



BEYOND PESTICIDES

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

Statement of
Beyond Pesticides
on
SB76, An Act Authorizing Municipalities to Restrict the Use of Pesticides
In Certain Areas of the Municipality or On Certain Types of Properties
to
Connecticut Joint Committee on Environment
March 15, 2019

Thank you for the opportunity to provide input to the Connecticut Joint Committee on Environment. Beyond Pesticides is a national, grassroots, membership organization that represents community-based organizations and a range of people seeking to improve protections from pesticides and promote alternative pest management strategies that reduce or eliminate a reliance on toxic pesticides. Our membership spans the 50 states, the District of Columbia, and groups around the world. On behalf of our members and supporters who are residents of the state of Connecticut, we urge the passage of SB76 through this committee.

We Support Local Rights to Enact Protections from Harmful Pesticides

We support passage of SB76, which will repeal state preemption of local government authority to restrict pesticides in Connecticut and reestablish the basic democratic right of local governments to put in place community-wide standards to protect health and the environment—restrictions that are more stringent than state regulation. Current Connecticut state law reserves to the state all regulatory authority governing pesticide use.

The democratic process is foundational to the culture of Connecticut and the country. Current state law betrays the democratic process. Connecticut communities want to be able to adopt standards that exceed or are more stringent than state standards as a matter of public health, environmental protection, or quality of life.

Why would a town or city want to do use its local authority to adopt a pesticide restriction? It is the simple exercise of the local democratic process that, while meeting state and federal standards, results in a determination that more should be done locally to protect the health of families, children, local waterways, pollinators, and those with pre-existing medical conditions that are exacerbated by pesticide exposure.

Certainly, there is a role for the state and federal government to establish a floor of protection and regulate commerce to protect the health and the environment of the people of Connecticut. But, when it comes to adding to the levels of protection based on local conditions, or based on a belief within that local jurisdiction there is not adequate protection afforded by the state and federal government, we have a long history in the state of Connecticut of allowing local governments to elevate that level of protection.

The Supreme Court Upheld the Right of Local Government to Restrict Pesticides

The role of local government in imposing pesticide use requirements is important to the protection of public health and the environment. This right was affirmed by the U.S. Supreme Court in *Wisconsin Public Intervenor v. Mortier*,¹ June 21, 1991. In this case, the Court affirmed the right of cities and towns to restrict pesticides that are not explicitly curtailed by state legislatures. The Court found that in conferring on states the authority to “regulate the sale and use of pesticides so long as the state regulation does not permit a sale or use prohibited by the Act [USC 136v(a)],” the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) “leaves the allocation of regulatory authority to the ‘absolute discretion’ of the states themselves, including the option of leaving local regulation of pesticides in the hands of local authorities.”

In the Wisconsin case, the applicant, who was denied a permit to use a pesticide that resulted in non-target exposure to the Town of Casey residents, argued that the town’s permitting ordinance “stands as an obstacle to the statute’s [FIFRA] goals of promoting pesticide regulation that is coordinated solely on the federal and state levels, that rests upon some degree of technical expertise, and that does not unduly burden interstate commerce.” That argument was flatly rejected by the court.

The Supreme Court found, “FIFRA nowhere seeks to establish an affirmative permit scheme for the actual use of pesticides,” and the law “does not equate registration and labeling requirements with a general approval to apply pesticides throughout the Nation without regard to regional and local factors, like climate, population, geography and water supply.” In effect, the court recognized the value of local authority in addressing pesticide use in the context of local conditions and concerns. However, *Mortier* leaves to states the question of local control to exceed state standards.

In response to the Supreme Court decision, the pesticide lobby immediately formed a coalition, called the Coalition for Sensible Pesticide Policy, and developed boilerplate legislative language that restricts local municipalities from passing ordinances on the use of pesticides on private property. The Coalition’s lobbyists descended on states across the country, seeking and passing, in most cases, preemption legislation that was often identical to the Coalition’s wording.

¹ Wisconsin Pub. Intervenor v. Mortier, 501 U.S. 597 (1991) <https://supreme.justia.com/cases/federal/us/501/597/>.

In the 43 states² where the Coalition was successful, localities can only address pesticide use on public property, and cannot restrict toxic pesticides on private property. And while only seven states retain this right of localities, those that do show there is a desire for local authority to address pesticide use in a way that best reflects the values of a community's residents and a locality's unique environment and ecosystems. However, the pesticide industry, now operating under the trade group Responsible Industry for Sound Environment (RISE) and buoyed by support from the American Legislative Exchange Council (ALEC), continues to assault sensible policies enacted within these states, and continues to pressure state governments to maintain undemocratic preemption laws that manipulate our federalist system of government by hamstringing local governments from protecting their residents from unnecessary chemical exposure.

Examples of Local Action

Takoma Park and Montgomery County (population 1 million) in Maryland within the last several years have passed ordinances banning the use of toxic pesticides for cosmetic lawn care purposes on all public and private property, in favor of organic practices.³⁴ Unsurprisingly, the pesticide industry sued Montgomery County, temporarily striking down the law and its planned implementation for private property in January 2018. The Montgomery County Council voted to appeal this decision, based on community desire to eliminate toxic pesticide use around children, pets, and sensitive waterways. A Maryland Court of Special Appeal decision is now pending.⁵ A similar result was seen in Hawaii, Maui, and Kauai County, in the state of Hawaii, where reasonable 'buffer zones' around schools, hospitals, and neighborhoods were struck down when the chemical industry sued the state using implied preemption authority of the state.⁶

In Maine, where state law is clear that local communities have the power to enact sensible pesticide restrictions, nearly 20 communities have restricted pesticide use on private property in some way, including comprehensive cosmetic pesticide restrictions passed in Ogunquit,⁷ South Portland,⁸ and recently the state's most populous city, Portland.⁹ However, again, in response RISE and the pesticide industry attempted to subvert local democratic decisions with the help of former Governor LePage, who introduced "Governor's bills" which would have

² Beyond Pesticides. 2013. State Preemption Law: The Battle for Local Control of Democracy.

<http://www.beyondpesticides.org/assets/media/documents/lawn/activist/documents/StatePreemption.pdf>.

³ Takoma Park City Council. 2013. Safe Grow Act. <http://citycouncil-takomapark.s3.amazonaws.com/agenda/items/2013/072213-9.pdf>.

⁴ Montgomery County Council. 2015. Healthy Lawns Act. <https://www.montgomerycountymd.gov/lawns/Resources/Files/Healthy-Lawns-Law.pdf>

⁵ Knapp, Les. 2018. Court of Special Appeals Hears Montgomery Pesticide Preemption Case. Maryland Association of Counties. <https://conduitstreet.mdcounties.org/2018/09/14/court-of-special-appeals-hears-montgomery-pesticide-preemption-case/>.

⁶ Pollack, Andrew. 2014. Judge Blocks a Local Pesticide Law in Hawaii. The New York Times.

<https://www.nytimes.com/2014/08/26/business/energy-environment/judge-strikes-down-local-law-restricting-pesticides-in-hawaii.html>.

⁷ Ogunquit, ME. 2015. Title II Ogunquit Municipal Code. Chapter 11 Pesticide/Herbicide Usages.

https://www.maine.gov/dacf/php/pesticides/documents2/municipal%20ordinances/Ogunquit_Ordinance_1-1-15.pdf.

⁸ South Portland, ME. 2019. Growing Healthy and Safe with the Pesticide Use Ordinance.

<https://www.southportland.org/departments/sustainability-office/pesticide-use/>

⁹ Portland, ME. 2019. Portland Pesticide Use Ordinance. <https://www.portlandmaine.gov/2168/Pesticide-Use-Ordinance>.

eliminated these local rights for the last several years of his term.¹⁰ The bill was overwhelmingly rejected.

Providing local rights can help protect unique local resources that are critically important for local economies. For example, the Vermont City of Burlington has a longstanding pesticide use ordinance that prohibits any outdoor pesticide use within 500 feet of Lake Champlain or its tributaries without prior approval from the board of health.¹¹ Localities in Connecticut must have the same ability to protect sensitive resources that function as a significant economic driver for ecotourism and other recreation activities.

Congress has historically affirmed the rights of localities. In 1972, the Senate Commerce Committee (which then had joint FIFRA jurisdiction with the Agriculture Committee) found, “Many local governments now regulate pesticides to meet their own specific needs which they are often better able to perceive than are State and Federal regulators.”¹²

In response to ordinances mentioned above as well as the over 160 local pesticide reform policies passed throughout the U.S., the pesticide industry attempted in the recent 2018 Farm Bill to insert language that would overturn the *Mortier* decision and institute federal pesticide preemption.¹³ A broad outpouring of opposition came from Congressional representatives,¹⁴ local decision makers^{15,16} and national municipal organizations.¹⁷ This strong pushback led to the amendment’s defeat, stopping its inclusion in the final Farm Bill agreement.¹⁸

Local Authority Is Foundational to Local Governance

There is no evidence that local ordinances regulating pesticides wreak havoc any more than other local ordinances governing zoning, building codes, or protection of the water supply. Historically, local communities have long adopted ordinances to respond to nuisance and matters of public health and welfare. Local jurisdictions have tackled the question of second hand smoke from cigarettes and adopted ordinances protecting the public from this nuisance and potential health problem. In the context of pesticides, local communities are eager to protect pollinators, water quality, and children’s health.

¹⁰ Pols, Mary. 2018. LePage looks to override local pesticide rules in 30 municipalities. But why? *Portland Press Herald*. <https://www.pressherald.com/2018/04/01/municipal-ordinances-restricting-pesticide-use-keep-popping-up-in-maine/>.

¹¹ City of Burlington, VT. 2008. Pesticide/Herbicide Ordinance. <https://www2.burlingtonvt.gov/Archives/assets/0/122/318/554/659/1350/c2ebf79b-ab21-429c-8f85-dde64145f0e5.pdf>.

¹² U.S. Senate Rep. No. 92-970, p. 27 (1972), U.S.Code Cong. & Admin.News 1972, p. 4111.

¹³ McGlashen, Andy. 2018. Farm Bill: House proposal could wipe out communities’ power to prohibit pesticides. *Environmental Health News*. <https://www.ehn.org/farm-bill-would-preempt-pesticide-bans-2602042695.html>.

¹⁴ McEachin, Donald. 2018. Letter to Farm Bill Conference Committee. <https://mceachin.house.gov/sites/mceachin.house.gov/files/documents/2018-08-27%20Farm%20Bill%20Conferees%20Conservation%20and%20Environmental%20Provisions.pdf>.

¹⁵ Sixty Local Officials. 2018. Letter to Farm Bill Conference Committee. <http://foe.org/wp-content/uploads/2018/09/City-Official-Farm-Bill-Preemption-Letter-FINAL-9.12.pdf>.

¹⁶ Mayors Strimling, Ethan and Cohen, Linda. 2018. Farm bill hurts ability of communities to protect health, environment of citizens. *The Hill*. <https://thehill.com/blogs/congress-blog/energy-environment/407194-farm-bill-hurts-ability-of-communities-to-protect>.

¹⁷ National league of Cities and National Association of Regional Councils. 2018. Letter to Farm Bill Conference Committee. <https://www.nlc.org/sites/default/files/users/user52189/Farm%20Bill%20Letter%20August%202018.pdf>

¹⁸ Common Dreams. 2018. Dangerous Pesticide Preemption Rider Scrapped From 2018 Farm Bill. <https://www.commondreams.org/newswire/2018/12/11/dangerous-pesticide-preemption-rider-scrapped-2018-farm-bill>.

Restoring local authority to regulate pesticides is essential to good governance in an age when communities are adopting sustainability policies that address critical issues of public health and environmental protection. We urge lawmakers on the Connecticut Joint Committee on Environment to reinstate protections for local communities' democratic right to adopt pesticide restrictions that can protect unique local resources and incentivize the adoption of land management practices that support healthy ecosystems and people. Beyond Pesticides remains available to answer any questions you may have on the issue of pesticide preemption or local pesticide reform in general.

We appreciate your support of legislation to clearly affirm the authority of local political subdivisions within Connecticut to restrict pesticides in a manner that best represents a local community's values and protects their unique natural resources.

Thank you for your consideration of our comments.