



Groups Take on Crisis in Democracy

Connecticut effort seeks to overturn state preemption of local authority to restrict pesticides

Would you like to live in a pesticide-free community that does not allow toxic pesticide use on lawns? Unfortunately, if you happen to live in one of the 41 states that have a preemption law, private property pesticide bans are impossible. Preemption laws prevent municipalities from passing pesticide policies that limit pesticide use restrictions to land owned by the local jurisdictions.

Connecticut is one of the preemption states where local and state organizations are trying to change the law and restore a foundational principle of democracy in protecting health and the environment. Earlier this year, the Lawn-care Pesticide Preemption Bill (Bill 5121) was introduced in the Connecticut General Assembly to overturn preemption law. However, in mid-April, the Planning and Development Committee Chairs were able to kill the legislation. Though the bill is now dead, it is a remarkable first attempt at repealing preemption, and an important learning tool for anyone who is interested in getting pesticide bans enacted in their community. Jay Feldman, Executive Director of Beyond Pesticides, State Senator Ed Meyer, Assistant Majority Leader and chair of the Environment Committee in Connecticut, and Nancy Alderman, President of Environment and Human Health, Inc., North Haven, Connecticut, discuss their efforts in fighting for pesticide reform in the state of Connecticut, offering advice on what works, what does

not, and most importantly, what you can do.

The following are excerpts from a panel discussion held at Beyond Pesticides' 30th National Pesticide Forum, March 31, 2012, at Yale University's School of Forestry and Environmental Studies:

Background

Jay Feldman, executive director, Beyond Pesticides

This is a very interesting story in American democracy. How did we get to this point in the history of the United States that we have taken away the local police powers of our local jurisdictions to protect the local public health of our people? This challenges a basic tenet that this country is based on—local governance.

Certainly there's a role for federal government here to establish a floor of adequate protection and regulate commerce so as to protect the health and the environment of the people of the U.S. But, when it comes to adding to the levels of protection based on local



conditions, or based on a belief within that local jurisdiction that there is not adequate protection provided by the federal government, we have a long history in this country of allowing local governments to elevate that level of protection.

California Beginnings

In 1979, two years after I got involved with pesticide issues, people in Mendocino County, California adopted restrictions on the spraying of forestry pesticides after the pesticides drifted on a school bus and made children ill. The State Attorney General sued the county and that case ended up in the Supreme Court of California, where it was found that the people of Mendocino had the right to regulate pesticides in a manner that protected their children from exposure. Within days, literally, the California legislature adopted legislation that took away the authority of local jurisdictions in the state to restrict pesticide use on private property. So this issue is very contentious and the chemical industry is on it—they are there, they have been working on this for decades. As time went on, a lot of other communities saw the need to regulate pesticides, including a range of authorities from right-to-know ordinances that require posting of signs to bans on types of spraying that cause environmental exposure in the community.

Mortier Vs. Casey

In the town of Casey, WI in 1985, there was a Christmas tree grower, and every time he sprayed pesticides, the spray drifted into town and everybody was exposed and many got sick. The town adopted an ordinance that limited his ability to spray in a manner that caused drift, which started years of litigation. It's really unfortunate that sometimes environmental issues seem pitted against agricultural interests, but I think what's clear now in the 21st century is that we can work together around organic practices. Nevertheless, in those days when communities were out there trying to regulate in this area, I think the division was in many ways more severe than it is today. In any event, the case of *Mortier v. Casey* went to the U.S. Supreme Court and in 1991 the Court upheld the right of the town of Casey to regulate pesticides. It basically ruled that federal law (the *Federal Insecticide, Fungicide and Rodenticide Act*, or FIFRA) does not preempt local jurisdictions from restricting the use of pesticides more stringently than the federal government. However, the ability of states to take away local authority was left in place.

Industry Backlash

Over the course of the next five to ten years, the chemical industry went to every state legislature across the country, as it had done in California, and today we have 41 states with statutes that pre-



empt local jurisdictions from regulating pesticides. While this is all going on in the court system, the chemical companies are out on Capitol Hill in Washington, DC putting forth legislation to amend our federal pesticide law to preempt local jurisdictions' power to restrict pesticide use in their communities. All pesticide laws in the U.S. are managed under the agriculture committees of Congress, which is an aberration when we're talking about health and the environment. Nonetheless, that's where jurisdiction lies and so we have a lot of agricultural state Democrats and Republicans sitting around squirming in their seats on the states' rights issue, because they were voting on taking away the right of their state to allow their local jurisdictions to do what they do through local power. The industry was never successful in attaching a preemption provision to FIFRA.

When the Supreme Court decision came down, all hell broke loose and the pro-pesticide lobby formed a coalition called the Coalition for Sensible Pesticide Policy. This coalition put a lot of money into local advertisements, but it was very unclear who they were or who they were representing. They convinced a lot of people that it was in their interest to take away their local government's authority to regulate pesticides. Articles like one in *Landscape Management* went out to all the landscapers across the country in 1991: "Local Laws, What Do They Do?... Are anti-pesticide interests in your community out to sabotage your business or department? There is help available." They went on to identify numerous states and jurisdictions across the country that had policies or were working on policies.

Among some of the arguments they used against allowing our local governments to exercise the democratic principles on which our nation was founded include: lack of scientific and technical expertise to make complex regulatory decisions in thousands of

local governing bodies; it will send conflicting signals to international trade partners; and it would send conflicting signals from local governments about their support for uniform federal tolerances in the context of food safety.

A Crisis in Democracy

So this was, and remains, a crisis in democracy! This was a huge crisis in our country at this time and it consumed a lot of congressional hearings on this issue, and in many stories in the *Washington Post* and *New York Times* about conservative legislators voicing their opposition to the rights of states to set policy on this matter.

In the Supreme Court decision, the justices wrote, “[F]ederal law, (FIFRA), does not equate pesticide 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.” This is the key principle of local authority to regulate toxics. It is nice to see the Supreme Court upholding this concept. I believe legislators at the state level can rely on this same basic foundational principle today.

Immediately after this decision, we strategically as an organization, in collaboration with local groups nationwide, focused on local jurisdictions’ authority in all states to adopt policies that affect how they manage their own property. We have seen an increasing number of local policies that establish management practices that eliminate pesticide dependency.

This spurred the industry to try attaching to broadened federal preemption legislation to prohibit on local governments from restricting pesticide use on their own land in a manner that is more

stringent than their state’s law. That is still out there, and I think we can expect, if Connecticut is successful, that we will see another federal effort to preempt the states from allowing their local jurisdictions to regulate, despite fierce rhetoric in political circles on the importance of democracy and state and local rights.

So this, in my mind, is a crisis in democracy. When you have scientists making statements on the lack of efficacy associated with the introduction of poisons that are poisoning our waterways and our kids, it is high time that we have the ability to remove these pesticides from our communities. However, this is an incredible opportunity at the state level to send an important message to our nation that we do have the need to protect our communities and people from exposure to toxic chemicals that we have found are not necessary and hazardous at the same time.

Case Study: Connecticut

State Senator Ed Meyer, Chair of the Senate Environmental Committee, Hartford, CT



Let me start by telling you how I got involved in the anti-pesticide movement. The year was 2000 and I had a very healthy and active eight-year old Labrador who suddenly got sick and died in a very short period of time. I took her to the veterinarian because I could not understand what was wrong, as she ran with me three or four times a week. The vet asked me where we ran, and I replied that we frequently ran at the golf course near our home. The vet asked about our lawn, and I replied that we use a bagged turf builder, one that is commonly used. The vet told me that our family dog died of stomach cancer from pesticide exposure.

Flash forward. I got elected to the Connecticut State Senate and met Jerry Silbert, M.D., executive director of the Watershed Partnership, Inc., who has a campaign to end hazardous pesticide use in Connecticut. I’m now in the Environment Committee and we have formed a partnership to really restrict pesticides. We started with a bill to ban pesticides in schools, which began at elementary schools and daycare centers to protect young children, and later expanded to include not just elementary schools but K-8 grade. To make sure that bill was implemented successfully, we did a couple of things to try to educate people in Connecticut on how to adopt organic lawn care practices. The





first thing we did was to hold off on enforcing the bill for three years in order to give folks time to learn and transition. Second, we brought in experts to educate groundskeepers in Connecticut.

Improving Protections

We are now taking it a step further in trying to overcome the state's preemption on pesticides, which says that the state of Connecticut is the sole regulator with respect to pesticides. So, the Environment Committee in 2012 introduced legislation, Bill 5121, to overcome that state preemption and allow towns to regulate pesticides, as long as the towns are within state law. We are engaged in a tremendous battle here and I want to try to engage you as constituents in this battle.

By the way, there are two battles here. One is the effort to repeal our ban on pesticides on school grounds (which we're defending against) and the second is the battle to beat our bill to allow our towns to have authority. These two battles have gone forth in a very deliberate and very aggressive way. Who are the combatants? First, we have the protectors, those of us who are trying to further organic and natural care of our properties. Second is the pesticide industry, led in many ways by Scotts Miracle-Gro. Scotts has been in my office, and they are battling this. There are other industry people that are extremely effective lobbyists as well. The third combatants are the groundskeepers who really have not gotten the message and did not use those three years before the ban became effective to transition their grounds to organic. They are very upset now because they did not prepare themselves and their lawns are a mess because they did not do the preparation that was necessary. They are very impatient and are now telling their state legislators to repeal the ban! And so they are very much a combatant in this battle. The fourth is the Department of Energy

and Environmental Protection (DEP) — and they are against us. With respect to preemption, they and the industry are all together, and they do not believe in the local ability to restrict pesticides and believe that there should be state preemption. It is very clear, and it is going to make the battle much more difficult in this last month of the 2012 legislative session.

I urge you all to get involved in this battle. There are some ways and things you can do: First of all, you can call or write —I prefer to call, which is more effective— or even visit your state representative and your state senator. Tell them about your commitment to the bills and that you will be watching how they come down on this, and remind them of Election Day on November 6, 2012. Be very direct with them —I'm asking you

to encounter your legislators. Second, I think we have to create some public opinion on this subject. Write letters to the editor about your conviction and put it in as many of your local papers as you can!

And lastly, if your time permits, come on up to the state Capital. Those of us who are in Hartford will introduce you to people, to legislators whose votes will be very significant on this. We'll show the department about this energy and strong conviction, and of how to build a healthy environment in Connecticut.

So there is definitely a part that everyone can play, and I want to motivate you all to get involved in this.

Organizing Connecticut

*Nancy Alderman, president,
Environment and Human Health, Inc.,
North Haven, CT*



Before getting to preemption, I think it's important to take a look at the landmark legislation that Connecticut has passed and how we got them passed in order to give you a general sense of how to get things done on the local or state level.

Landmark Cases

In 1991, Connecticut passed landmark pesticide legislation that did two things: it put the little yellow tags on all properties after they had been sprayed, and also allowed people to get on a regis-

ter so that when their neighbors sprayed they would get a call 24 hours in advance so they can shut windows, bring in their dogs, etc. This was a major piece of legislation, and the first of its kind. This effort was led by the Connecticut Fund for the Environment, a state group with lawyers on staff.

Then in 1999 we had another big event that focused on pesticide use on the inside of schools that was done in a very different way. Initially, we wanted to look at the wells in the town of Woodbridge, CT. We met with people and asked them for permission to test their wells for pesticides. It normally cost about \$1,600, but we had a grant and we were going to do it for \$75 per well. While we were at this meeting, however, a young woman raised her hand and told us that her child had just been poisoned in the Woodbridge grammar school. They had sprayed pesticides by the first grader's cubbies where they placed their little brown lunch bags and the whole group got sick.

I was hesitant to do anything at first because that was not what we came to the town for, but I was so shocked and appalled when I learned that we had no laws in place for pesticides in Connecticut schools. We had nothing! Anybody who was paid by the school could essentially spray inside a school, and they did not have to keep records. So, instead of doing the well water report right away, we wrote *Pest Control Practices in Connecticut Public Schools* as our first report. It was so astounding that we got a bill within a year—it was incredible. It was clear that the Department of Health would do nothing, and the Department of Environmental Protection did absolutely nothing, so the legislature came forward and passed that bill. So we are now protected inside schools.

Now, let's move on to 2005 and how we managed to get the bill to get pesticides off of school grounds that Senator Meyer was talking about. This, too, was the first bill of its kind (you can see why all of the pesticide industry is inside Connecticut right now). For this, a large group of environmentalists, including Audubon, Watershed Alliance, and many others, all met to discuss how we were going to get a bill that would restrict pesticides on the grounds of schools. We looked at Canada, which has been so successful, and we decided to hire someone to do a survey to find out what people care about with respect to the pesticide problem.

We found that people were concerned about the smallest children, as well as pets. We decided as a group that we were going to focus on the smallest children and initially used the word elementary school—which was a mistake, I would say to anyone who might be

looking to do similar legislation. Elementary schools vary from K-4 or K-5, which provided uneven protection. We passed the bill, but then we had to go back and fix it so that today it includes K-8 and everybody has the same protection.

The Preemption Bill

A large group of environmentalists met over the summer to discuss how we wanted to proceed. It was clear to the majority of us that we were not going to move that school bill up into the high schools. [Eds note. The state of New York in 2010 passed the *Child Safe Playing Fields Act*. Similar to Connecticut's law, that extends the ban on toxic pesticides on outdoor school grounds to K-12.] What we learned about, which many of us did not fully understand, including myself, was preemption.

Just to give a lesson of how the laws are written in this country, and perhaps you all know this. The laws are written so that the federal government provides the baseline and the state law can be stricter, but never less strict, and the town can be stricter than the state but never less strict. So how is it that tobacco and pesticide laws are flipped? They preempt the law so that the towns cannot be stricter than the state. In fact, towns could not do anything different—they certainly could not be less strict, but they could not be stricter. That to us seemed totally against what our laws were meant to do.

We decided to only focus on lawn care, which the towns are well-equipped to do. We also have some towns that rely almost entirely on wells, so some towns simply have sensitive areas that they might want to have as pesticide-free. This seemed like the place that we really should go. When we found out that there were 41 other states that were also suffering (and yes, I would use the word 'suffer') under preemption, we decided that this was what we should do.



Strategy

Did we think we would get it in the first year? I don't even know if I should talk about things like that, but I was taught when I started to do legislation that you don't get things right away. You have to love incremental work, which of course I don't love. I was told to love it and Sen. Meyer has explained to me that I am to love it. And he also explained that I am to love all the legislators no matter what they do, so I have become a loving person, and I recommend the same to all of you, because when you're not, they don't like you. And you don't want them not to like you.

Sen. Meyer also told me last year that if it is just a group of environmentalists saying, "We don't want preemption," do not expect the legislators to respond. So, in fact, we did have mayors and first selectmen expressing their support. Now, we were very clear with them that just by signing on, you don't have to do anything. So, if your town were to benefit from a preemption law passing, your town doesn't have to do anything! The town can take a small section and say it wants to protect its water, but it doesn't have to do anything. Repealing state preemption law would just restore what the towns originally had, and what they should have had until to-

bacco and pesticide lobbyists walked in. I think that's what we all might have to convey to supporters.

So here we are with preemption, and I will say that one of the reasons for tackling this issue was to educate the public about preemption and to simply let them know, because Connecticut had so much trouble with tobacco preemption. It was terrible! New York City was allowed to ban smoking in a restaurant, but Connecticut couldn't do it because we had preemption, and what the state said was you could only have no smoking areas, but no town could tell its restaurants that they could not allow smoking. We have lived through the preemption struggle before. Though it was much more obvious than pesticide preemption, it was the same thing, and it was done for the same reason. It is easier to lobby at the state than to lobby in 169 towns.

No industry should ever be able to put preemption law in place. It is a terrible thing to do and it is not the way our laws were designed. Hopefully, other states will take this on as well. If we do not get it this year, we will continue fighting!

State Preemption Laws

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

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.