

WHAT IS STATE PREEMPTION?

In general terms, preemption refers to the ability of one level of government to override laws of a lower level. While local governments once had the ability to restrict the use, sales and distribution of pesticides, pressure from the chemical industry led many states to pass legislation prohibiting municipalities from passing local pesticide ordinances that are stricter than state policy. These laws, called state preemption laws, effectively deny local residents and decision makers their democratic right to better protection when the community decides that minimum standards set by state law are insufficient to protect local public and environmental health. Today, as pesticide pollution and concerns over human and environmental health mount, states and municipalities are fighting to overturn preemption laws and return the power back to localities.

Current Preemption Struggles

On January 1, 2005 Dane County officials in Wisconsin, who oversee 61 municipalities including Madison, passed a local county-wide ban on the use of synthetic lawn fertilizers that contain phosphorus due to its pollution of local lakes. The industry trade group Responsible Industry for a Sound Environment (RISE) is currently suing the County under preemption law. Similar legislation has been introduced in Minnesota. Legislative bills that would allow municipalities to prohibit or restrict the use of lawn pesticides and synthetic fertilizers (that lead to the use of pesticides) under certain circumstances have also been introduced in Suffolk County and Long Island, New York and the states of Montana, Vermont, Rhode Island and Connecticut. Only nine states and Washington DC uphold the rights of localities to restrict pesticides. For many localities, the debate over preemption comes down to the issue of local government's ability to meet federal or state regulations that protect drinking water, and therefore public health, from pesticide contamination.

History of Preemption

In 1979, Mendocino County was one of the first local jurisdictions in the country to pass an ordinance prohibiting the aerial application of phenoxy herbicides (such as 2,4-D). The measure was passed after an incident in 1977 that resulted in herbicide drift on school buses nearly three miles away from the application site. A California State Supreme Court decision later upheld the right of citizens to adopt more protective standards than the state and federal government (*The People v. County of Mendocino*, 1984). The California legislature then adopted legislation to take away that right, which was later upheld in the courts.

The issue of federal preemption of local ordinances made its way to the U.S. Supreme Court, which ruled in 1991 that federal law (the *Federal Insecticide, Fungicide and Rodenticide Act*, FIFRA) does not preempt local jurisdictions from restricting the use of pesticides. (*Wisconsin Public Intervenor v. Ralph Mortier*.) However, the ability of states to take away local authority was left in place. The pesticide lobby immediately formed a coalition, called The Coalition for Sensible Pesticide Policy, and developed model legislation that would restrict local municipalities from passing ordinances regarding the use or sale of pesticides. The Coalition lobbyists descended upon states across the country seeking and passing, in most cases, preemption legislation that was often identical to the coalition's wording.

STATE PREEMPTION LAWS

A Beyond Pesticides Factsheet

STATE	PRE-EMPTION	STATE	PRE-EMPTION	STATE	PRE-EMPTION
Alabama	Yes	Maryland	No	South Carolina	Yes
Alaska	No	Massachusetts	Yes	South Dakota	No
Arizona	Yes	Michigan	Yes	Tennessee	Yes
Arkansas	Yes	Minnesota	Yes	Texas	Yes
California	Yes	Mississippi	Yes	Utah	No
Colorado	Yes	Missouri	Yes	Vermont	No
Connecticut	Yes	Montana	Yes	Virginia	Yes
Delaware	Yes	Nebraska	Yes	Washington	Yes ²
District of Columbia	No	New Hampshire	Yes	West Virginia	Yes
Florida	Yes	New Mexico	Yes	Wisconsin	Yes
Georgia	Yes	New Jersey	Yes ¹	Wyoming	No
Hawaii	No	New York	Yes		
Idaho	Yes	Nevada	No		
Illinois	Yes	North Carolina	Yes		
Indiana	Yes	North Dakota	Yes		
Iowa	Yes	Ohio	Yes		
Kansas	Yes	Oklahoma	Yes		
Kentucky	Yes	Oregon	Yes		
Louisiana	Yes	Pennsylvania	Yes		
Maine	No	Rhode Island	Yes		

¹ Local ordinances must be submitted for approval to the New Jersey Department of Environment.

² Local ordinances must go to the Washington Office of the Attorney General for interpretation and approval. Generally, use restricted ordinances are not approved.



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