

PARTIAL RESTORATION OF LOCAL CONTROL OVER PESTICIDE USE AND APPLICATION

Preemption of local control over pesticides in Colorado

Prior to 1996, the Colorado Pesticide Applicators' Act (PAA) allowed local governments to regulate the use and application of pesticides on agricultural, private or public property. This authority was first limited to non-commercial applicators by the passage of SB96-086 and then almost entirely eliminated in 2006 by HB06-1274. As a result, the Colorado Department of Agriculture (CDA) now has the exclusive authority to implement all of Colorado's pesticide regulations. It makes sense for the state to have exclusive authority for certain matters, such as the registration and labeling of pesticides. It does not make sense, however, to deny local decision-makers the *option* to adopt more stringent pesticide standards.

Why is pesticide preemption a problem?

Our food system, urban landscaping practices and pest management approaches are all heavily pesticide reliant. While pesticides can be effective in killing insects, weeds or other pests, there is substantial evidence that pesticides pose a significant risk to people, particularly children, as well as to non-target organisms, such as pollinators, birds and other wildlife. In fact, pesticides are registered by the U.S. Environmental Protection Agency (EPA) with harms determined to be acceptable under a one-size-fits-all standard setting process. The state of Colorado accepts these standards, for the most part, when it registers pesticides even in cases when independent studies show significant risks that are not addressed by federal standards. Pesticides can pollute water, disrupt ecosystems, contribute to biodiversity loss, degrade soil health, reduce soil's capacity to store carbon, and destroy habitat. Pesticides also contribute to the underlying causes for some aspects of climate change. A report from the Intergovernmental Panel on Climate Change found that about a quarter of global emissions leading to climate change are attributable to agriculture, forestry and related land use, including pesticide use.¹ Conversely, thriving soil ecosystems play a unique role in sequestering carbon. Moreover, healthy soils hold water and support biodiversity and balanced ecosystems both below and above ground, all essential to helping to build resilience in the face of unpredictable and extreme weather events.

Colorado's communities are vastly different in many regards, including in terms of geography, ecology and demography. It is at the local level where these differences can best be understood by relying on information from county health departments, volunteer naturalists, hunters, fishermen, sportsmen and local experts. In this context, federal and state laws serve as a floor or baseline of protection and it is prudent to ensure local political subdivisions the freedom to rely on this information to adopt more stringent standards of protection as they see fit.

The federal government adopts pesticide registration and application standards based on determinations of acceptable levels of risk and exposure as well as benefits, including economic benefits. While these assessments should be revisited often to reflect the newest studies, it may take decades before they are revised. State governments, in turn, have limited resources and typically defer to federal standards. Preemption prevents local governments from using their unique knowledge and risk tolerance to respond more quickly and effectively to protect their residents from harm.² This not only denies them their traditional exercise of local police powers, but it instead can require unplanned expenditures and damages when addressing chemical contamination that could have been avoided in the first place. This disconnect between federal, state and local policy can only be resolved by giving local governments clear authority to act.

¹ IPCC, 2019: Summary for Policymakers. In: IPCC Special Report on the Climate and Land. https://www.ipcc.ch/site/assets/uploads/2019/08/Edited-SPM_Approved_Microsite_FINAL.pdf

² Centner, T. J., & Heric, D. C. (2019). Anti-community state pesticide preemption laws prevent local governments from protecting people from harm. *International Journal of Agricultural Sustainability*, 17(2), 118–126. <https://doi.org/10.1080/14735903.2019.1568814>

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Role of state and federal governments

Federal law (Federal Insecticide, Fungicide and Rodenticide Act or FIFRA) establishes national standards for pesticide labeling and registration. The requirements adopted by Colorado's PAA and Pesticide Act comply with FIFRA and establish a detailed framework under which most pesticide registration, labeling, storage, distribution, and applicator licensing must take place. Restoring local government and voter control over specific aspects of the regulation of pesticide use and application would not infringe on either federal or state law. The U.S. Supreme Court in the 1991 case of *Wisconsin Public Intervenor v. Mortier* allows regulation by local authorities when not prevented by state law.

Role of local governments

There are 14 states across the U.S. that expressly allow local government regulation over some aspects of pesticide use and application, or at least do not preempt such regulation. Below are some examples of localities that have chosen to use this authority include:

- Kern County and other California counties which adopted protective pesticide buffer zones around homes and schools;
- The Minnesota cities of Shorewood and Stillwater protected bees from pesticides by adopting rules restricting pesticide use and pledging to become "Honey Bee Havens;"
- Montgomery County, Maryland, banned cosmetic pesticides (pesticides that improve the appearance of non-agricultural green spaces such as lawns) on turf grass to protect children's health; and
- Portland, Maine banned cosmetic pesticide use to protect the sustainability and economic value of Casco Bay to their community. Pesticide and fertilizer use on properties adjacent to the bay had been contributing to a green slime algal bloom.

Examples of how Colorado local voters and governments could use this authority include the following:

- Restrict the use of specific pesticides beyond current limitations that are found in drinking water and are an immediate concern to public health;
- Create a pesticide-free buffer around facilities with vulnerable populations, such as preschools, hospitals or nursing homes;
- Create a pesticide-free buffer to protect fragile ecosystems;
- Require informational signage be placed in retail stores where bee-toxic pesticides proven to endanger pollinators or plants treated with such pesticides, are sold.