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Judge Strikes Down Montgomery County's Pesticide Ban

Rules that state laws and regulations preempt county's measure

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Montgomery County Circuit Court Judge Terrence McGann on Thursday struck down the county's general pesticide ban in a ruling that opponents of the ban called precedent setting.

McGann ruled that state law preempts the law that the County Council passed in 2015.

The county law, set to go into effect in January, would have banned residents from using certain pesticides on private property. It was intended to limit the overuse of pesticides that have been the subject of studies showing a general harm to the people, animals and the environment. However, McGann ordered that the law not go into effect as scheduled.

"By generally banning the use of registered pesticides, the ordinance prohibits and frustrates activity that is intended to be permitted by state law, which conflicts with and is thus preempted by state law," McGann ruled. "The county's ordinance flouts decades of state primacy in ensuring safe and proper pesticide use, undermines the state's system of comprehensive and uniform product approval and regulation, and prohibits products and conduct that have been affirmatively approved and licensed by the state."

The County Council [passed the law by a 6-3 vote despite warnings from the state's Office of the Attorney General](#) and County Executive Ike Leggett that it would likely draw a preemption challenge in court. Leggett declined to sign the bill due to his concerns, but it became law because it passed with a veto-proof majority. McGann referenced both the attorney general's and Leggett's opinion in his ruling.

"How prophetic he was," McGann said about Leggett.

County spokesman Patrick Lacefield said the county will wait to see if the council would like to appeal the ruling. The ruling does not impact the county's decision to generally ban the use of pesticides on county property, a policy that went into effect in 2016.

The case was brought by plaintiffs including county residents, local lawn care groups, companies that produce pesticides and the pesticide industry group Responsible Industry for a Sound Environment.

"The judge made it so clear that the County Council cannot override the state government and he has also made it very clear that the regulation of pesticides is so comprehensive by both the state and federal governments that there is nothing else the county can do with its ban on pesticides," Gus Bauman, an attorney for the plaintiffs, said after the ruling. "It's definitely precedent setting, which is one reason why this case was brought before this court at this time on these issues."

Seth Grimes, a former Takoma Park City Council member who helped pass a similar pesticide ban in that city, said outside the courtroom he was disappointed by the ruling.

“The modern reality is that state regulation is neither comprehensive nor pervasive in that it doesn't cover off-label uses of pesticides,” Grimes said. “It doesn't cover the health threats that have become very evident through the normal use of some routine pesticides such as glysophate-based ones like Round Up that have been revealed in recent years. The fact is state law is full holes and does not adequately protect Marylanders' health or the environment.”

Council member George Leventhal, the chief sponsor of the bill, said Thursday he hopes the county will appeal.

“I'm very disappointed in the judge's ruling,” Leventhal said. “It's a worrisome precedent for the ability of local governments to protect their residents on vital issues of health and safety.”

He said certain pesticides pollute local waterways and are a “hazard for adults, children and pets.”

However, McGann found that the county ordinance would have created confusion in the marketplace where lawn care companies and citizens use pesticides for their businesses and on their private properties.

He also found that the Maryland Department of Agriculture and the federal Environmental Protection Agency already evaluate whether pesticides are safe for use. The agencies regulate how they're used by approving detailed product labels and requiring applicators take trainings to apply restricted pesticides not available for general use.

“In light of Maryland's broad regulatory scheme on pesticide use, the ordinance exceeds the county's power,” McGann said. “From the commercial application process to the minute details of each individual label, the General Assembly has regulated the entire field and, therefore, has evinced clear legislative intent to unilaterally control pesticide use throughout the state.”

Leventhal and Council members Marc Elrich, Hans Riemer, Nancy Navarro, Tom Hucker and Nancy Floreen voted in favor of the county bill. Roger Berliner, Sidney Katz and Craig Rice voted against it.

John Austin, a co-owner of the local landscaping company Green Gardens, said outside the courtroom Thursday that the industry is heavily regulated and requires extensive training to use pesticides.

“It’s unfortunate that all this time and money was spent on this thing,” Austin said. “I think some of our county legislators are a bit full of themselves and pretty arrogant.”

He said the judge’s ruling will make it easier for his business to do its job. He also said he wouldn’t mind not using pesticides—as long as every other business had to comply with that restriction.

“But if we are going to use them, we’re already regulated,” Austin said. “This whole thing was time-consuming, but it seemed to me it could go no other way.”

Some supporters are still holding out hope that the ruling could be reversed.

Julie Taddeo, of the anti-pesticide advocacy group [Safe Grow Montgomery](#), said she doesn’t believe the judge was objective. She disagreed with McGann describing the public safety argument as a mask for the county to supersede state and federal regulations on pesticides.

“Safety was the priority. It was the goal. It was not a mask,” Taddeo said. “I’m hoping the county will appeal this decision because it’s a serious issue affecting health and the environment, our children, wildlife, even bees. The judge is really on the wrong side of history. Communities are demanding these laws.”