

The uphill battle for communities that ban pesticides

As cities and counties across the U.S. restrict or ban pesticides, many are realizing passing a law is but a battlefield victory in a prolonged war.

By **Meg Wilcox** - June 19, 2019



WELLFLEET, Mass.—On a recent moonlit evening, with spring peepers in chorus, a dozen Wellfleet residents gathered inside their town's grey-shingled library for a public information session on the controversial herbicide, glyphosate.

A bucolic, seaside town with less than 3,000 year-round residents, Wellfleet is famed for its picturesque harbor and sweet, briny oysters.

Its residents, like the rest of Cape Cod, rely on a sole source of drinking water, a shallow underground aquifer, and protecting that aquifer from pollutants such as pesticides and septic wastes from

household wastewater is a huge concern.

Semi-rural, with 1,000 ponds, extensive wetlands and pristine beaches, Cape Cod is like a giant sandbar. Anything spilled on its sandy soils can seep quickly into the groundwater and pollute its water and interconnected system of surface waters.

And so, as organic landscaper and founder of the advocacy organization Protect Our Cape Cod (POCCA), Laura Kelley spoke about the dangers of glyphosate, she told Wellfleet residents, “[st pesticide] regulations don’t match our ecology.”

She was referring to the Massachusetts Department of Agricultural Resources’ (MDAR) allowed glyphosate to control weeds on rights of way under power lines on Cape Cod. Kelley, and other residents, are concerned that the weedkiller isn’t as safe as regulators say it is, with [emerging](#) suggesting harmful impacts from cancer to birth defects to disruption of hormones and other biological functions that can linger for generations.

[Studies](#) showing glyphosate can persist in groundwater worry them, as do recent high-profile [judgments](#) for people claiming their cancer was caused by the herbicide.

Herbicide use by the region’s electricity provider, Eversource, is therefore wildly unpopular on the Cape. All 15 towns are locked in battle with both Eversource and MDAR, the authorizing agency on the issue.

Cape Cod isn’t alone in facing an uphill battle at carrying out local pesticide policies. While more [140 communities](#) across the U.S. have now passed a pesticide ordinance or law, and the movement has been scoring big wins—from [L.A. County’s glyphosate moratorium](#), to [Portland, Maine’s glyphosate pesticide ban](#), to [Montgomery County, Maryland’s appellate court victory](#) upholding its Healthy Act to [new legislation that would ban glyphosate from New York City parks](#)—moving from victory to implementation of laws or ordinances can be a mixed bag.

Some localities find that passing a law is but a battlefield victory in a prolonged war. State-level preemption laws, resistance from implementing agencies, and lax EPA rules can lead to policies that simply sit on a shelf or are challenged in court.

Advocates say that a proactive organic management approach may be the best way to prevail in the long run. A systems approach focusing on soil health is not only more effective for turf management

but its positive message resonates with the public.

“The holistic response motivates parents because it’s their kids, and they’re worried about water contamination and drifting of pesticides,” Jay Feldman, executive director of Beyond Pesticides, EHN. “Then they learn they can play a part in reducing fossil fuel use and sequestering carbon [through organic management], not to mention the insect apocalypse.”

State preemption

Like most states in the nation, Massachusetts’ state law preempts localities from setting their own pesticide policies on private property. While the land under power lines is owned by the towns, [National Seashore](#) or private residences, Eversource is granted an easement which permits it to maintain it.

Five Cape Cod towns have banned glyphosate use on town property, but they are unable to stop Eversource’s spraying on rights of way within their boundaries.

[Preemption laws](#) prohibit localities from adopting pesticide ordinances that are stricter than state regulations, which tend to closely follow the EPA. Forty-three states passed these laws, for private property, largely in response to chemical industry pressure in the 1990s, Drew Toher, community resource and policy director at Beyond Pesticides, told EHN. As communities have grown concerned that the federal government isn’t protecting their health, they’ve therefore been passing pesticide ordinances where they have authority, on public property.

But even those ordinances can face resistance from opponents seeking a broad interpretation of preemption laws, Toher said. In Maryland, which doesn’t have a preemption, opponents of Montgomery County’s Healthy Lawns Act filed suit against the law, claiming preemption was implied. Opponents lost, in a major victory for the county.

Preemption is the key obstacle for Cape Cod but EPA’s lax rules are also at play because they allow state officials to dismiss community concerns. EPA claims that glyphosate has no public health risk but the International Agency for Research on Cancer (IARC) [concluded](#) in 2015 that glyphosate is a probable carcinogen, and an international group of [scientists later concurred with that finding](#). The scientist group says that EPA is relying in part on data provided by industry researchers that has not been peer-reviewed.

MDAR has determined that glyphosate is safe for sensitive environments, based on a [review](#) that refers to EPA data but does not mention IARC's finding.

Eversource supervisor for transmission management, Bill Hayes, therefore uses glyphosate, he said, because it's on MDAR's approved list.

Hayes argues that using herbicides is "best management practices" on rights of way and that herbicide use actually protects habitats better than mechanical means, like mowing, which can indiscriminately destroy vegetation and lead to soil erosion.

Public health scientists don't buy that argument. "Explore alternatives before spraying something that's likely to cause cancer around the Cape Cod environment," Richard Clapp, professor emeritus of environmental health, Boston University School of Public Health, told EHN. "There are other ways to control poison ivy."

For some communities, repealing state preemption laws may be what's needed to give them the authority to regulate pesticides in a way that works for their local environment. Cape Cod's state representative Dylan Fernandes, has [filed legislation](#) that would end the state's pesticide preemption. The bill is picking up support, with 50 to 55 sponsors, Fernandes told EHN.

"Even a casual observer has heard just how much the EPA has rolled back and even tried to hijack science," Fernandes told EHN. "I fundamentally believe that local residents should have a say on whether pesticides are being sprayed on the land in which they live."

Bills to repeal preemption have been filed in other states, including Minnesota, Connecticut and Illinois, but none have yet succeeded. Still, Toher is buoyed that the movement was able to bring an attempt to [slip federal preemption](#) of local pesticide laws into the farm bill last year.

"That fight galvanized local legislators," he said. "I see a lot of wind at our backs."

Montgomery County, Maryland: Resisting agencies

Pesticides are still used at some Maryland playing fields, like this baseball field at Cabin John Regional Park, even after the passage of the Health Lawns Act. (Credit: L. Tan)

Even in states without preemption, communities can face resistance from agencies charged with

implementing local pesticide laws.

Montgomery County—Maryland’s largest county, with more than a million residents—passed in the [Healthy Lawns Act](#), the first U.S. county law to restrict pesticides for cosmetic use on both private and public property. A lawsuit was immediately filed against the private property portion of the law, but just last month Maryland’s Appellate Court [upheld the law](#), and—to advocates delight—cited Rachel Carson in the [ruling’s](#) opening.

Though the public portion of the law wasn’t challenged in court, the Montgomery Parks Department has resisted implementing the law as advocates intended, Julie Taddeo, founder of Safe Grow Montgomery, told EHN.

The law left wiggle room for the parks department to make “certain parks” pesticide free, and in the past few years, the department has done so for only 10 out of 426 parks, and currently doesn’t have plans to go beyond that, according to an email from Montgomery Parks Deputy Director John Nissel.

The parks department is also dragging its feet at a requirement to run a pilot pesticide-free program on five playing fields by 2020, and its [website](#) indicates that it continues to use herbicides for weed control, when pesticides should be the last resort in an integrated pest management (IPM) approach, Taddeo said, referring to a practice that aims to minimize risks to human health and the environment by following a hierarchy of pest management options that moves from less harmful (i.e., mechanical removal) to more harmful (i.e., pesticides).

County Councilor Tom Hucker concurs with Taddeo. “They [parks department] don’t seem to be as concerned about the public health exposure.” But he thinks it will get increasingly untenable for the parks department to continue using pesticides, with the recent court ruling.

Nissel defended the department’s actions in an email, saying that it had met steps and dates for implementation of the law, including designating some parks pesticide-free, and implementing maintenance of playing fields using IPM.

Resistance from implementing agencies is common, Chip Osborne, founder of [Osborne Organic](#), a national expert on organic turf management, told EHN. “They’ve been told by the pesticide industry to expect failure [with organic management],” and some [go to great lengths](#) to defend pesticide use. Osborne himself was a pesticide applicator for 25 years. Then in 1997, he says he had an “aha moment” that “it’s not really what it’s cracked up to be.”

Long-time Massachusetts' public health activist Ellie Goldberg agrees. "In Newton the parks department said kids could trip on weeds and hurt their knees on the rocks if they didn't use herbicides. They quoted pesticide manufacturer's claims that the pesticides were safe to justify poisons on playgrounds and playing fields."

Even on Cape Cod, the Falmouth Conservation Commission is **resisting** following the town Board of Health's moratorium on glyphosate.

Proactive organic management

Marblehead, Massachusetts, has practiced organic management on all of its parks, like this one, for the past 20 years under the leadership of Chip Osbourne. (Credit: Meg Wilcox)

Montgomery County's unhurried approach to implementing the Healthy Lawns Act points to what advocates say can be a problem with IPM. It allows pesticide use as a "last resort," which is one interpretation.

A proactive organic management approach, they say, may be better for long-term success.

Banning a single pesticide, like glyphosate, can be a smart strategy for galvanizing support, particularly with recent **high-profile jury awards**. But that strategy can fall short in the long run because a systems approach is what's needed to fully move from conventional to organic management.

"Whether you're managing a backyard, or national park, or a soccer field, you have to embrace managing a system and the most important thing is soil health, the biological life of the soil," C Toher told EHN. Osbourne chairs Marblehead, Massachusetts' Recreation and Parks Commission, which practiced organic management for nearly 20 years.

Shifting from a mindset of feeding grass to feeding the soil builds the soil's microbial diversity, that helps the system withstand weed and pest pressures, Toher said. Plus, it has "multiple bottom lines for human health, water quality and pollinator populations."

Most important, says Osbourne, is to not just swap out a synthetic pesticide for an organic pesticide like acetic acid. That doesn't lead to the systems change that's needed, and organic pesticides aren't problem-free.

And, said Toher, advocating for proactive organic management can help the environmental community move beyond the “whack-a-mole approach” of fighting one pesticide after another.

Communities in Maine, such as [South Portland](#) and Ogunquit have been adopting this approach because the state has “an affirmative stance on the right of localities,” said Toher.

Accountability and education

Marin County anti-pesticides activists. (Credit: Barbara Bogard)

Some communities, like Marin County, California, which no longer uses synthetic pesticides on its parks and playing fields, have found a formula for success that includes public engagement, accountability and education.

Nearly 20 years ago, Marin County, created an [IPM Commission](#), to oversee the park department pesticide ordinance. The commission holds quarterly meetings, open to the public, and produce reports with a full accounting of its activities.

Parks Department director Jim Chakya told EHN the commission creates “a forum for the community to come in and provide feedback. It’s a really good place for some of the challenging conversations around issues like glyphosate.”

Sierra Club activist Barbara Bogard agrees that the commission has been instrumental at fostering trust with the community, but told EHN the turning point in Marin was the election of Larry Brauer who ran on a “no herbicides in the watershed platform,” to the water district board in 2014. The Marin County elected officials on notice that this issue could turn an election.”

Marin has also put \$140,000 towards a public education campaign, and taken other steps, including quarter-cent sales taxes that’s helped to fund the department’s IPM efforts.

“This is our water”

Laura Kelley of Protect Our Cape Cod Aquifer showing local news clips on POCCA’s work. (Credit: Meg Wilcox)

Back on Cape Cod, boards of selectmen from all 15 towns have passed resolutions calling for zero herbicide use by Eversource, and [formally appealed to MDAR](#), as have the region’s state

representatives and the Cape Cod Commission, a regional planning agency.

The town of Brewster—which has vernal pools, ponds, lush bird habitat and well fields in its right of way— has secured a preliminary injunction in Barnstable Superior Court against Eversource.

MDAR is expected to announce this summer whether it approves Eversource's [latest plan](#) to spray glyphosate, as well as the pesticides imazapyr, metsulfuron methyl and triclopyr, in rights of way in Cape Cod towns (excluding Brewster due to the court case). MDAR declined a request for intervention but based on past decisions, it's unlikely the agency will disallow the herbicide use.

Kelley, of Protect Our Cape Cod Aquifer ([POCCA](#)), has been laboring, with the [Association to Protect Cape Cod](#), to persuade town boards of health and selectmen to strengthen their pesticide restriction policies.

An eleventh generation Cape Cod resident, who grew up on a Quaker sheep farm, she's organized town brigades to hand clear vegetation on rights of way to demonstrate that alternative methods work.

"This is our water. It's up to us to protect it," she told EHN.

Meg Wilcox

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COMMENTS