


**MEMORANDUM**

March 15, 2019

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: Bill 8-19, Erosion, Sediment Control and Stormwater Management – Asphalt Sealing Products

PURPOSE: Introduction – no Council votes required

Bill 8-19, Erosion, Sediment Control and Stormwater Management – Asphalt Sealing Products, sponsored by Lead Sponsor Councilmember Rice, is scheduled to be introduced on March 19, 2019. A public hearing is tentatively scheduled for April 23, 2019 at 1:30 p.m.<sup>1</sup>

Bill 8-19 would prohibit the use of a sealant to cover an asphalt or concrete surface, including a driveway or parking area, in the County that contains more than 0.1% PAH. The Bill would also require the Director of the Department of Environmental Protection (DEP) to establish a system to approve alternative sealants that would comply with this law.

**Background**

Bill 21-12, Erosion, Sediment Control and Stormwater Management – Coal Tar Pavement Products, prohibited the use of asphalt sealing products containing coal tar on or after December 18, 2012 based on a finding that runoff from coal tar sealants created environmental problems for County waterways by introducing high levels of Polycyclic Aromatic Hydrocarbons or PAH into the environment. However, non-coal tar asphalt sealants have been introduced into the County that also contain high levels of PAH. Runoff from these sealants also results in high levels of PAH in County waterways. PAH has been associated with adverse health effects in humans and animals.

Bill 8-19 would expand the ban on coal tar sealants to non-coal tar sealants containing more than 0.1% PAH and require the Director of DEP to establish a system to approve sealants that contain less than 0.1% PAH for use in the County. In order to provide time for the Director to establish a system to approve sealants complying with this law and to give the industry time to adapt, the Bill would have a delayed effective date of July 1, 2020.

This packet contains:

Bill 8-19

Legislative Request Report

Circle #

1

4

F:\LAW\BILLS\1908 Erosion, Sediment Control, Stormwater Mgmt.-Asphalt Sealing Products\Intro Memo.Docx

---

<sup>1</sup>#AsphaltSealant

Other search terms: asphalt, driveways and parking lots

Bill No. 8-19  
Concerning: Erosion, Sediment Control  
and Stormwater Management – High-  
PAH Sealants  
Revised: March 13, 2019 Draft No. 6  
Introduced: March 19, 2019  
Expires: September 19, 2020  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

---

Lead Sponsor: Councilmember Rice

---

**AN ACT** to:

- (1) prohibit the use of certain high-PAH sealants in the County;
- (2) require the Director of the Department of Environmental Protection to establish a system to approve certain low-PAH sealants; and
- (3) generally amend the laws governing water quality.

By amending

Montgomery County Code  
Chapter 19, Erosion, Sediment Control and Storm Water Management  
Section 19-68

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

1           **Sec. 1. Section 19-68 is amended as follows:**

2   **19-68. [Coal tar pavement] High-PAH sealant products.**

3           (a) *Definitions.* As used in this Section:

4           Coal tar pavement product means a material that contains coal tar, coal  
5           tar pitch, coal tar pitch volatiles, RT-12, refined tar, or a variation of those  
6           substances assigned the chemical abstracts service (“CAS”) number  
7           65996-92-1, 65996-93-2, 65996-89-6, or 8007-45-2 and is intended to  
8           cover an asphalt or concrete surface, including a driveway or parking  
9           area.

10          Director means the Director of the Department of Environmental  
11          Protection or the Director’s designee.

12          High-PAH sealant means a surface-applied product containing:

13          (1) steam-cracked petroleum residues, steam-cracked asphalt,  
14          pyrolysis fuel oil, heavy fuel oil, ethylene tar, ethylene cracker  
15          residue, or a variation of those substances assigned the CAS  
16          number 64742-90-1 or 69013-21-4; or

17          (2) substances containing more than 0.1% (1000 ppm) polycyclic  
18          aromatic hydrocarbons, by weight.

19          PAH means Polycyclic Aromatic Hydrocarbons.

20          (b) *Use of a coal tar pavement [products] product or high-PAH sealant*  
21          *prohibited.*

22          (1) A person must not use in the County:

23                (A) a coal tar pavement product [in the County];

24                (B) a high-PAH sealant; or

25                (C) a sealant that has not been approved by the Director.

26          (2) Both the property owner and the applicator have violated this  
27          Section if a coal tar pavement product, a high-PAH sealant, or any

28                    unapproved sealant is applied to an asphalt or concrete surface on  
29                    [the] property in the County.

30            (c) *Sale.* A person must not sell or offer for sale a coal tar pavement product,  
31            a high-PAH sealant, or an unapproved sealant in the County.

32            (d) *Enforcement.* The Director must:

33                    (1) publish a list of alternative products for use on asphalt and concrete  
34                    that do not contain coal tar or more than 0.1% PAH; [and]

35                    (2) not approve a coal tar pavement product or a high-PAH sealant;

36                    (3) establish a system to approve sealants that contain less than 0.1%  
37                    PAH for use in the County; and

38                    (4) generally enforce this Section.

39            **Sec. 2. Effective date.**

40            The amendments in Section 1 take effect on July 1, 2020.

## LEGISLATIVE REQUEST REPORT

Bill 8-19

*Erosion, Sediment Control and Stormwater Management – Asphalt Sealing Products*

- DESCRIPTION:** Bill 8-19 would prohibit the use of a sealant to cover an asphalt or concrete surface, including a driveway or parking area, in the County that contains more than 0.1% PAH. The Bill would also require the Director of the Department of Environmental Protection (DEP) to establish a system to approve alternative sealants that would comply with this law.
- PROBLEM:** The ban on coal tar sealants has led to alternative sealants with dangerous levels of PAH.
- GOALS AND OBJECTIVES:** Eliminate the introduction of PAH into the environment through asphalt sealants.
- COORDINATION:** Department of Environmental Protection, County Attorney
- FISCAL IMPACT:** To be provided
- ECONOMIC IMPACT:** To be provided
- EVALUATION:** To be provided
- EXPERIENCE ELSEWHERE:** The District of Columbia, Prince George's County, and Anne Arundel County are considering a similar ban.
- SOURCE OF INFORMATION:** Robert H. Drummer, Senior Legislative Attorney
- APPLICATION WITHIN MUNICIPALITIES:** To be researched.
- PENALTIES:** Class A violation.