

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.



BEYOND PESTICIDES

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

Enabling Local Government to Protect Health and the Environment

State Laws Preempt Local Authority

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 of pesticides on all land within their jurisdictions, pressure from the chemical industry led many states to pass legislation prohibiting municipalities from adopting local pesticide ordinances for private property 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 and federal law are insufficient to protect local public and environmental health. Given this restriction, local jurisdictions nationwide have passed ordinances specific to local government land only. As pesticide pollution and concerns over human and environmental health mount, many are fighting to overturn preemption laws and return the power back to localities, enabling them to adopt more stringent protective standards throughout their communities.

History of Preemption

In 1979, Mendocino County, California 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 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 preempt that right.

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 more stringently than the federal government. (*Wisconsin Public Intervenor v. Ralph Mortier*) However, the ability of states to take away local authority for 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 for private property. 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.

Recent Preemption Struggles

On January 1, 2005, Dane County, Wisconsin officials, 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. This directly restricted the use of 'weed and feed' products that combine synthetic fertilizers and herbicides. The chemical industry trade group Responsible Industry for a Sound Environment (RISE) sued the County under preemption law, however the U.S. 6th Circuit Court of Appeals upheld Dane County's ordinance in December 2005 because the law does not preempt local authority to regulate fertilizers. 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 various states. In 2008, California State Assemblywomen Fiona Ma introduced AB977 to overturn the California state law that prohibits local authority to restrict pesticides. Only nine states 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.