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

STATEMENT OF
JAY FELDMAN, EXECUTIVE DIRECTOR
BEYOND PESTICIDES
ON
BILL 17-493
PESTICIDE CONSUMER NOTIFICATION AMENDMENT ACT OF 2007
BEFORE THE
COMMITTEE ON PUBLIC SERVICES AND CONSUMER AFFAIRS
COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 16, 2008

Ms. Chairwoman and members of the Committee. Thank you for the opportunity to appear before the Committee today. I am Jay Feldman, Executive Director of Beyond Pesticides, a national, grassroots, membership organization that represents community-based organizations and a range of people seeking to improve protections from pesticides and promote alternative pest management strategies that reduce or eliminate a reliance on toxic pesticides. Our membership spans the 50 states, the District of Columbia, and groups around the world.

I. Support for the Legislation with Suggested Amendments

We are here today in support of 11-493, the Pesticide Consumer Notification Amendment Act of 2007. The legislation will require a licensed pesticide applicator to provide prospective customers and potentially affected residents with product label and hazard information on the products to be used. The bill is an important start to giving people at least minimal information about toxic chemical products, often assumed to be safe.

As a clearinghouse, we hear from people who have contracted with a commercial pest control company, were told or assumed the pesticide products being used in or around their home, in offices, schools, and community-wide are safe, and then later got ill or became aware of the toxic characteristics of the chemical or chemicals used and their long-term effects.

II. Historical Context

To give historical perspective to this problem and illustrate that this legislation is indeed on the right track, we can go back to 1986 when the U.S. Government Accountability Office (GAO) published a report entitled, *Nonagricultural Pesticides: Risks and Regulation*, and found that, "The general public receives limited and misleading information on pesticide hazards."[1] Four years later, in March 1990, GAO

published another report on the subject, *Lawn Care Pesticides: Risks Remain Uncertain While Prohibited Safety Claims Continue,*[2] and found "the same situation." Today, 18 years later, commercial pesticide applicators have become more sophisticated and we now call it "greenwashing." However, you can be sure that customers continue to receive the same message, the ones that GAO documented, characterizing toxic pesticides as "completely safe for humans."

This is what GAO said,

> To determine what safety information professional pesticide applicators provide to potential customers, we telephoned 21 lawn care companies in the Washington, D.C. metropolitan area (including Maryland and Virginia), requesting information and literature about the safety of their products.
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> The lawn care company representatives we talked to provided a variety of responses when asked about the effects of their products on human, animal, and environmental health. Several representatives said they were aware of the concerns surrounding pesticide use and described the measures they take as a result. One company representative, for example, said his company did not use the pesticide diazinon because it was too toxic. [The insecticide diazinon, widely used in an around homes was finally banned from residential use at the end of 2004. That is how slow the regulatory process moves, even with highly toxic chemicals.] Another said his company used pesticides only when necessary.
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> Many of the representatives we talked to, however, made statements that their products are safe or nontoxic. These statements included the following:
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> "Our products are practically nontoxic; no one gets sick."
> "All [of] our products are legal and registered at EPA as practically nontoxic."
> "The only way to be affected by the [pesticide] 2,4-D would be to lay [sic] in it for a few days."
> "The safety issue has been blown out of proportion. Such a small amount of chemicals are put down directly on plants. . .[They do] not affect animals or people."
> "Dogs may get a rash or irritated [from diazinon], but they will only feel a little itchy. This is the same reaction the applicator gets when the pesticide touches their [sic] skin."

III. Regulatory and Statutory Deficiencies

An investigation like this today, I believe, would yield the same findings. However, today, we have added a layer of complexity to this problem that is more misleading for consumers. Risk assessments of pesticides are in full swing at the Environmental Protection Agency (EPA), and reviews of pesticides or reregistrations brand them as

presenting acceptable risk, under statutory standards that blur complex toxicological questions and the limitations of the analysis. Despite rhetoric to the contrary, vulnerable population groups, such as children, the elderly, and those with neurological and immunological illnesses and cancer, are inadequately protected by the risk assessments. The testing protocol for some health endpoints, such as poisoning that disrupts the endocrine system (impacting human development at miniscule doses) have not been developed by EPA, as required by statute. And some issues have been simply taken off the table, such as the additive effect of chemical mixtures and the synergic effects of pesticides mixed with other pesticides or with pharmaceuticals. While all this is going on, the District's pesticide registration apparatus in the Department of the Environment is entirely dependent on a federal system that is inadequate.

In summary review, there are a number of reasons why existing regulatory standards and reviews provide inadequate protection of public health and the environment: (i) pesticide reregistration, carried out by EPA's Office of Pesticide Programs, is an ongoing process with outstanding and missing data associated with a pesticide's review; (ii) additional studies are needed to reach final decisions on the impact on children for hundreds of pesticide products; (iii) the underlying standards of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) ("unreasonable adverse effects') and Food Quality Protection Act (FQPA) ("reasonable certainty of no harm" or "negligible risk," based on risk assessment methodology with uncertainties and risk factors) do not ensure that there will be no harm (by definition it allows levels of risk or harm to be set); (iv) "inert" ingredients (non-disclosed ingredients in pesticide products considered proprietary information) in pesticide formulations are not fully evaluated; (v) pesticide poisonings, including short- and long-term adverse effects are not tracked by EPA; (vi) endocrine disrupting effects are not currently evaluated; and, (vii) mixtures of pesticides and between pesticides and pharmaceuticals are not evaluated.

IV. Problems with the Pesticide Product Label

The difficulty, from a public health perspective, is that the inadequate regulatory system, allowing widespread use of poisons that are more often than not unnecessary, results in a pesticide product label that is also inadequate, or fails in restricting use or conveying hazard information. A consumer or resident may be able to glean some acute toxicity information from a product's label in some cases. Information on the chronic or long-term effects will not be found on a pesticide label –even when EPA has that information. Consumers certainly will rarely get information as to whether the pesticide will initiate or exacerbate a respiratory condition, such as asthma, or contribute to a learning disability or emotional disorder. This information is simply not on a pesticide label. Furthermore, if there are data gaps for certain health endpoints, or if EPA has not complied with a statutory requirement to evaluate the product for endocrine disruption, a pregnant woman, for example, would have no idea about this from a label. While the Material

Safety Data Sheet is better in some respects, all this information will not be found there either. Product manufacturer information usually emphasizes their lengthy product development investment and has a history of misleading, according to GAO.

V. Suggested Amendments

If nothing else, the legislation may be a warning to people that a toxic product is proposed for use or is being used. However, the clarity of that message may be undermined by the messenger and the materials provided. Therefore, we urge the following:

A. Warn customers and residents about the hazards of toxic pesticides.
Include a provision to require specific language, mandated to accompany a contract proposal and other notification provisions to residents, that provides a clear warning.

We would suggest language that states:

> EPA continues to examine registered pesticides to determine that the use of the pesticides in accordance with instructions printed on the label does not pose what the law calls unreasonable (or unacceptable) risks to human health and the environment. Nevertheless, EPA cannot guarantee that registered pesticides do not pose risks or hazards, and exposure to toxic pesticides should be avoided. Based in part on recommendations of the National Academy of Sciences that reviewed registered pesticides and their potential to cause unreasonable adverse effects on human health, particularly on the health of pregnant women, infants, children and other sensitive population groups, Congress enacted the Food Quality Protection Act of 1996. That law requires EPA to reevaluate all registered pesticides and review new pesticides to measure their risk, taking into account the unique exposures and sensitivity that pregnant women, infants, and children have to pesticides. EPA review under that law is ongoing and incomplete. In addition, there are often toxic ingredients in pesticide products that are not disclosed on the product label because EPA gives them trade secret protection. Under DC law, commercial pest control companies and licensed pest control operators are required to provide you with information that includes hazard information. Certain pesticides used by commercial companies are exempt from the notification requirement because they are not known to cause acute toxicity, cancer, birth defects, nervous system and developmental effects, reproductive problems and other chronic effects. Some are exempt because they do not volatize or escape into the air and therefore do not result in exposure or environmental effects given their use pattern. The District of Columbia government urges careful consideration of pest management methods and products and suggests the use of non-chemical and non-toxic methods by commercial pest control companies.

B. Require Development of an Exempt List Based on Specific Statutory Criteria

(i) The District Department of the Environment should be charged with generating a list of products exempt from the warning as cited above, but only under very strict guidelines stipulated in the legislation.

(ii) See Addendum 1 for a definition of exempt pesticides that we suggest is included in the legislation. Only those pesticides that meet the criteria in Addendum 1 should be given the exempt status.

(iii) Pesticides that have not been reviewed for exempt status should be subject to the disclosure and warning provisions of the act.

(iv) In the case of exempt products, disclosure language should be provided to consumers and affected residents that outlines the characteristics of the review standards.

(v) The Department should be permitted to add only adverse health effects to the list of criteria but not eliminate any exempt criteria, and required to establish a public petition and review process to do so.

VI. Incentives for Safe Practices and Products

The incentive to identify less and non-toxic approaches to pest management could and should be an outcome of this legislation. It is an appropriate goal in light of the experience among more and more jurisdictions across the country that have banned specific classes of pesticides or pesticides with certain adverse effects. Other jurisdictions have adopted organic practices successfully. Once warned, consumers and pest control companies and licensed pest control operators can turn to safer practices and products. With more notification and disclosure of potential hazards, data gaps, unanswered questions, vulnerable population groups, such as children, elderly and those with neurological and immunological illnesses or cancer, the market may move toward safer practices and products. Of course, many of the toxic pesticides on the market today --chemicals that are in wide use-- are unnecessary.

Notice does not always ensure that people are protected. It depends on the type of notice. MSDSs are uneven in terms of the level of information that is provided, so-called inert ingredients (a term of art that has nothing to do with whether a chemical is harmful), contaminants, and metabolites are not on the label and often not included in MSDSs. Therefore, we are urging the adoption of a warning statement that more clearly indicates issues that may not be raised by EPA, MSDS, and manufacturer information.

VII. Conclusion

Local jurisdictions are taking up this public health issue with increasing frequency. Based on hazard information and regulatory deficiencies, local governments are

determined to adopt a cautionary approach, eliminate the use of registered toxic pesticides, and embrace safer practices and products that effectively manage the urban environment.

While there are some who will view this legislation as burdensome and fear that their current products may be pushed out of the marketplace, in reality, the public's health and the environment will be better protected as new, safer, cost-effective pest management practices and products take hold.

Thank you for the opportunity to testify today. We appreciate your commitment to protecting and improving health and the environment for the residents of the District of Columbia.

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[1] U.S. General Accounting Office (GAO), *Nonagricultural Pesticides: Risks and Regulation*, Washington, D.C., GAO/RCED-86-97.

[2] GAO, Lawn Care Pesticides: Risks Remain Uncertain while Prohibited Safety Claims Continue, GAOP/ RCED-90-134, March 1990.

Addendum 1
Exempt Pesticides

Exempt pesticides are any pesticide or pesticide product ingredients, which, at a minimum, have not been classified as or found to have any of the following characteristics:

(1) Toxicity Category I or II by the United States Environmental Protection Agency (EPA). These pesticides are identified by the words "DANGER" or "WARNING" on the label.

(2) A developmental or reproductive toxicant as defined by the State of California Proposition 65 Chemicals Known to Developmental or Reproductive Harm.

(3) A carcinogen, as designated by EPA's List of Chemicals Evaluated for Carcinogenic Potential (chemicals classified as a human carcinogen, likely to be carcinogenic to humans, a known/likely carcinogen, a probable human carcinogen, or a possible human carcinogen), the International Agency for Research on Cancer (IARC), U.S.National Toxicology Program (NTP), and the state of California's Proposition 65 list. Any of the following classifications shall deem the chemical a carcinogen and unacceptable:

Known to the State of California to Cause Cancer (California)
Group A: Human Carcinogen (US EPA 1986 category)
Group B: Probably Human Carcinogen (US EPA 1986 category)
Group C: Possible Human Carcinogen (US EPA 1986 category)
Known Carcinogen (US EPA 1996 category)
Likely Carcinogen (US EPA 1996 category)
Carcinogenic to Humans (US EPA 1999 category)
Likely to be Carcinogenic to Humans (US EPA 1999 category)
Suggestive Evidence of Carcinogenicity (US EPA 1999 category)
Known to be Human Carcinogens (NTP)
Reasonably Anticipated to be Human Carcinogens (NTP)
Group 1: Carcinogenic to Humans (IARC)
Group 2A: Probably Carcinogenic to Humans (IARC)
Group 2B: Possibly Carcinogenic to Humans (IARC)

(4) Neurotoxic cholinesterase inhibitors, as designated by California Department of Pesticide Regulation or the Materials Safety Data Sheet (MSDS) for the particular chemical,

(5). Known groundwater contaminants, as designated by the state of California (for actively registered pesticides) or from historic groundwater monitoring records (for banned pesticides).

(6) Pesticides formulated as dusts, powder or aerosols, unless used in a way that virtually eliminates inhalation hazard (for example, applied to cracks or crevices and sealed after the application, or as a directed spray into the entrance of an insect nest).

(7) Nervous system toxicants, including chemicals such as cholinesterase inhibitors or chemicals associated with neurotoxicity by a mechanism other than cholinesterase inhibition, or listed on:

Toxics Release Inventory (TRI), EPA EPCRA Section 313 (Identified as "NEUR" on Table 1)
EPA Reregistration Eligibility Decisions (RED)
Insecticide Resistance Action Committee (IRAC) Mode of Action Classification:

Acetylcholine esterase inhibitors;
GABA-gated chloride channel antagonists;
Sodium channel modulators;
Nicotinic Acetylcholine receptor agonists /antagonists;
Nicotinic Acetylcholine receptor agonists;
Chloride channel activators;
Octopaminergic agonists;
Voltage-dependent sodium channel blockers; or
Neuronal inhibitors (unknown mode of action).

(8) Endocrine disruptors, which include chemicals that are known to or likely to interfere with the endocrine system in humans or wildlife, based on the European Commission (EC) List of 146 substances with endocrine disruption classifications, Annex 13 (and/or any subsequent lists issued as follow-up, revisions, or extensions).

(9) (Regarding outdoor use) Adversely affect the environment/wildlife, based on:

1. Label precautionary statements including "toxic" or "extremely toxic" to bees, birds, fish, aquatic invertebrates, wildlife or other non-target organisms, unless these organisms are the target pest and/or environmental exposure can be virtually eliminated.
2. Pesticides with ingredients with moderate or high mobility in soil, according to the Groundwater Ubiquity Score (GUS), or with a soil half-life of 30 days or more (except for mineral products). Persistence and Soil Mobility procedures appear below.

a) If GUS (Groundwater Ubiquity Score) cannot be found, we search for the aerobic soil half-life and soil-binding coefficient Koc. GUS is then calculated from the formula: GUS = $\log_{10}$(half-life)*(4 – $\log_{10}$ (Koc)).

(10) Have data gap or missing information in EPA registration documents, including pesticide fact sheets, or EPA reregistration eligibility decisions, which EPA is requiring the registrant to fulfill.

(11) Contaminants and metabolites recognized by EPA that violate any of the above criteria.

(12) Inert or active ingredients that are Chemicals Included on EPA's List 1 (Inerts of Toxicological Concern) or EPA List 2: (Potentially Toxic, High Priority for Testing).