, we can say with some degree of certainty that any pesticide approved for use by the State and Federal Government on agricultural land that becomes prohibited under a future amendment to this Bill would be disastrous for Montgomery County agriculture. It could provide a catalyst for landowners to abandon agricultural operations in favor open space preservation thereby jeopardizing the viability of this working agricultural landscape. It is for these reasons APAB is opposed to Bill 52-14 due to the ramifications and unintended consequences this legislation could create in the future. These concerns must be thoroughly vetted before adopting Bill 52-14 into law. In reality, the only way to ensure these prohibitions do not result in mission creep effecting agricultural lands in the future would be not to adopt Bill 52-14.

The APAB would like to thank you for the opportunity to present our views on Bill 52-14 Pesticide Legislation. The APAB will participate in the Council Work Sessions on this important issue to better understand the legislation and to address the questions and concerns that we have raised in this testimony. Please let us know if you have any questions.

Sincerely,



Robert Cissel, Chairman  
Agricultural Preservation Advisory Board.

cc: **Montgomery County Council**  
**Joseph Hamlin, Legislative Attorney**  
**AAC Board Members**  
**APAB Board Members**



AGRICULTURAL ADVISORY COMMITTEE

September 22, 2015

The Honorable George Leventhal  
Montgomery County Council President  
100 Maryland Avenue  
Rockville, MD 20850

Dear Council President Leventhal:

Re- Amendments to Pesticide Legislation

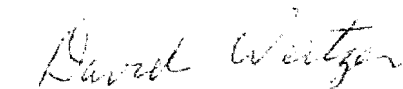
The Montgomery County Agricultural Advisory Committee-AAC met on September 15, 2015 to discuss the amendments to the Pesticide Legislation Bill 52-14 as proposed by Council Member Roger Berliner.

Council Member Berliner attended our meeting and he reviewed the reasoning behind the amendments and he answered many questions from the Committee. While the AAC is very appreciative for Mr. Roger Berliner's alternative approach, the AAC remains opposed to Bill 52-14. This Bill circumvents the authority of the Federal EPA and the Maryland Department of Agriculture. Furthermore, the Committee does not believe Montgomery County tax payers can afford the costs to implement this legislation.

We continue to feel this legislation is totally unnecessary because pesticides are closely and carefully regulated with strict science at the Federal and State levels. The AAC further believes that a better approach is more education and less regulation for Pesticide usage in Montgomery County.

The AAC would like to thank you for the opportunity to present our views on amendments to the Pesticide Bill 52-14 and please let us know if you have any questions.

Sincerely,

  
\_\_\_\_\_  
David Weitzer, Chairman

**Montgomery Soil Conservation District**

18410 Muncaster Road - Derwood, MD 20855 - Phone (301) 590-2855 - Fax (301) 590-2849

September 28, 2015

The Honorable George Leventhal, President  
Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20850

Re: Proposed amendments to Bill 52-14, Pesticides

Dear Council President Leventhal:

RECEIVED  
MONTGOMERY COUNTY  
COUNCIL

2015 OCT -1 AM 9:05

The Montgomery Soil Conservation District Board of Supervisors would like to express our concern regarding the County's continued attempts to regulate pesticides beyond the current federal and state laws. While we appreciate Councilmember Berliner's efforts to amend the original Pesticide Legislation 52-14, we still believe this represents bad policy and we maintain the same reservations we expressed to the Council in our letter dated November 21, 2014 (copy attached for inclusion in the public record). One of our main concerns is that pesticides are a critical tool for many of our conservation applications and any restrictions on their use can have unintended negative consequences on our ability to assist farmers with their natural resource restoration goals.

Pesticides are critical to our food production capabilities, but they are also an integral component of a variety of conservation practices. The no-till system of farming, which has so many benefits for improving soil productivity, preventing soil erosion, and protecting our water quality, requires the use of pesticides for proper management and production of crops. Montgomery County farmers were leaders in adopting this progressive and beneficial method of farming decades ago, and we cannot risk implementing regulations that would circumvent the achievements that the agricultural community has realized through this practice. Furthermore, most of the conservation practices we promote, from grassed waterways for erosion prevention to Cover Crops for nutrient uptake, are dependent on the use of pesticides to control weeds, prevent the spread of invasive species, and prepare fields for planting.

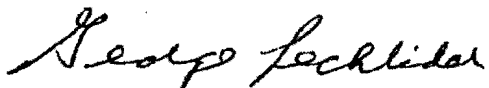
We would also like to express our concern over part of the language in Article 5. County Property and Parks, 33B-14 Prohibition on County-owned property. While most of this section seems to refer specifically to lawns on county owned property, we note that line 342 states "(4) This Section does not apply to County-owned property that the Parks Department operates or manages for the County." It is not clear if this statement means that the *Exceptions* outlined in (b) do not apply to property owned by the Parks Department or if the *Prohibition* of pesticides in (a) doesn't apply to park property. We have a number of farmers that operate on parkland in the county and we want to insure that nothing in this legislation would restrict their ability to continue their agricultural production on these sites.

*George Leventhal, President  
September 28, 2015  
Page Two*

We also believe that most of the reductions of pesticide use on County land that are outlined in the bill could be achieved much more effectively through administrative channels within County Government. If the County doesn't want pesticides used on County property then instruct county land managers to stop using pesticides. This would alleviate the need for legislation and would address a considerable portion of pesticide use in the County without negatively impacting citizens, businesses, and farmers.

We appreciate Councilmember Berliner's attempts to make this legislation less onerous. However, when we consider the benefits these tools (pesticides) have for agriculture and how critical they are to so many of our conservation applications, combined with the excessive amount of oversight they already receive from multiple tiers of government, we cannot as an organization support the restrictions outlined in the legislation. Thank you for considering our comments and for including them as part of the public record on this issue.

Sincerely,

A handwritten signature in cursive script that reads "George Lechlida".

George Lechlida, Chairman  
Montgomery Soil Conservation District

Enclosure

Cc: Montgomery County Councilmembers  
Jeremy Crisis, Director Agricultural Services-DED  
Lonnie Luther, Montgomery County Farm Bureau-President



**Montgomery Soil Conservation District**

18410 Muncaster Road - Derwood, MD 20855 - Phone (301) 590-2855 - Fax (301) 590-2849

November 21, 2014

The Honorable Craig Rice, President  
Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20850

Re: Bill 52-14, Pesticides

Dear Council President Rice and Council Members:

The Montgomery Soil Conservation District Board of Supervisors would like your consideration regarding the following comments on Bill 52-14, Pesticides-Notice Requirements-Non-Essential Pesticides Prohibitions. While we question the rationale and need for the bill, we also greatly appreciate that agriculture has been completely exempted from the provisions of the legislation. As we are sure you are aware, a bill of this nature would have devastating impacts for the agricultural industry and our conservation efforts in Montgomery County. However, even though agriculture is exempt we are concerned that the Bill will have a number of unforeseen consequences and a negative economic impact, and for these reasons we are opposed to the bill.

We would like to recommend one minor change to the wording of the agricultural exemption contained in Section 33B-10. Exceptions and Exemptions. Under subsection (a) (3) we recommend changing the words "pest control" to "applications". The agricultural exemption would then read "(3) for applications while engaged in agriculture; and ". This change is important because there are many instances where pesticides are used for purposes other than controlling pests. In fact, many of the Federal and State Conservation programs farmers participate in require the use of these valuable resources. One example is the Maryland Department of Agriculture Cover Crop program, which requires that the cover crop grain, often wheat, barley or rye (which are not considered "pests"), must be killed down by a herbicide to comply with the program guidelines.

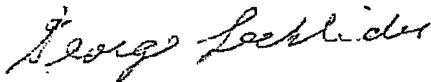
The MSCD Board of Supervisors feels that this legislation creates a number of conflicts for current landscape management practices. In particular, we have serious concerns regarding the spread of noxious weeds and the implications this could have for agriculture. While we recognize there is language in the bill pertaining to noxious weed control, we still believe that this legislation could be used as a loophole for residential lot owners not to control their noxious weeds. This would then allow the weeds to spread onto agricultural land where farmers would be required by state law to address them at their expense. This creates a direct conflict with State noxious weed control laws, and represents one example of unforeseen consequences created by Bill 52-14.

Craig Rice, Council President  
November 21, 2014  
Page Two

In addition, Federal and State regulations and staff are already in place to address pesticide issues. Anyone in Montgomery County with a pesticide concern can contact the Maryland Department of Agriculture and get assistance with these regulations. In fact, MDA employs over 50 staff, whose main job is pest control, regulation and oversight. Without any staff trained in pesticide regulation, will Montgomery County now have to develop a similar cadre of employees to implement this bill? At what expense and for what perceived benefit?

We again thank you for exempting agriculture from these regulations, including agricultural production on county owned land, but we worry that the costs and unintended impacts of the legislation may be greater than the benefit. We also request that you thoroughly consider the impacts this Bill will have on our other industries and residents. We appreciate your consideration of our suggested changes and we look forward to participating in the future discussion regarding this bill.

Sincerely,



George Lechliden, Chairman  
Montgomery Soil Conservation District

Enclosure

Cc: Montgomery County Councilmembers  
Jeremy Crisis, Director Agricultural Services-DED  
Lonnie Luther, Montgomery County Farm Bureau-President



# Megamart

El Supermercado 100% Latino

September 25, 2015

Dear Council:

My name is Eric Velasquez and I am a Partner and Owner of MegaMart, a retail chain with 10 locations in the Metro D.C. area including 3 locations in Montgomery County, MD.

On behalf of the 165 Megamart employees that work in our Montgomery County stores, I am writing you today to oppose Bill 52-14 that would ban certain pesticides. I care very deeply about our MegaMart employees and customers and believe that this bill will add yet another expense and unnecessary regulation that will hurt our community. In addition to the cost to retailers like MegaMart, this bill will be extremely costly to landscaping and lawn care businesses throughout Montgomery County. Many of our customers work in this industry.

This legislation would jeopardize their ability to earn a living and provide for their family. I urge you to please vote NO Bill 52-14.

Sincerely yours,

Eric Velasquez  
Owner  
MegaMart

June 16, 2015

**MEMORANDUM**

TO: Josh Hamlin, Legislative Attorney

FROM: Councilmember Roger Berliner, Chair, T&E Committee

CC: Councilmembers

SUBJECT: Amendments to Bill 52-14, Pesticides – Notice Requirements – Non-essential Pesticides – Prohibitions

Thank you for your work thus far to organize our three worksessions on the health, environmental, regulatory, and legal issues concerning pesticides. I believe these worksessions have successfully set the stage for a more informed deliberation of the legislation itself. Accordingly, and consistent with my earlier pledges on timing, I have advised the Council President that we will take up the bill itself in Committee at our first scheduled meeting after our summer recess on September 21.

In the interim, I request that you prepare a series of amendments to the legislation for my committee colleagues' consideration at our next worksession. These amendments will provide alternative means by which we can address the serious health concerns raised by pesticide exposure. My goal remains to produce legislation that is the strongest in the nation, a goal that I believe can and should be achieved without becoming the first major jurisdiction in the United States to ban the use of pesticides on private property.

There are a number of reasons why I have come to believe that banning pesticide use on private property, as called for in Bill 52-14, is unwise at this moment in time:

- (1) In my view, the most important issue confronting the Council is how we bring about significant changes in behavior on an issue our County has not previously seriously addressed or enforced. Prior to adopting the first ban of any large jurisdiction in the country, I believe it is our responsibility to increase awareness as to the potential health risks. If our public is made aware of the potential dangers, I believe it will significantly increase voluntary behavioral changes that lead to very substantial reductions in pesticide use;
- (2) Just as we have done in other environmental initiatives, it is a prudent course of action to first set a baseline level of pesticide use and a reduction goal prior to imposing a ban. However, if we fail to reach our goal, then it would be reasonable to consider additional measures to curb the use of pesticides;
- (3) Our public is highly divided on this issue, perhaps more so than on any issue that has come before our Council in my nine years. As elected officials, I believe it is our obligation to responsibly lead our community to healthier outcomes by educating,

building broad support to the extent possible, and demonstrating on county property the efficacy of alternative approaches before imposing absolute restrictions on private use;

- (4) The conclusion from the Attorney General's Office that banning pesticide use on private property is likely to be preempted under state law, while certainly not dispositive, casts serious doubt over the legality of a measure that is deeply divisive and far-reaching;
- (5) The nation's leading experts at the National Cancer Institute have told us that the state of the science with respect to the health risks is not "definitive." While I personally believe that the state of the science is sufficient to warrant a much more proactive approach to pesticides, I believe it falls short of justifying a private property ban at this moment in time;
- (6) It has been generally acknowledged that the proposed ban would be difficult, if not impossible, to enforce. To adopt such a restrictive, divisive approach that is so difficult to enforce seems unwise to me; and
- (7) While there are examples of situations where organic approaches to lawn care have been successful, there are still significant questions regarding the cost and effectiveness of organic lawn care for the average Montgomery County homeowner.

Any one of these reasons could justify not proceeding with a ban at this moment. However, the combination of all of these factors should give us considerable pause.

I also believe that this legislation ought to generally exempt our higher-quality, competition-level playing fields in the county. Our leading local public and private turf experts have expressed concerns that, because of factors unique to our Mid-Atlantic climate, they require pesticides to ensure quality playing surfaces and to minimize player injury resulting from uneven surfaces.

Given these issues, I ask that you draft as amendments the following provisions that would place Montgomery County at the forefront of efforts to reduce the use of pesticides:

- Ban the use of pesticides on county non-park land;
- Require our Parks Department to follow Seattle's model and create a list that will grow over time of non-playing-field park areas that are designated as pesticide free; require the Parks Department to pilot an organic playing field; require the adoption of protocols that limit the use of pesticides in parkland to the maximum extent possible and create pesticide-free buffer areas near streams; and to require reporting requirements that make explicit the circumstances under which pesticides are used;
- When a lawn care company proposes the use of pesticides on private property, require residents to sign a document that identifies the reported health risks associated with

pesticides, acknowledges that organic alternatives exist, and directs (or not) a lawn care provider to adhere to least-toxic Integrated Pest Management practices that call for a minimum use of pesticides;

- Require that condo associations or homeowners associations hold an affirmative vote *of the membership* in order to adopt a pesticide regime for the maintenance of common elements;
- Require the Montgomery County Department Environmental Protection to develop a baseline pesticide application level based on most recent Maryland Department of Agriculture data, set a goal of reducing non-agricultural pesticide use 50% by 2020, require the County Executive to propose additional measures should the county not meet the reduction target; and require that the Department not only enforce existing regulations, but conduct a vigorous public education campaign on pesticide use; and
- Require affected individuals be notified in advance of pesticide application in properties where children are frequently present, such as playgrounds and daycare facilities.

As I hope these amendments make clear, I believe that there are serious and justifiable concerns about the use of pesticides in our community. We should take strong measures that will significantly limit the county's use of pesticides, and at the same time, ensure that homeowners and members of home owner associations are in a position to make healthier choices. If these measures fail to significantly reduce pesticide use in our county, and science continues to strongly suggest associations with bad health outcomes, then it would be proper to consider even more aggressive action.

Thank you in advance for this language. Please do not hesitate to contact me if you have questions about how to proceed.



MONTGOMERY COUNTY COUNCIL  
ROCKVILLE, MARYLAND


ROGER BERLINER  
COUNCILMEMBER  
DISTRICT 1

CHAIRMAN  
TRANSPORTATION, INFRASTRUCTURE  
ENERGY & ENVIRONMENT COMMITTEE

MEMORANDUM

September 9, 2015

TO: Councilmembers

FROM: Councilmember Roger Berliner, Chair, T&E Committee 

SUBJECT: Proposed Amendments to Pesticide Legislation (52-14)

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On June 16, I asked legislative attorney Josh Hamlin to draft potential amendments to Bill 52-14. Since these amendments, in their entirety, offer a substitute, or alternative approach, they are attached to this memo in bill form.

These amendments represent an aggressive and proactive stance towards significantly reducing pesticide use in the county, but do so in a responsible and phased way. *Taken together, if the Council were to adopt this substitute, it would represent the strongest pesticide legislation passed by any large jurisdiction in the nation.*

As you probably appreciate, the Office of the Attorney General has concluded that making it unlawful for a county resident to apply pesticides to their own lawns, as proposed by Bill 52-14 as introduced, is likely to be invalidated by a court. The state of the science is that there are strong "associations" between pesticides and human health risks, and the National Cancer Institute has advised our Council that scientists have not arrived at definitive causal links. And many of our residents feel that banning the application of pesticides on their private property is a bridge too far given that (1) EPA has found them to be safe if applied properly; (2) stores will continue to be able to sell them; (3) the organic alternatives are more expensive and relatively new in this area; and (4) the law would be difficult, if not impossible to enforce.

However, as the supporters of Bill 52-14 have made clear, many in our community have serious concerns about the impact of pesticide use on the health of children and other vulnerable populations. I share those concerns. When the International Agency for the Research on Cancer (IARC) concludes that the major ingredient in Round-up is "probably carcinogenic to humans," as it did earlier this year, it is something to take seriously. The question before the Council is not whether we should take action, but how? After careful consideration, I have concluded that a phased approach that combines (a) a steep reduction target of 50%, (b) county leadership, (c) bans on park playgrounds and tot lots, (d) increased awareness of risks and alternatives, and (e) greater control for residents living in HOAs and common

ownership communities is the most responsible path forward. Attached is a Fact Sheet that more fully describes this phased approach.

I believe we should take these steps before consideration of additional lawful measures. As one of our colleagues confided to me, Bill 52-14 as introduced is akin to going from 0-60 mph in mere seconds. Our residents have not been educated as to the risks associated with pesticide use, and our current county regime is both extremely limited in scope and enforcement. If we move too quickly to ban products used by thousands of residents on their homes and by our parks people to keep our playing fields in acceptable shape, we run the risk of a significant citizen rebellion, an expensive and uphill legal fight, and millions in additional costs to maintain our playing fields – if they can be maintained at all.

I thank you in advance for your consideration of my amendments to Bill 52-14 and do let me know if you have any questions or suggestions for how we can most responsibly serve our public in the effort to significantly reduce the exposure of our residents to pesticides.

Enclosures: Fact Sheet and Amendments to Bill 52-14



## **Berliner Alternative to Pesticides Bill (52-14)**

*A Responsible Approach to Pesticide Reduction that would, if adopted,  
be the Strongest Anti-Pesticide Measure in the Nation*

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### **Demonstrates County Leadership on Pesticide Reduction**

- **County Property Lawn Ban** - Bans the use of pesticides on lawns on county property.
  - **Pesticide Reduction Strategy** - Requires the Department of Environmental Protection to set a countywide 50% reduction goal for non-agricultural use of pesticides within 3 years. If that standard is not met, directs the Department to develop strategies to more aggressively reduce pesticide use in our community.
- 

### **Protects Children and Environmental Areas**

- **County Park Playgrounds** - Bans the application of pesticides on all 282 county park playgrounds.
  - **Private Playgrounds and Daycares** - Requires private playgrounds and daycare facilities to provide 48 hour notice to affected individuals, advancing the type of notice requirements already placed on Montgomery County Public Schools.
  - **Pesticides in Stream Valleys** - Bans, in most circumstances, the use of pesticides within 25 feet of our streams.
  - **Pesticide-free Park Program** - Requires the Parks Department to create a growing list of parks and park areas managed without pesticides. With this program, Parks estimates it will be able to go pesticide free on over 1600 acres of parkland across the county, including one pesticide-free local park.
  - **Playing Fields** - Requires the Parks Department to designate 5 playing fields for an organic pilot, and for the remaining fields, to use Integrated Pest Management, which calls for the use of the least amount of pesticides possible.
  - **Improved Parks Notice Requirements** - Requires Parks Department to provide notice of its pesticide applications on its website at least 48 hours before application.
- 

### **Increases Awareness of Risks and Choice for Residents**

- **Pesticide Risk Disclosure and IPM Selection** - When homeowners contract for lawn service, requires lawn care companies to inform customers of the health risks associated with pesticides to be used, and requires residents to acknowledge those risks, to acknowledge that alternatives are available, and to direct, or not, their service to employ "Integrated Pest Management" in their use of pesticides.
- **Choice for Common Ownership Communities** - In place of a ban, requires condo associations and HOAs to create a process for owners to vote on the application of pesticides to common elements, and allows individuals to decline to have pesticides applied to their unit. Over 300,000 Montgomery County residents live in Common Ownership Communities.



**MONTGOMERY COUNTY DEPARTMENT OF PARKS**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

September 15, 2015

The Honorable Roger Berliner  
Chair  
Transportation, Infrastructure, Energy  
and Environment Committee  
Montgomery County Council  
100 Maryland Avenue, 5th Floor  
Rockville, MD 20850

Dear Councilmember Berliner:

In your June 16, 2015 memorandum to the Montgomery County Council proposing amendments to Bill 52-14 related to pesticide usage and with the revised Bill dated September 18<sup>th</sup>, you recommend specific requirements for land and facilities managed by the Department of Parks. I have carefully considered those recommendations in the response provided in this letter.

The mission statement of the Department of Parks speaks to a balance between the provision of safe and enjoyable recreation activities that encourage healthy lifestyles and the protection of natural resources. In that light, while I certainly support all efforts to limit the use of pesticides in our County to the maximum extent practical, any unilateral ban of pesticides in the parks would severely compromise our ability to successfully implement several aspects of our mission. The amendments recommended in your memo related to parks suggest a framework to reduce pesticide usage and to create and grow a list of designated pesticide free areas in the parks. I support this approach.

The Department of Parks has long been a leader in the mid- Atlantic region in the practice of Integrated Pest Management (IPM) and using alternatives to pesticides. As an example, we have documented an 84% reduction in pesticide usage at our Brookside Gardens greenhouse over the last 10 years. We currently use many innovative pest management methods resulting in significantly less reliance on



pesticides. Weed control alternatives in use include propane flamers, mechanical weed scrapers, and release of beneficial insects, volunteer weed pullers, and alternative sprays. Disease control alternatives in use include oil, sanitation, micro nutrient applications, biological hyper-parasites and environmental manipulation. Insect control alternatives in use include release of predators and parasitoids, oil, microbial based insecticides, mineral soil amendments, sanitation, washing, and natural products such as Neem. In addition, pesticides are also an important component of this integrated, balanced program to sustain balanced, healthy ecological systems and protect our assets and facilities.

I propose the following efforts in the parks to achieve the goal of pesticide reduction:

**1) Declare the following areas in parks pesticide free:**

- a) **Community Gardens.** Our eleven popular community gardens are already pesticide free. This popular program will grow and all existing and future community gardens will be pesticide free.
- b) **Playgrounds.** The significant majority of our 282 playgrounds include a safety surface comprised of wood chips or wood fiber mulch. It is not uncommon for aggressive weeds or annual grasses to rapidly take root in the surface which compromises the safety function of the surface. We have used glyphosate to control weed growth within and around playgrounds. Instead, we will use mechanical methods, hand weeding, more frequent maintenance of the surface, and over the long term transition to safety surfaces that do not support the growth of weeds or grasses.
- c) **General Lawn Areas.** We maintain and mow approximately 1600 acres of lawn area in the parks that is not associated with an athletic field. Some of this lawn space is considered "community open space" where park visitors can gather, relax or recreate in a variety of ways. These areas will be maintained without the use of pesticides.
- d) **Child Care Centers.** There are currently three child care providers who lease park activity buildings. These buildings and grounds will be maintained pesticide free.
- e) **One Pilot Local Park.** We would select one local park that is representative of the majority of local parks in terms of size and amenities and go pesticide free. We will monitor the results and report back to the Council on a regular basis to determine whether to continue the pilot or before considering addition of other parks.

**2) Conduct a local park athletic field pilot.**

There are 293 total athletic fields in the parks, maintained at three different maintenance standards; elite, regional/recreational, and local. The breakdown is 8 elite fields, 45 regional / recreational fields, and 240 local fields. The elite fields are maintained at the highest standard and include the Shirley Povich Field in Cabin John Regional Park, the stadium baseball field at Blair High School, and six Bermuda grass rectangular fields within regional or recreational parks. The regional / recreational fields include cool-season grass diamonds and rectangular fields in regional or recreational parks that are for use by permit only.

Over 80% of park athletic fields are in community (local) parks which may be booked by permit for games or practices, but otherwise are available for walk-on use. Current use of pesticides on the local fields is fairly limited and sporadic. The primary use of pesticides on the diamond fields is for weed control in non-turf areas (infields, dugouts). Pesticides may also be used for weed control or disease management in turf areas. Many local park rectangular fields are already pesticide free. However, we are not currently meeting several maintenance standards for the local fields due to budgetary limitations and there is widespread consensus that the turf cover on most of the local fields is not meeting player expectations during much of the playing season (March 15 – November 30). It is not uncommon to find rutted and rocky bare soil in the center of our local park soccer fields or weed growth in diamond infields during the peak of the season, which increases risk of injury. Maintenance standards that are not being met for most local fields due to budget limitations include overseeding, fertilization, aeration, weed control, and treatment for insects or turfgrass diseases.

In order to move toward both the goals of pesticide reduction and improved playing surface, we propose a pilot project involving five local park athletic fields. Five local park fields would be maintained under a pesticide-free, organic turf care program. Specifications and maintenance standards for the program would be publically vetted and qualified vendors would be competitively selected to maintain the fields. The particular fields would be selected to maximize comparative analysis of the results of the maintenance program. The results would be reported to the Council on a semi-annual basis. This would be a three year pilot.

In addition, a project is already underway to test herbicide alternatives on local park rectangular fields. This study is a multi-year collaboration between Montgomery Parks and the University of

Maryland. Two rectangle fields located at Timberlawn Local Park at 10800 Gloxinia Drive, Bethesda, MD 20852 have been divided into blocks that receive one of three different treatments:

- 1) Pesticide free – Weeds are allowed to grow naturally. More frequent over-seeding and aeration is used to crowd weeds.
- 2) Integrated Pest Management (IPM) - Combines multiple strategies to reduce weeds. Herbicides that reduce broadleaf weeds and prevent annual weed seed germination are applied.
- 3) Natural herbicides – Liquid corn gluten is applied early in the season to suppress weed seed germination. Fiesta, an iron-based herbicide is applied during the growing season to reduce broadleaf weeds.

**3) Continue to manage the following facilities or programs under the principles of Integrated Pest Management (IPM) with an emphasis on pesticide reduction whenever practical:**

- a) **Athletic fields** (except pilot project)
- b) **Public gardens** – Brookside and McCrillis
- c) **Event centers** - Rockwood, Woodlawn and Seneca Lodge
- d) **Non-lawn landscaped areas** – planting beds
- e) **Infrastructure** – weed control in hard surfaces, courts, pavements
- f) **Non-native Invasive plant management**
- g) **Arboriculture** – care of trees
- h) **Agriculture** (except community gardens)
- i) **Storm water management facility maintenance**

**4) Reporting**

Parks would report on all these initiatives to the Council on a semi-annual basis. The report would include pesticide use, alternatives implemented throughout parks, update on athletic field pilots, and any emerging pest and disease problems.

**5) Operating Budget Impact**

Implementation of these pesticide reduction measures, particularly keeping our 282 playgrounds weed free and the athletic field pilot will have costs. If the Council approves a bill that requires the

Councilmember Roger Berliner  
September 15, 2015  
Page 5

measures noted above, the Department of Parks will request additional operating resources to implement the measures.

Thank you for considering these recommendations in the Council's further deliberations on Bill 52-14. In particular, I ask that all athletic fields are exempted from the legislation while we carefully consider options to improve the quality of our fields while exploring options to reduce pesticide use.

Sincerely,

A handwritten signature in black ink, appearing to be 'MR' with a stylized flourish.

Michael F. Riley  
Director

cc: Casey Anderson, Chair, Montgomery County Planning Board, M-NCPPC  
John Nissel, Deputy Director of Operations, Montgomery County Department of Parks  
David Vismara, Chief, Horticultural, Forestry, and Environmental Education Division, MCP



## MONTGOMERY COUNTY COUNCIL

ROCKVILLE, MARYLAND

### MEMORANDUM

October 2<sup>nd</sup>, 2015

To: Councilmembers

From: Councilmembers Leventhal, <sup>CL</sup>Riemer, <sup>HR</sup>Elrich, <sup>ME</sup>Hucker, <sup>TH</sup>and <sup>NA</sup>Navarro

Re: Amendments to the Pesticide Legislation (Bill 52-14)

This upcoming Tuesday, October 6, we will be offering amendments to the pesticide legislation (Bill 52-14) that a majority of the T&E Committee recommended on September 17. These amendments restore a critical component of the Bill as introduced – the restriction on the use of pesticides on County-owned and private lawns for cosmetic purposes – but do so in a way that is much clearer to residents and landscaping professionals and easier for the Department of Environmental Protection (DEP) to administer. They also largely retain the T&E Committee's recommendations with regard to County parks and playing fields, while adding provisions to further ensure progress in reducing pesticide use in these areas. Finally, they expand the outreach and education campaign already included in the Bill and stagger the effective dates of new provisions, which should help ensure a successful transition to safer, healthy lawns throughout the County. We respectfully request your favorable consideration of these amendments to Bill 52-14.

#### ***Limiting Cosmetic Use of Pesticides***

New provisions of the Bill proposed in these amendments clearly state the objectives of the Council in enacting the law, and basis for the Council's action. This proposal also alters the way that pesticides that are subject to use restrictions are identified. After repeated attempts to come up with a means of identification that is both clear to consumers and landscaping professionals, and feasible for administration by DEP, we have settled on an elegantly simple solution that will achieve our policy objective.

The proposed approach generally restricts the use of EPA-registered pesticides on lawns, playgrounds, mulched recreation areas and children's facilities on both County-owned and private property for *purely cosmetic* purposes. The several exceptions to the restrictions ensure that pesticide use for environmental and human health purposes, or to prevent significant economic damage, is not restricted. Also, though it has been repeatedly stated since the introduction of the Bill, it bears repeating: Bill 52-14 will not restrict the use of pesticides in agriculture in any way.

### ***Parks and Playing Fields***

Our proposed amendments largely incorporate the T&E Committee's treatment of County parks and playing fields, recognizing the need to move away from pesticide use on playing fields but recognizing there are circumstances that justify a measured approach. A key addition to the Committee-recommended Bill is the additional requirement that the Parks Department develop a plan for transitioning to the maintenance of all playing fields without registered pesticides by 2020. We believe that this plan can be informed and refined by the results of the pilot program to which the Parks Department has committed, which Parks Director Michael Riley has indicated will now include a regional/recreational field. The Council and the Executive will be kept informed of the feasibility of the transition by the biannual reports from the Parks Department that will be submitted under the law. The public will also be kept informed, through open data requirements applied to information related to the Parks Department's use of pesticides.

### ***Staggered Effective Dates***

The Bill's restrictions on cosmetic use of pesticides are equally applicable to County-owned property and private property. However, we recognize that this is a situation in which it is appropriate for the County to take the first steps. Our proposal would make provisions applicable to County-owned property – restricting the cosmetic use of pesticides on certain County-owned property, and generally prohibiting the use of neonicotinoid pesticides on County-owned property – effective on July 1, 2016. The provisions of the Bill requiring the Parks Department to take several steps to reduce pesticide use would also take effect on July 1, 2016. The Bill's cosmetic use restrictions applicable to private property would not take effect until January 1, 2017. With a year lead time, we believe that property owners can be properly informed of the law's requirements, and landscaping professionals can be properly trained in methods of lawn care that will be allowed under the law.

The Bill as introduced included a robust outreach and education campaign, and this proposal would expand the campaign to include clear information about what pesticides are allowed and best practices for organic and pesticide-free lawn care. We also note that Beyond Pesticides, a national nonprofit committed to reducing the use of toxic pesticides, has indicated that it "is committed to underwriting the cost of training both county staff and landscapers, commercial operators, and homeowners, and provide ongoing technical assistance in evaluating soil to make management decisions." It is our hope and belief that with adequate time, information, and training, the transition to healthier lawns across the County will be a success.

Below is a section-by-section description of the amendments we propose to Bill 52-14 as recommended by the majority of the T&E Committee:

**Change the name of the Bill** from "Pesticides – Notice Requirements – Non-essential Pesticides – Prohibitions" to "Pesticides – Notice Requirements – Cosmetic Pesticide Use Restrictions." This change will more clearly reflect the purpose and effect of the Bill.

**Sec. 33B-1. Legislative findings and purpose.** This section would include all new language reciting the Council's findings, which support the proposition of reducing pesticide use

for cosmetic purposes, while recognizing the utility of pesticides in agriculture and protecting public health.

**Sec. 33B-2. Definitions.** Under the approach we propose, several definitions in the Committee-recommended Bill would be deleted, because the defined terms would no longer appear in the Bill or the definitions are otherwise unnecessary. These deleted definitions include "integrated pest management," "larvicide," "lawn care pesticide," and "restricted lawn care pesticide." The amendments would add definitions for "listed pesticide" "mulched recreation area," "registered pesticide" and "playing field," which is no longer within the definition of "lawn."

**Sec. 33B-3. Signs with retail purchase of pesticides.** This section remains the same as the introduced bill, and makes only technical changes to the existing law.

**Sec. 33B-4. Storage and handling of pesticides.** Amend existing law to include a requirement that retailers display signs where pesticides are sold that inform consumers of the County law and identify permissible pest control options.

**Sec. 33B-5. Regulations.** Amend the Bill to delete the requirement that the Executive establish, by regulation, a list of non-essential/restricted lawn care pesticides. Under the new approach, the list will no longer be necessary.

**Sec. 33B-6. Penalty for violating chapter.** This section remains the same as existing law/introduced bill.

**Sec. 33B-7. Notice about pesticides to customer.** Amend the Bill back to its original state by deleting additional required disclosure by applicators and acknowledgement and direction by customers that were added by the T&E Committee. These requirements are unnecessary under the new approach. The Bill as so amended would make only technical changes to existing law in this section.

**Sec. 33B-8. Posting signs after application by custom applicator.** Aside from a technical correction made in the T&E Committee, this section remains the same as in the Bill as introduced. The Bill would make minor changes to the requirements under the section.

**Sec. 33B-9. Posting signs after application by property owner or tenant.** This section also remains generally the same as in the Bill as introduced. It would be a new requirement, requiring the same signs to be posted for private lawn applications of pesticide to areas more than 100 square feet as are required for commercial applications. Our proposal would also require the signs to be posted for the treatment of areas of any size that are within five feet of a property line.

**Sec. 33B-10. Prohibited applications.** Amend the Bill to include a general prohibition on pesticide use on lawns, playgrounds, and children's facilities for cosmetic purposes. The section would provide that, on County-owned property and private property, a person must not apply a registered pesticide, other than a listed pesticide (which is a National Organic Standards Board recommended pesticide or an EPA minimum risk pesticide), to a lawn (which, again, no longer

includes a playing field), playground, mulched recreation area, children's facility, or the grounds of a children's facility. Exceptions, which are the same for both County-owned and private property, are included to: control noxious weeds; control invasive species listed in a regulation adopted under Subsection 33B-5(c); control disease vectors; control biting or stinging insects or stinging plants; control organisms that threaten the health of trees or shrubs; maintain property as part of efforts by a public utility to comply with applicable vegetation management provisions of any federal, state, or local law or regulation; control indoor pests, if applied around or near the foundation of a building; control pests while engaged in agriculture; and control a pest outbreak that poses an imminent threat to human health or prevent significant economic damage if a registered pesticide is not used. Registered pesticide use under human health/economic damage exemption must be reported to DEP (when used on private property) or the Council (when used on County-owned property).

**Sec. 33B-11. Outreach and education campaign.** This section would be expanded to include information on pest control products allowed for cosmetic use under the law, and guidance on best practices for organic and pesticide-free lawn care. Information in the campaign would be provided in multiple languages.

**Sec. 33B-12. Neonicotinoid pesticides on County-owned property.** This section would generally prohibit the use of neonicotinoid pesticides by County employees and contractors on *all* County-owned property, with exceptions only for agriculture and County-owned property managed by the Parks Department.

**Sec. 33B-13. Integrated pest management on County property.** This section remains substantively the same as the introduced Bill, and would apply to all County-owned property, beyond the areas subject to the use restrictions of Sec. 33B-10.

**Sec. 33B-14. County Parks.** This section would be generally the same as the Committee-recommended Bill, with a few key additions: (1) a requirement for a plan for transitioning to maintenance of all playing fields without the use of registered pesticides by 2020; (2) a requirement that the playing field pilot program use the services of an expert in organic playing field turf management and a publicly available plan; (3) a requirement that advance notice of each planned application of a registered pesticide be posted in the area where the pesticide is to be applied, in addition to posting on a Parks Department website, which the Committee-recommended Bill requires; and (4) a requirement that the notice information and reports to the Council and Executive be made available to the public in a manner consistent with the County Open Data Act.

**Effective Dates:** The regulation including the list of invasive species must be submitted to the Council by March 1, 2016; the new provisions pertaining to County-owned property and County Parks would be effective July 1, 2016, and new provisions pertaining to private property would be effective January 1, 2017. This staggered approach should allow adequate time for property owners to be informed of the law, and landscaping professionals to be trained in compliant lawn care techniques.



Bill No. 52-14  
Concerning: Pesticides – Notice  
Requirements – [[Non-essential  
Pesticides – Prohibitions]] Cosmetic  
Pesticide Use Restrictions  
Revised: September 17, 2015  
Draft No. \_\_\_\_\_  
Introduced: October 28, 2014  
Expires: April 28, 2016  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: \_\_\_\_\_  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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

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**AN ACT to:**

- (1) require posting of notice for certain ~~[[lawn]]~~ applications of pesticide;
- (2) ~~[[prohibit the use of certain pesticides on lawns]]~~ [[require a Countywide pesticide use reduction plan]] ~~prohibit the use of certain pesticides on lawns;~~
- (3) [[require common ownership communities to take certain steps before the application of certain pesticides;
- (4)]] ~~prohibit the use of certain pesticides on playgrounds, children's facilities, and certain County-owned property;~~
- ~~[[((4))]]~~ [[((5))]] (4) require the County to adopt an integrated pest management program for certain County-owned property; ~~[[and]]~~
- ~~[[((5))]]~~ [[((6))]] (5) require the Parks Department to take certain steps to reduce the use of certain pesticides; and
- [[((7))]] (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~~[[, and 5]]~~  
Sections 33B-8, 33B-9, 33B-10, 33B-11, 33B-12, ~~[[and]]~~ 33B-13, and 33B-14~~[[, 33B-15, 33B-16 and 33B-17]]~~

<b>Boldface</b>	<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, 33B4, 33B-5, 33B-6 and 33B-7 are  
 2 amended, and Sections 33B-8, 33B-9, 33B-10, 33B-11, 33B-12, ~~[[and]]~~ 33B-13,  
 3 and 33B-14~~[[, 33B-15, 33B-16 and 33B-17]]~~ 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 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.

### 33B-2. Definitions.

In this [chapter] Chapter:

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

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

*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.

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

Integrated pest management means a process for managing pests that:

- (1) uses monitoring to determine pest injury levels;
- (2) combines biological, cultural, mechanical, physical, and chemical tools and other management practices to control pests in a safe, cost effective, and environmentally sound manner that contributes to the protection of public health and sustainability;

(3) uses knowledge about pests, such as infestations, thresholds, life histories, environmental requirements, and natural control of pests; and

(4) uses non-chemical pest-control methods and the careful use of least-toxic chemical methods when non-chemical methods have been exhausted or are not feasible.]]

[[Larvicide means a pesticide designed to kill larval pests.]]

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

(1) [Mostly] mostly covered by grass, other similar herbaceous plants, shrubs, or trees; and

(2) [Kept] kept trim by mowing or cutting.

[[Lawn includes an athletic playing field other than a golf course.]] *Lawn* does not include a:

(1) playing field;

(2) golf course; [[or]]

(3) garden; or

(4) tree or shrub..

[[Lawn care pesticide means a pesticide registered by the United States Environmental Protection Agency and labeled pursuant to the Federal Insecticide, Fungicide and Rodenticide Act for use in lawn, garden and ornamental sites or areas.]]

Listed pesticide means:

(1) a pesticide the active ingredients of which are recommended by the National Organic Standards Board pursuant to 7 U.S.C. § 6518, as amended, and published as the National List at 7 C.F.R. §§ 205.601 and 205.602; or

(2) a pesticide designated a “minimum risk pesticide” under FIFRA § 25(b) and listed in 40 C.F.R. § 152.25(f).

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

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

[[Non-essential pesticide means a pesticide designated as a non-essential pesticide under Section 33B-4.]]

*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.

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

Playing field means:

(1) an athletic field maintained by the Montgomery County Department of Parks; or

(2) an area of land on private property maintained exclusively for sporting use.

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

(1) applying a pesticide for the purpose of engaging in agriculture; or

(2) applying a pesticide around or near the foundation of a building for purpose of indoor pest control[[;

(3) applying a pesticide to a golf course or turf farm]].

*Registered pesticide* means a pesticide registered by the United States Environmental Protection Agency and labeled pursuant to the Federal Insecticide, Fungicide and Rodenticide Act for use in lawn, garden and ornamental sites or areas.

[[*Restricted lawn care pesticide* means a pesticide designated as a restricted lawn care pesticide under Section 33B-4.]]

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

*Waterbody* means waters located within the County that are:

(1) subject to the ebb and flow of the tide; or

(2) free flowing, unconfined, and above-ground rivers, streams or creeks.

**[33B-4.] [[33B-2.]] 33B-3. 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] notice signs and supporting information that are approved by the [department] Department; and
- (b) [The] the product label or other information that the federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) [, 7 U.S.C. 136 et seq.,] requires for sale of the pesticide.

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

**[33B-5] [[33B-3.]] 33B-4. 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; and
- (e) display a sign or signs in each area of the retail establishment where pesticides are available to consumers, with language approved by the Department, that:

- 186           (1) informs buyers of the County law on the use of registered  
 187                 pesticides on lawns; and  
 188           (2) identifies pest control options that are permissible for lawn  
 189                 application under the law.

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

192 **[33B-6] [[33B-4.]] 33B-5. Regulations.**

- 193           (a) The [County] Executive must adopt regulations to carry out this Chapter  
 194                 under method (2).  
 195           (b) The Executive must include in the regulations adopted under this  
 196                 [section] Section the minimum size or quantity of pesticide subject to  
 197                 [section 33B-4] Section [[33B-2]] 33B-3.  
 198           (c) [[The Executive must include in the regulations adopted under this  
 199                 Section a list of]] [[non-essential]] [[restricted lawn care pesticides. The  
 200                 list of]] [[non-essential]] [[restricted lawn care pesticides must be based  
 201                 on an evaluation of all lawn care pesticides and must include:  
 202                 (1)) [[all pesticides]] [[each pesticide classified]] [[as “Carcinogenic  
 203                 to Humans” or “Likely to Be Carcinogenic to Humans”]] [[by the  
 204                 U.S. Environmental Protection Agency as:  
 205                         (A) “carcinogenic to humans” (Group A);  
 206                         (B) “likely to be carcinogenic to humans” (Groups B1 and  
 207                         B2);  
 208                         (C) “suggestive evidence of carcinogenic potential” (Group  
 209                         C); or  
 210                         (D) inadequate information to assess carcinogenic potential”  
 211                         (Group D);

(2)] [[all pesticides]] [[each pesticide classified by the U.S. Environmental Protection Agency as a “Restricted Use Product”;

(3)] [[all pesticides classified as a “Class 9” pesticide by the Ontario, Canada, Ministry of the Environment]] [[each pesticide classified by the International Agency for Research on Cancer as:

(A) “carcinogenic to humans” (Group 1);

(B) “probably carcinogenic to humans” (Group 2A);

(C) “possibly carcinogenic to humans” (Group 2B); or

(D) “not classifiable as to its carcinogenicity to humans” (Group 3);

(4)] [[all pesticides classified as a “Category 1 Endocrine Disruptor” by the European Commission]] [[each pesticide in the top quartile of toxicity for pesticides evaluated by the U.S. Environmental Protection Agency or other federal government authority for systemic non-carcinogenic human toxicity; and

(5)] [[any other pesticides which the Executive determines are not critical to pest management in the County]] [[each pesticide in the top quartile of toxicity for pesticides evaluated by the U.S. Environmental Protection Agency for:

(A) chronic toxicity to fish; and

(B) chronic toxicity to aquatic invertebrates.

(d)] The Executive must include in the regulations adopted under this Section a list of invasive species that may be detrimental to the environment in the County.

[(e)] (d) The Executive must review and update the [[lists]] list of [[non-essential]] [[restricted lawn care pesticides and]] invasive species

238                   designated under [[subsections]] subsection (c) [[and (d)]] by July 1 of  
 239                   each year.

240   **[33B-7] [[33B-5.]] 33B-6. Penalty for violating chapter.**

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

243                   **ARTICLE 2. Notice Requirements.**

244   **[33B-2] [[33B-6.]] 33B-7. Notice about pesticides to customer [[;**  
 245   **acknowledgement and direction by customer]]].**

246           (a)   In this [section] Section:

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

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

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

253                   (1)   [Before] before application, a list of:

254                           [a.](A)       [The] the trade name of each pesticide that might be  
 255                                           used;

256                           [b.](B)       [The] the generic name of each pesticide that might  
 257                                           be used; and

258                           [c.](C)       [Specific] specific customer safety precautions [[,  
 259                                           including all potential health risks identified by the United  
 260                                           States Environmental Protection Agency and the World  
 261                                           Health Organization]] for each pesticide that might be  
 262                                           used; and

263                   (2)   [After] after application, a list of:

264 [a.](A) [The] the trade name of each pesticide actually used;  
 265 and

266 [b.](B) [The] the generic name of each pesticide actually  
 267 used; and

268 (3) [A] a written notice about pesticides prepared by the [department]  
 269 Department under subsection (c) [of this section].

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

273 (d) The notice prepared by the [department] Department under subsection  
 274 (c) [of this section] must include:

275 (1) [Government] government agency phone numbers to call to:

276 [a.](A) [Make] make a consumer complaint;

277 [b.](B) [Receive] receive technical information on  
 278 pesticides; and

279 [c.](C) [Get] get assistance in the case of a medical  
 280 emergency;

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

283 (3) [A] a statement that a custom applicator must:

284 [a.](A) [Be] be licensed by the Maryland Department of  
 285 Agriculture; and

286 [b.](B) [Follow] follow safety precautions; and

287 (4) [A] a statement that the customer has the right to require the  
 288 custom applicator to notify the customer before each treatment of  
 289 the lawn of the customer with a pesticide.

290 [(e) Before applying a pesticide to a lawn, a custom applicator must:

(1) inform a new customer of:

(A) the existence of other means of pest control without the use of restricted lawn care pesticides; and

(B) the practice of integrated pest management (IPM), including a description of the process of IPM that is consistent with that of the U.S. Environmental Protection Agency; and

(2) obtain from a new customer, in writing or other electronic format approved by the Director :

(A) acknowledgement that the customer received the information required under this subsection and subsection (b); and

(B) direction from the customer as to whether or not to use IPM practices.

(f) A custom applicator must retain a acknowledgement from a new customer obtained under subsection (e) for at least one year.]]

**[33B-3] [[33B-7.]] 33B-8. Posting signs after application by custom applicator.**

(a) Immediately after a custom applicator treats a lawn with a pesticide, the custom applicator must [post a sign on the lawn] place markers within or along the perimeter of the area where pesticides [[will be]] have been applied.

(b) A [sign posted] marker required under this [section] Section must:

(1) [Be] be clearly visible [from the principal place of access to] to persons immediately outside the perimeter of the property;

(2) [Be] be a size, form, and color approved by the [department] Department;

(3) [Be] be made of material approved by the [department]  
Department; [and]

(4) [Have] have wording with content and dimensions approved by  
the [department] Department[.]; and

(5) be in place on the day that the pesticide is applied.

**[[33B-8.]] 33B-9. Posting signs after application by property owner or tenant.**

(a) A person who performs a private lawn application treating an area  
more than 100 square feet, or an area of any size within five feet of a  
property line, must place markers within or along the perimeter of the  
area where pesticides [[will be]] have been applied.

(b) A marker required under this Section must:

(1) be clearly visible to persons immediately outside the perimeter of  
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; and

(5) be in place on the day that the pesticide is applied.

**ARTICLE 3. [[Application restrictions.]] [[Pesticide use reduction.]]**

**Application restrictions.**

**[[33B-9.]] 33B-10. [[Prohibited application.]] [[Countywide use reduction plan.]]**

**Prohibited applications.**

[[A person must not apply a non-essential pesticide to a lawn.]]

[[((a) The Director must by July 1, 2016 provide a report to the County  
Executive and County Council that outlines options for:

(1) determining a baseline estimate of the use of restricted lawn care  
pesticides in the County; and

(2) measuring changes in the use of restricted lawn care pesticides in the County over time.

(b) The Director must then develop a restricted lawn care pesticide use plan, with a goal of reducing, by 2018, the use in the County of restricted lawn care pesticides other than in agriculture by at least 50% from the baseline established under subsection (a).

(c) If the reduction goal is not achieved, the Director must implement additional measures to further reduce the use of restricted lawn care pesticides.]]

(a) On County-owned property and private property, except as provided in subsection (b), a person must not apply a registered pesticide other than a listed pesticide to:

(1) a lawn;

(2) a playground;

(3) a mulched recreation area;

(4) a children's facility; or

(5) the grounds of a children's facility.

(b) A person may apply any registered pesticide to:

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

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

(3) control disease vectors;

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

(5) control organisms that threaten the health of trees or shrubs;

(6) maintain property as part of efforts by a public utility to comply with applicable vegetation management provisions of any federal, state, or local law or regulation;



- (7) control indoor pests, if applied around or near the foundation of a building;
- (8) control pests while engaged in agriculture; and
- (9) control a pest outbreak that poses an imminent threat to human health or prevent significant economic damage if a registered pesticide is not used.

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

- (1) within seven days after a pesticide is applied on private property, notify the Department of the application and the reasons for the use of the pesticide; or
- (2) within 30 days after a pesticide is applied on County-owned property, inform the Council of the application and the reasons for the use of the pesticide.

**[[33B-10.]] [[Exceptions and exemptions]] [[Playgrounds and Children's Facilities.]]**

[[a) A person may apply a non-essential pesticide for the following purposes:

- (1) for the control of weeds as defined in Chapter 58, Weeds;
- (2) for the control of invasive species listed in a regulation adopted under Subsection 33B-4(d);
- (3) for pest control while engaged in agriculture; and
- (4) for the maintenance of a golf course.

(b) A person may apply to the Director for an exemption from the prohibition of Section 33B-9 for a non-essential pesticide. The Director may grant an exemption to apply a non-essential pesticide on property

where application is prohibited under Section 33B-9 if the applicant shows that:

- (1) effective alternatives are unavailable;
- (2) granting an exemption will not violate State or federal law; and
- (3) use of the non-essential pesticide is necessary to protect human health or prevent significant economic damage.

(c) A person may apply to the Director for an emergency exemption from the prohibition in Section 33B-9 if a pest outbreak poses an imminent threat to public health or if significant economic damage would result from the inability to use a pesticide prohibited by Section 33B-9. The Director may impose specific conditions for the granting of emergency exemptions.]]

[[a) Except as provided in subsection (b), a person must not apply a restricted lawn care pesticide to a playground, children's facility, or the grounds of a children's facility.

(b) A person may apply a restricted lawn care pesticide to a playground, children's facility, or the grounds of a children's facility only to:

- (1) control weeds as defined in Chapter 58, Weeds;
- (2) control invasive species listed in a regulation adopted under subsection 33B-4(d);
- (3) control disease vectors;
- (4) control biting or stinging insects or stinging plants;
- (5) control organisms that threaten the health of trees or shrubs; or
- (6) control a pest outbreak that poses an imminent threat to human health or prevent significant economic damage if a restricted lawn care pesticide is not used.]]

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

- (a) The Executive must implement a public outreach and education campaign before and during implementation of the provisions of this Article.
- (b) [[This]] The outreach and education campaign [[should]] must include the provision of the following resources:
- (1) the National Organic Standards Board National List or the Organic Materials Review Institute (OMRI) listed products which are the NOSB National list products categorized by use;
  - (2) FIFRA § 25(b) minimum risk pesticides, listed in 40 C.F.R. § 152.25(f); and
  - (3) guidance on best practices for organic and pesticide-free lawn care.
- (c) The outreach and education campaign should include:
- [[a]] (1) informational mailers to County households;
  - [[b]] (2) distribution of information through County internet and web-based resources;
  - [[c]] (3) radio and television public service announcements;
  - [[d]] (4) news releases and news events;
  - [[e]] (5) information translated into Spanish, French, Chinese, Korean, Vietnamese, and other languages, as needed;
  - [[f]] (6) extensive use of County Cable Montgomery and other Public, Educational, and Government channels funded by the County; [[and]] and
  - [[g]] (7) posters and brochures made available at County events, on Ride-On buses and through Regional Service Centers, libraries, recreation facilities, senior centers, public schools, Montgomery

College, health care providers, hospitals, clinics, and other venues]]; and

(h) a survey of pesticide use by County residents and custom applicators]].

**[[ARTICLE 4. Common Ownership Communities.**

**33B-12. Definitions.**

In this article the terms association document, common element, community association, owner, and unit have the meanings attributed to them in Section 10B-8.

**33B-13. Application of pesticide to individual units.**

(a) Beginning July 1, 2016, each year, a community association must provide owners an opportunity to decline to have a restricted lawn care pesticide applied to the owner's unit.

(b) If a unit owner declines to have a restricted lawn care pesticide applied, the community association or its agent must not apply the restricted lawn care pesticide to the unit.

**33B-14. Application of pesticide to common elements.**

(a) Beginning July 1, 2016, each year, the owners in a common ownership community must approve, by a majority of votes cast, in person or by proxy, the application of a restricted lawn care pesticide to a common element during the following year.

(b) A community association may apply to the Director for an emergency exemption from the prohibition or restrictions under this Section if a pest outbreak poses an imminent threat to public health or if significant economic damage would result from the inability to use a restricted lawn care pesticide. The Director may impose specific conditions on each emergency exemption.

(c) A community association must post notice of each pesticide application to the common elements. The notice required under this subsection must consist of signs that:

- (1) are clearly visible to persons immediately outside the perimeter of the property;
- (2) are in place on the day that the pesticide is applied;
- (3) are of a size, form, and color approved by the Department;
- (3) are made of material approved by the Department; and
- (4) have wording with content and dimensions approved by the Department.]]

**ARTICLE [[4.]] [[5.]] 4. County Property and Parks**

**[[33B-12.]] [[33B-15.]] 33B-12. [[Prohibition]] Neonicotinoid pesticides on County-owned property.**

- (a) Prohibition. Except as provided in subsection (b), a [[person]] County employee or County contractor must not [[apply to any lawn]] use a neonicotinoid pesticide on property owned by the County[:]]
- [[ (1) a]] [[non-essential]] [[restricted lawn care pesticide; or
  - (2) a neonicotinoid]].

(b) Exceptions.

- (1) A [[person]] County employee or County contractor may use [[any larvicide or rodenticide on a lawn on property owned by the County as a public health measure to reduce the spread of disease vectors under recommendations and guidance provided by the Centers for Disease Control and Prevention, the United States Environmental Protection Agency, or the State Department of Agriculture. Any rodenticide used must be in a tamper-proof product, unless the rodenticide is designed and registered for a

specific environment inaccessible to humans and pets.]] a  
neonicotinoid pesticide on County-owned property to control  
pests while engaged in agriculture.

(2) [[A]] [[person]] [[County employee or County contractor may  
use a]] [[non-essential]] [[restricted lawn care pesticide or  
neonicotinoid on a lawn on property owned by the County for the  
following purposes]] [[set forth in Subsection 33B-10(a).]][[:

(A) for the control of weeds as defined in Chapter 58, Weeds;

(B) for the control of invasive species listed in a regulation  
adopted under Subsection 33B-4(d);

(C) for pest control while engaged in agriculture;

(D) for the maintenance of a golf course; and

(E) for the maintenance of medians and islands in County  
rights-of-way.

(3) A]] [[person]] [[County employee or County contractor may use  
a]] [[non-essential]] [[restricted lawn care pesticide or  
neonicotinoid on a lawn on property owned by the County if the  
Director determines, after consulting the Directors of General  
Services and Health and Human Services, that the use of the  
pesticide is necessary to protect human health or prevent  
imminent and significant economic damage, and that no  
reasonable alternative is available. If a pesticide is used under]]  
[[this paragraph]]], the Director must, within 30 days after using  
the pesticide, report to the Council on the reasons for the use of  
the pesticide.

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

**[[33B-13.]] [[33B-16.]] 33B-13. Integrated pest management on County property.**

(a) Adoption of program. The Department must adopt[[, by a method (2) regulation,]] an integrated pest management program for all property owned by the County.

(b) Requirements. Any program adopted under subsection (a) must require:

- (1) monitoring the turf or landscape as appropriate;
- (2) accurate record-keeping documenting any potential pest problem;
- (3) evaluating the site for any injury caused by a pest and determining the appropriate treatment;
- (4) using a treatment that is the least damaging to the general environment and best preserves the natural ecosystem;
- (5) using a treatment that will be the most likely to produce long-term reductions in pest control requirements and is operationally feasible and cost effective in the short and long term;
- (6) using a treatment that minimizes negative impacts to non-target organisms;
- (7) using a treatment that is the least disruptive of natural controls;
- (8) using a treatment that is the least hazardous to human health; and
- (9) exhausting the list of all non-chemical methods and [[organic treatments available]] listed pesticides for the targeted pest before using any [[synthetic chemical]] other treatments.

(c) The Department must provide training in integrated pest management for each employee who is responsible for pest management.

**[[33B-17.]] 33B-14. County parks.**

(a) Policy. It is the policy of Montgomery County to promote environmentally sensitive landscape pest management in its parks by

phasing out the use of the most hazardous pesticides and reducing overall pesticide use while preserving landscape assets, maintaining functionality of playing fields, and protecting the health and safety of the public and County employees. To carry out this policy, the Parks Department must, subject to appropriation, implement the provisions of this Section.

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

(1) the maintenance of certain parks entirely without the use of [[restricted lawn care]] registered pesticides other than listed pesticides [[or neonicotinoids]];

(2) a program for reducing the use of [[restricted lawn care]] registered pesticides other than listed pesticides [[and neonicotinoids]] on playing fields that includes:

(A) a pilot program consisting of at least five playing fields maintained without the use of [[restricted lawn care]] registered pesticides other than listed pesticides [[or neonicotinoids]] that:

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

(ii) includes a publicly available plan describing the practices and procedures used; [[and]]

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



- 582                    (C) a plan for transitioning to maintenance of all playing fields  
 583                    without the use of registered pesticides other than listed  
 584                    pesticides by 2020; and
- 585            (3) a public communication campaign to inform the public of the  
 586            existence and progress of the pesticide-free parks program.
- 587    (c) Pesticide usage protocols. The Parks Department must develop usage  
 588    protocols which limit the use of [[restricted lawn care]] registered  
 589    pesticides other than listed pesticides [[and neonicotinoids]] to the  
 590    maximum extent possible and, subject to the exceptions in subsection  
 591    (d):
- 592            (1) do not permit the use of [[restricted lawn care]] registered  
 593            pesticides other than listed pesticides [[or neonicotinoids]] within  
 594            25 feet of a waterbody;
- 595            (2) [[do not permit the application of restricted lawn care pesticides  
 596            or neonicotinoids to playgrounds in County parks; and
- 597            (3)] except where immediate application is necessary to protect  
 598            human health or prevent significant economic damage, include  
 599            the posting of notice of each planned application of [[restricted  
 600            lawn care]] a registered pesticide other than a listed pesticide [[or  
 601            neonicotinoid]] on the appropriate Parks Department website and  
 602            in the area where the pesticide is to be applied, from at least 48  
 603            hours before application through at least 48 hours after  
 604            application, that includes:
- 605            (A) the common name of the pesticide;  
 606            (B) the location of the application;  
 607            (C) the planned date and time of the application; and  
 608            (D) the reason for the use of the pesticide[.]; and

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

(d) Exceptions. The pesticide-free parks program and pesticide usage protocols may generally permit the application of a [[restricted lawn care]] registered pesticide to:

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

(2) control invasive species listed in a regulation adopted under subsection [[33B-4(d)]] 33B-5(c);

(3) control disease vectors;

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

(5) control organisms that threaten the health of trees or shrubs;

(6) remove weeds as part of the renovation of a playing field;

(7) control pests while engaged in agriculture; and

[[ (7) ] (8) otherwise protect human health or prevent significant economic damage.

(e) Reporting requirement. The Parks Department must submit [[a report]] biannual reports to County Executive and County Council on or before January 15 and July 15 of each year that:

(1) [[details restricted lawn care]] detail registered pesticide [[and neonicotinoid]] usage, other than listed pesticide usage, in County parks during the preceding year, including:

(A) the common name of each [[restricted lawn care]] registered pesticide [[and neonicotinoid]] used;

(B) the location of each application;

(C) the date and time of each application; and

(D) the reason for each use of a [[restricted lawn care]] registered pesticide [[and neonicotinoid]]; [[and]]

(2) [[describes]] describe the status of the pesticide-free parks program implemented under this Section; and

(3) are available to the public in a manner consistent with the Montgomery County Open Data Act, Chapter 2, Article XIV of this Code.

**Sec. 2. Initial [[Lists]] List of [[Non-Essential]] [[Restricted Lawn Care Pesticides and]] Invasive Species.** The Executive must submit the [[lists]] list of [[non-essential]] [[restricted lawn care pesticides and]] invasive species required by [[Subsections]] Subsection [[33B-4(c) and (d)]] 33B-5(c) to the Council for approval by [[January]] March 1, 2016

**Sec. 3. Effective Date.** The [[prohibitions on]] [[requirements for the use of]] [[non-essential]] [[restricted lawn care pesticides in common ownership communities contained in]] [[Section 33B-9]] [[Sections 33B-12 and 33B-13, and the]] prohibitions and requirements related to the [[on]] use of [[non-essential]] [[restricted lawn care]] registered pesticides and neonicotinoids on County-owned property and in County parks contained in [[Section 33B-14]] Sections [[33B-15]] 33B-10, 33B-12, 33B-13 and [[33B-17]] 33B-14 take effect on [[January]] July 1, 2016; the prohibitions on the use of registered pesticides on private property contained in Section 33B-10 take effect on January 1, 2017.

**[[Sec. 4. Expiration.** This Act and any regulation adopted under it expires on January 1, 2019.]]

United States Code Annotated Title 7. Agriculture Chapter 94. Organic Certification (Refs & Annos)
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7 U.S.C.A. § 6518

§ 6518. National Organic Standards Board

Currentness

(a) In general

The Secretary shall establish a National Organic Standards Board (in accordance with the Federal Advisory Committee Act) (hereafter referred to in this section as the "Board") to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of this chapter.

(b) Composition of Board

The Board shall be composed of 15 members, of which--

- (1) four shall be individuals who own or operate an organic farming operation;
- (2) two shall be individuals who own or operate an organic handling operation;
- (3) one shall be an individual who owns or operates a retail establishment with significant trade in organic products;
- (4) three shall be individuals with expertise in areas of environmental protection and resource conservation;
- (5) three shall be individuals who represent public interest or consumer interest groups;
- (6) one shall be an individual with expertise in the fields of toxicology, ecology, or biochemistry; and
- (7) one shall be an individual who is a certifying agent as identified under section 6515 of this title.

(c) Appointment

Not later than 180 days after November 28, 1990, the Secretary shall appoint the members of the Board under paragraph (1) through (6) of subsection (b) of this section (and under subsection (b)(7) of this section at an appropriate date after the certification of individuals as certifying agents under section 6515 of this title) from nominations received from organic certifying organizations, States, and other interested persons and organizations.

(d) Term

A member of the Board shall serve for a term of 5 years, except that the Secretary shall appoint the original members of the Board for staggered terms. A member cannot serve consecutive terms unless such member served an original term that was less than 5 years.

(e) Meetings

The Secretary shall convene a meeting of the Board not later than 60 days after the appointment of its members and shall convene subsequent meetings on a periodic basis.

(f) Compensation and expenses

A member of the Board shall serve without compensation. While away from their homes or regular places of business on the business of the Board, members of the Board may be allowed travel expenses, including per diem in lieu of subsistence, as is authorized under section 5703 of Title 5 for persons employed intermittently in the Government service.

(g) Chairperson

The Board shall select a Chairperson for the Board.

(h) Quorum

A majority of the members of the Board shall constitute a quorum for the purpose of conducting business.

(i) Decisive votes

Two-thirds of the votes cast at a meeting of the Board at which a quorum is present shall be decisive of any motion.

(j) Other terms and conditions

The Secretary shall authorize the Board to hire a staff director and shall detail staff of the Department of Agriculture or allow for the hiring of staff and may, subject to necessary appropriations, pay necessary expenses incurred by such Board in carrying out the provisions of this chapter, as determined appropriate by the Secretary.

(k) Responsibilities of Board

(1) In general

The Board shall provide recommendations to the Secretary regarding the implementation of this chapter.

(2) National List

The Board shall develop the proposed National List or proposed amendments to the National List for submission to the Secretary in accordance with section 6517 of this title.

(3) Technical advisory panels

The Board shall convene technical advisory panels to provide scientific evaluation of the materials considered for inclusion in the National List. Such panels may include experts in agronomy, entomology, health sciences and other relevant disciplines.

(4) Special review of botanical pesticides

The Board shall, prior to the establishment of the National List, review all botanical pesticides used in agricultural production and consider whether any such botanical pesticide should be included in the list of prohibited natural substances.

(5) Product residue testing

The Board shall advise the Secretary concerning the testing of organically produced agricultural products for residues caused by unavoidable residual environmental contamination.

(6) Emergency spray programs

The Board shall advise the Secretary concerning rules for exemptions from specific requirements of this chapter (except the provisions of section 6511 of this title) with respect to agricultural products produced on certified organic farms if such farms are subject to a Federal or State emergency pest or disease treatment program.

(l) Requirements

In establishing the proposed National List or proposed amendments to the National List, the Board shall--

(1) review available information from the Environmental Protection Agency, the National Institute of Environmental Health Studies, and such other sources as appropriate, concerning the potential for adverse human and environmental effects of substances considered for inclusion in the proposed National List;

(2) work with manufacturers of substances considered for inclusion in the proposed National List to obtain a complete list of ingredients and determine whether such substances contain inert materials that are synthetically produced; and

(3) submit to the Secretary, along with the proposed National List or any proposed amendments to such list, the results of the Board's evaluation and the evaluation of the technical advisory panel of all substances considered for inclusion in the National List.

(m) Evaluation

In evaluating substances considered for inclusion in the proposed National List or proposed amendment to the National List, the Board shall consider--

- (1) the potential of such substances for detrimental chemical interactions with other materials used in organic farming systems;
- (2) the toxicity and mode of action of the substance and of its breakdown products or any contaminants, and their persistence and areas of concentration in the environment;
- (3) the probability of environmental contamination during manufacture, use, misuse or disposal of such substance;
- (4) the effect of the substance on human health;
- (5) the effects of the substance on biological and chemical interactions in the agroecosystem, including the physiological effects of the substance on soil organisms (including the salt index and solubility of the soil), crops and livestock;
- (6) the alternatives to using the substance in terms of practices or other available materials; and
- (7) its compatibility with a system of sustainable agriculture.

(n) Petitions

The Board shall establish procedures under which persons may petition the Board for the purpose of evaluating substances for inclusion on the National List.

(o) Confidentiality

Any confidential business information obtained by the Board in carrying out this section shall not be released to the public.

**CREDIT(S)**

(Pub.L. 101-624, Title XXI, § 2119, Nov. 28, 1990, 104 Stat. 3947; Pub.L. 102-237, Title X, § 1001(7), Dec. 13, 1991, 105 Stat. 1893.)

7 U.S.C.A. § 6518, 7 USCA § 6518

Current through P.L. 114-49 approved 8-7-2015

KeyCite Yellow Flag - Negative Treatment  
Proposed Regulation

Code of Federal Regulations

Title 7. Agriculture

Subtitle B. Regulations of the Department of Agriculture

Chapter I. Agricultural Marketing Service<sup>1</sup> (Standards, Inspections, Marketing Practices)

Subchapter M. Organic Foods Production Act Provisions (Refs & Annos)

Part 205. National Organic Program (Refs & Annos)

Subpart G. Administrative

the National List of Allowed and Prohibited Substances

7 C.F.R. § 205.601

§ 205.601 Synthetic substances allowed for use in organic crop production.

Effective: October 30, 2014

Currentness

In accordance with restrictions specified in this section, the following synthetic substances may be used in organic crop production: *Provided*, That, use of such substances do not contribute to contamination of crops, soil, or water. Substances allowed by this section, except disinfectants and sanitizers in paragraph (a) and those substances in paragraphs (c), (j), (k), and (l) of this section, may only be used when the provisions set forth in § 205.206(a) through (d) prove insufficient to prevent or control the target pest.

(a) As algicide, disinfectants, and sanitizer, including irrigation system cleaning systems.

(1) Alcohols.

(i) Ethanol.

(ii) Isopropanol.

(2) Chlorine materials--For pre-harvest use, residual chlorine levels in the water in direct crop contact or as water from cleaning irrigation systems applied to soil must not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act, except that chlorine products may be used in edible sprout production according to EPA label directions.

(i) Calcium hypochlorite.

(ii) Chlorine dioxide.

(iii) Sodium hypochlorite.



(3) Copper sulfate--for use as an algicide in aquatic rice systems, is limited to one application per field during any 24-month period. Application rates are limited to those which do not increase baseline soil test values for copper over a timeframe agreed upon by the producer and accredited certifying agent.

(4) Hydrogen peroxide.

(5) Ozone gas--for use as an irrigation system cleaner only.

(6) Peracetic acid--for use in disinfecting equipment, seed, and asexually propagated planting material. Also permitted in hydrogen peroxide formulations as allowed in § 205.601(a) at concentration of no more than 6% as indicated on the pesticide product label.

(7) Soap-based algicide/demossers.

(8) Sodium carbonate peroxyhydrate (CAS #-15630-89-4)--Federal law restricts the use of this substance in food crop production to approved food uses identified on the product label.

(b) As herbicides, weed barriers, as applicable.

(1) Herbicides, soap-based--for use in farmstead maintenance (roadways, ditches, right of ways, building perimeters) and ornamental crops.

(2) Mulches.

(i) Newspaper or other recycled paper, without glossy or colored inks.

(ii) Plastic mulch and covers (petroleum-based other than polyvinyl chloride (PVC)).

(iii) Biodegradable biobased mulch film as defined in § 205.2. Must be produced without organisms or feedstock derived from excluded methods.

(c) As compost feedstocks--Newspapers or other recycled paper, without glossy or colored inks.

(d) As animal repellents--Soaps, ammonium--for use as a large animal repellant only, no contact with soil or edible portion of crop.

(e) As insecticides (including acaricides or mite control).

- (1) Ammonium carbonate--for use as bait in insect traps only, no direct contact with crop or soil.
  - (2) Aqueous potassium silicate (CAS #-1312-76-1)--the silica, used in the manufacture of potassium silicate, must be sourced from naturally occurring sand.
  - (3) Boric acid--structural pest control, no direct contact with organic food or crops.
  - (4) Copper sulfate--for use as tadpole shrimp control in aquatic rice production, is limited to one application per field during any 24-month period. Application rates are limited to levels which do not increase baseline soil test values for copper over a timeframe agreed upon by the producer and accredited certifying agent.
  - (5) Elemental sulfur.
  - (6) Lime sulfur--including calcium polysulfide.
  - (7) Oils, horticultural--narrow range oils as dormant, suffocating, and summer oils.
  - (8) Soaps, insecticidal.
  - (9) Sticky traps/barriers.
  - (10) Sucrose octanoate esters (CAS #-42922-74-7; 58064-47-4)--in accordance with approved labeling.
- (f) As insect management. Pheromones.
- (g) As rodenticides. Vitamin D<sub>3</sub>.
- (h) As slug or snail bait. Ferric phosphate (CAS # 10045-86-0).
- (i) As plant disease control.
- (1) Aqueous potassium silicate (CAS #-1312-76-1)--the silica, used in the manufacture of potassium silicate, must be sourced from naturally occurring sand.

- (2) Coppers, fixed--copper hydroxide, copper oxide, copper oxychloride, includes products exempted from EPA tolerance, *Provided*, That, copper-based materials must be used in a manner that minimizes accumulation in the soil and shall not be used as herbicides.
- (3) Copper sulfate--Substance must be used in a manner that minimizes accumulation of copper in the soil.
- (4) Hydrated lime.
- (5) Hydrogen peroxide.
- (6) Lime sulfur.
- (7) Oils, horticultural, narrow range oils as dormant, suffocating, and summer oils.
- (8) Peracetic acid--for use to control fire blight bacteria. Also permitted in hydrogen peroxide formulations as allowed in § 205.601(i) at concentration of no more than 6% as indicated on the pesticide product label.
- (9) Potassium bicarbonate.
- (10) Elemental sulfur.
- (11) Streptomycin, for fire blight control in apples and pears only until October 21, 2014.
- (12) Tetracycline, for fire blight control in apples and pears only until October 21, 2014.
- (j) As plant or soil amendments.
  - (1) Aquatic plant extracts (other than hydrolyzed)--Extraction process is limited to the use of potassium hydroxide or sodium hydroxide; solvent amount used is limited to that amount necessary for extraction.
  - (2) Elemental sulfur.
  - (3) Humic acids--naturally occurring deposits, water and alkali extracts only.
  - (4) Lignin sulfonate--chelating agent, dust suppressant.
  - (5) Magnesium sulfate--allowed with a documented soil deficiency.

- (6) Micronutrients--not to be used as a defoliant, herbicide, or desiccant. Those made from nitrates or chlorides are not allowed. Soil deficiency must be documented by testing.
- (i) Soluble boron products.
- (ii) Sulfates, carbonates, oxides, or silicates of zinc, copper, iron, manganese, molybdenum, selenium, and cobalt.
- (7) Liquid fish products--can be pH adjusted with sulfuric, citric or phosphoric acid. The amount of acid used shall not exceed the minimum needed to lower the pH to 3.5.
- (8) Vitamins, B<sub>1</sub>, C, and E.
- (9) Sulfurous acid (CAS # 7782-99-2) for on-farm generation of substance utilizing 99% purity elemental sulfur per paragraph (j)(2) of this section.
- (k) As plant growth regulators. Ethylene gas--for regulation of pineapple flowering.
- (l) As floating agents in postharvest handling.
- (1) Lignin sulfonate.
- (2) Sodium silicate--for tree fruit and fiber processing.
- (m) As synthetic inert ingredients as classified by the Environmental Protection Agency (EPA), for use with nonsynthetic substances or synthetic substances listed in this section and used as an active pesticide ingredient in accordance with any limitations on the use of such substances.
- (1) EPA List 4--Inerts of Minimal Concern.
- (2) EPA List 3--Inerts of unknown toxicity--for use only in passive pheromone dispensers.
- (n) Seed preparations. Hydrogen chloride (CAS # 7647-01-0)--for delinting cotton seed for planting.
- (o) As production aids. Microcrystalline cheesewax (CAS #'s 64742-42-3, 8009-03-08, and 8002-74-2)-for use in log grown mushroom production. Must be made without either ethylene-propylene co-polymer or synthetic colors.

(p) to (z) [Reserved]

**Credits**

[68 FR 61992, Oct. 31, 2003; 71 FR 53302, Sept. 11, 2006; 72 FR 69572, Dec. 10, 2007; 75 FR 38696, July 6, 2010; 75 FR 77524, Dec. 13, 2010; 77 FR 8092, Feb. 14, 2012; 77 FR 33298, June 6, 2012; 77 FR 45907, Aug. 2, 2012; 78 FR 31821, May 28, 2013; 79 FR 58663, Sept. 30, 2014]

SOURCE: 65 FR 80637, Dec. 21, 2000; 66 FR 15619, March 20, 2001, unless otherwise noted.

AUTHORITY: 7 U.S.C. 6501–6522.

Current through Sept. 24, 2015; 80 FR 57688.

**Footnotes**

1 Includes matters within the responsibility of the Federal Grain Inspection Service.

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**End of Document**

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Code of Federal Regulations

Title 7. Agriculture

Subtitle B. Regulations of the Department of Agriculture

Chapter I. Agricultural Marketing Service<sup>1</sup> (Standards, Inspections, Marketing Practices)

Subchapter M. Organic Foods Production Act Provisions (Refs & Annos)

Part 205. National Organic Program (Refs & Annos)

Subpart G. Administrative

the National List of Allowed and Prohibited Substances

7 C.F.R. § 205.602

§ 205.602 Nonsynthetic substances prohibited for use in organic crop production.

Currentness

The following nonsynthetic substances may not be used in organic crop production:

- (a) Ash from manure burning.
- (b) Arsenic.
- (c) Calcium chloride, brine process is natural and prohibited for use except as a foliar spray to treat a physiological disorder associated with calcium uptake.
- (d) Lead salts.
- (e) Potassium chloride--unless derived from a mined source and applied in a manner that minimizes chloride accumulation in the soil.
- (f) Sodium fluoaluminate (mined).
- (g) Sodium nitrate--unless use is restricted to no more than 20% of the crop's total nitrogen requirement; use in spirulina production is unrestricted until October 21, 2005.
- (h) Strychnine.
- (i) Tobacco dust (nicotine sulfate).
- (j) to (z) [Reserved]

**Credits**

[68 FR 61992, Oct. 31, 2003]

SOURCE: 65 FR 80637, Dec. 21, 2000; 66 FR 15619, March 20, 2001, unless otherwise noted.

AUTHORITY: 7 U.S.C. 6501–6522.

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Code of Federal Regulations

Title 40. Protection of Environment

Chapter I. Environmental Protection Agency (Refs & Annos)

Subchapter E. Pesticide Programs

Part 152. Pesticide Registration and Classification Procedures (Refs & Annos)

Subpart B. Exemptions (Refs & Annos)

40 C.F.R. § 152.25

§ 152.25 Exemptions for pesticides of a character not requiring FIFRA regulation.

Effective: June 21, 2006

Currentness

The pesticides or classes of pesticides listed in this section have been determined to be of a character not requiring regulation under FIFRA, and are therefore exempt from all provisions of FIFRA when intended for use, and used, only in the manner specified.

(a) Treated articles or substances. An article or substance treated with, or containing, a pesticide to protect the article or substance itself (for example, paint treated with a pesticide to protect the paint coating, or wood products treated to protect the wood against insect or fungus infestation), if the pesticide is registered for such use.

(b) Pheromones and pheromone traps. Pheromones and identical or substantially similar compounds labeled for use only in pheromone traps (or labeled for use in a manner which the Administrator determines poses no greater risk of adverse effects on the environment than use in pheromone traps), and pheromone traps in which those compounds are the sole active ingredient(s).

(1) For the purposes of this paragraph, a pheromone is a compound produced by an arthropod which, alone or in combination with other such compounds, modifies the behavior of other individuals of the same species.

(2) For the purposes of this paragraph, a synthetically produced compound is identical to a pheromone only when their molecular structures are identical, or when the only differences between the molecular structures are between the stereochemical isomer ratios of the two compounds, except that a synthetic compound found to have toxicological properties significantly different from a pheromone is not identical.

(3) When a compound possesses many characteristics of a pheromone but does not meet the criteria in paragraph (a)(2) of this section, it may, after review by the Agency, be deemed a substantially similar compound.

(4) For the purposes of this paragraph, a pheromone trap is a device containing a pheromone or an identical or substantially similar compound used for the sole purpose of attracting, and trapping or killing, target arthropods. Pheromone traps are intended to achieve pest control by removal of target organisms from their natural environment and do not result in increased levels of pheromones or identical or substantially similar compounds over a significant fraction of the treated area.



(c) Preservatives for biological specimens.

(1) Embalming fluids.

(2) Products used to preserve animal or animal organ specimens, in mortuaries, laboratories, hospitals, museums and institutions of learning.

(3) Products used to preserve the integrity of milk, urine, blood, or other body fluids for laboratory analysis.

(d) Foods. Products consisting of foods and containing no active ingredients, which are used to attract pests.

(e) Natural cedar.

(1) Natural cedar blocks, chips, shavings, balls, chests, drawer liners, paneling, and needles that meet all of the following criteria:

(i) The product consists totally of cedarwood or natural cedar.

(ii) The product is not treated, combined, or impregnated with any additional substance(s).

(iii) The product bears claims or directions for use solely to repel arthropods other than ticks or to retard mildew, and no additional claims are made in sale or distribution. The labeling must be limited to specific arthropods, or must exclude ticks if any general term such as "arthropods," "insects," "bugs," or any other broad inclusive term, is used. The exemption does not apply to natural cedar products claimed to repel ticks.

(2) The exemption does not apply to cedar oil, or formulated products which contain cedar oil, other cedar extracts, or ground cedar wood as part of a mixture.

(f) Minimum risk pesticides—

(1) Exempted products. Products containing the following active ingredients are exempt from the requirements of FIFRA, alone or in combination with other substances listed in this paragraph, provided that all of the criteria of this section are met.

Castor oil (U.S.P. or equivalent)

Cedar oil

Cinnamon and cinnamon oil

Citric acid

Citronella and citronella oil

Cloves and clove oil

Corn gluten meal

Corn oil

Cottonseed oil

Dried blood

Eugenol

Garlic and garlic oil

Geraniol

Geranium oil

Lauryl sulfate

Lemongrass oil

Linseed oil

Malic acid

Mint and mint oil

Peppermint and peppermint oil

2-Phenethyl propionate (2-phenylethyl propionate)

Potassium sorbate

Putrescent whole egg solids

Rosemary and rosemary oil

Sesame (includes ground sesame plant) and sesame oil

Sodium chloride (common salt)

Sodium lauryl sulfate

Soybean oil

Thyme and thyme oil

White pepper

Zinc metal strips (consisting solely of zinc metal and impurities)

(2) Permitted inerts. A pesticide product exempt under paragraph (f)(1) of this section may only include inert ingredients listed in the most current List 4A. This list is updated periodically. The most current list may be obtained by contacting the Registration Division at the appropriate address as set forth in 40 CFR 150.17(a) or (b).

(3) Other conditions of exemption. All of the following conditions must be met for products to be exempted under this section:

(i) Each product containing the substance must bear a label identifying the name and percentage (by weight) of each active ingredient and the name of each inert ingredient.

(ii) The product must not bear claims either to control or mitigate microorganisms that pose a threat to human health, including but not limited to disease transmitting bacteria or viruses, or claims to control insects or rodents carrying specific diseases, including, but not limited to ticks that carry Lyme disease.

(iii) The product must not include any false and misleading labeling statements, including those listed in 40 CFR 156.10(a)(5)(i) through (viii).

#### Credits

[59 FR 2751, Jan. 19, 1994; 61 FR 8878, March 6, 1996; 66 FR 64764, Dec. 14, 2001; 71 FR 35545, June 21, 2006]

SOURCE: 49 FR 30903, Aug. 1, 1984; 50 FR 16234, April 25, 1985; 50 FR 41143, Oct. 9, 1985; 53 FR 15977, May 4, 1988; 53 FR 19114, May 26, 1988; 53 FR 30431, Aug. 12, 1988; 54 FR 11923, March 22, 1989, unless otherwise noted.

AUTHORITY: 7 U.S.C. 136–136y; Subpart U is also issued under 31 U.S.C. 9701.

Notes of Decisions (5)

Current through Sept. 24, 2015; 80 FR 57688.

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**MONTGOMERY COUNTY DEPARTMENT OF PARKS**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

October 1, 2015

The Honorable George Leventhal  
Montgomery County Council  
100 Maryland Avenue  
Rockville, Maryland 20850

Council President Leventhal:

The Department of Parks greatly appreciates the Council's consideration of the recommendations outlined in my September 15<sup>th</sup> memo to Councilmember Berliner related to Bill 52-14. As a follow-up to our communication and in response to the request of several councilmembers, the Department of Parks is amenable to including one regional/recreational field in the athletic field pilot program described in my September 15<sup>th</sup> memo. This will enable comparison of pesticide free maintenance and Integrated Pest Management practices at our restricted use fields which are maintained at a higher level than the local park fields.

I look forward to future participation in the Council's deliberations on this important topic.

Sincerely,

Michael F. Riley  
Director



## **BEYOND PESTICIDES**

701 E Street, SE ■ Washington DC 20003  
202-543-5450 phone ■ 202-543-4791 fax  
info@beyondpesticides.org ■ www.beyondpesticides.org

### **Councilmember Berliner's County Playground and Pilot Playing Field Proposal Montgomery County, MD Council September 9, 2015**

The amendments proposed to 52-14 by Councilmember Roger Berliner, Chair of the T&E Committee, strip out the central portions of the bill intended to move Montgomery County land, including public and private property, to non-toxic sustainable management practices. Mr. Berliner's proposed amendments:

- (i) eliminate the phase-out of toxic pesticides on private land within the county, except for property 25-feet from a waterbody (by eliminating original Section 33B-9, Prohibited application);
- (ii) eliminate the phase-out of toxic pesticides on playing fields that children use throughout the county by redefining lawn to exclude playing fields

#### **The Amendments Reduce the Scope and Intent of the Bill**

The amendments reduce the scope of the bill to phasing out toxic pesticides on playgrounds and five pilot playing field sites and reorient the approach to a posting and notice bill with an undefined 50% reduction goal in hazardous pesticide use over three years. If the reduction goal is not met, the county is required to implement "additional measures," which are not defined. Another provision allows homeowner associations by majority vote to treat common spaces with hazardous pesticides. Ironically, a provision requires that written notice be given to exposed individuals (which presumably will cover most of the population) with specific language that indicates that EPA states "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." Central to 52-14 is the sponsors' understanding that exposure in a community where toxic pesticides are used is virtually impossible to avoid.

#### **The Amendments Do Not Address the Hazards of Pesticides.**

The reality of pesticide hazards has provided the impetus for communities across the country and Montgomery County residents to start to eliminate the use of toxic pesticides rather than to simply notify and warn people that they are at risk, without realistic options to avoid exposure. The actual risk of hazard, based on scientific studies, goes beyond the warning stated in the Berliner amendments and extends to children throughout their developmental phases of teenage years. Pesticides are especially problematic for children with asthma and respiratory problems, as well as those with learning disabilities and attentional deficit hyperactivity disorders. In the community more broadly, the Berliner amendments undermine the intent of 52-14 to stop the widespread use of lawn and playing field pesticides that are known to cause

cancer, nervous system disorders, reproductive dysfunction, and immune system problems, and the exposure that occurs through drift, volatilization, run-off, and direct contact with the turf. Notification and reduction do not move the county off the pesticide treadmill of land management practices that are not needed to produce a beautiful and functional lawn and landscape.

**The Amendments Ignore the Efficacy of Non-Toxic Organic Practices.**

The underlying premise of the amendments, beyond the basic disregard for public health and environmental effects of pesticide use, is that pesticides are necessary to maintain a playing field or a lawn. If they were not thought to be necessary than why would a community want its residents to be exposed to glyphosate (Roundup), which the World Health Organization has classified as carcinogenic to humans (based on laboratory animal studies), or neonicotinoids and other environmental toxicants that indiscriminately kill bees, birds, and butterflies, among other beneficial organisms?

The County Council has created a stellar hearing record on the viability of organic management systems in building soil health through the elimination of petroleum-based synthetic fertilizers, increasing the biological life in the soil to enrich nutrient cycling through natural means, and ultimately growing healthier and more resilient plants, including turf. The opposition to phasing out toxic pesticides is coming from practitioners who are not trained or experienced in organic management systems and their horticultural benefits to managing diseases, insects, and weeds, while achieving long-term cost savings.

**Training on Organic Land Management Practices**

Rather than undermine the purpose and intent of the 52-14 to phase out toxic pesticides in the community, a positive approach would adopt the original legislation and train county staff and other practitioners in the county in organic land management. To do this, Beyond Pesticides is committed to underwriting the cost of training both county staff and landscapers, commercial operators, and homeowners, and provide ongoing technical assistance in evaluating soil to make management decisions. This training and technical assistance will teach the skills necessary to replace toxic chemicals with a systems approach to implementing 52-14. The systems approach will enhance soil health and incorporate organic compatible management practices and products that meet the community's expectations with resilient turf.