


MEMORANDUM

April 19, 2019

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: Bill 8-19, Erosion, Sediment Control and Stormwater Management – High-PAH Sealants

PURPOSE: Public Hearing – no Council votes required

Bill 8-19, Erosion, Sediment Control and Stormwater Management – High-PAH Sealants, sponsored by Lead Sponsor Councilmember Rice and Co-Sponsor Council President Navarro, was introduced on March 19, 2019. A Transportation and Environment Committee worksession is tentatively scheduled for June 10, 2019 at 2:00 p.m.¹

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

¹#AsphaltSealant

Other search terms: asphalt, driveways and parking lots

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

Fiscal and Economic Impact statement

Circle #

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Bill No. 8-19
Concerning: Erosion, Sediment Control
and Stormwater Management – High-
PAH Sealants
Revised: March 25, 2019 Draft No. 7
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
Co-Sponsor Council President Navarro

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

Boldface	<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:

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

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

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

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

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

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

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

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

PAH means Polycyclic Aromatic Hydrocarbons.

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

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

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

(B) a high-PAH sealant; or

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

(2) Both the property owner and the applicator have violated this 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.



ROCKVILLE, MARYLAND

MEMORANDUM

April 5, 2019

TO: Nancy Navarro, President, County Council

FROM: Richard S. Madaleno, Director, Office of Management and Budget *RM*
Alexandre A. Espinosa, Director, Department of Finance *AE*

SUBJECT: FEIS for Bill 8-19, Erosion, Sediment Control and Stormwater Management – High PAH

Please find attached the Fiscal and Economic Impact Statements for the above-referenced legislation.

RSM:cm

cc: Andrew Kleine, Chief Administrative Officer
Fariba Kassiri, Deputy Chief Administrative Officer
Debbie Spielberg, Special Assistant to the County Executive
Dale Tibbitts, Special Assistant to the County Executive
Lisa Austin, Office of the County Executive
Ohene Gyapong, Acting Director, Public Information Office
David Platt, Department of Finance
Dennis Hetman, Department of Finance
Monika Coble, Office of Management and Budget
Trevor Lobaugh, Office of Management and Budget
Chrissy Mireles, Office of Management and Budget

Fiscal Impact Statement
Council Bill 8-19 Erosion, Sediment Control and Stormwater Management- High PAH

1. Legislative Summary.

This bill 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% of Polycyclic Aromatic Hydrocarbons (PAH). The bill would require the Department of Environmental Protection's Director to establish a system to approve alternative sealants that would comply with this law.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

Currently, pavement sealant products do not contain information that would allow an individual to determine whether the PAH concentration was greater than 0.1%. Furthermore, there is currently no accepted testing protocol for pavement sealants to determine if a substance has PAH levels above 0.1%.

The bill requires DEP to:

- a. publish a list of alternative products for use on asphalt and concrete that do not contain coal tar or more than 0.1 % PAH, and
- b. establish a system to approve sealants that contain less than 0.1 % PAH for use in the County.

To meet these requirements, DEP would publish on its website only those products where the manufacturer/distributor could provide testing results from an accredited lab demonstrating that the PAH concentration of their product was below 0.1%. The development of the website page containing this list could be accomplished with existing resources.

There could potentially be costs associated with two aspects of this bill, but the magnitude of these costs is not possible to predict at this time.

- a. Outreach will be required to inform residents, businesses, and pavement sealant applicators of this modification to the sealant ban. When coal tar was banned, several things had occurred which simplified the County's outreach activities associated with this action. First, Washington, DC, had enacted a coal tar ban prior to the County's ban, and had conducted extensive outreach to pavement sealant suppliers and applicators, many of whom work regionally. Therefore, many suppliers and applicators had already begun using products compliant with the ban. Second, major home improvement retailers like Home Depot and Lowe's, responding to concerns raised across the country related to coal tar, had already stopped carrying coal tar-based products. Therefore, many "do-it-yourself" applicators were choosing from products that were compliant with the coal tar ban. Given that the PAH concentration of a product is not readily known

to customers and suppliers, there will likely need to be a greater outreach effort to explain the ban and how to determine if a product is compliant under this bill.

- b. The other area where costs may be incurred is associated with enforcement of the ban. There is a relatively simple and inexpensive field test that can determine if a sample removed from pavement contains coal tar. There is no such test for PAHs. One laboratory that can test potential samples of pavement sealant for the presence of PAHs indicated it would cost approximately \$600 per sample, with a turnaround time of 7-10 days. Given the inability for someone to easily tell if a sealant contains PAHs greater than 0.1%, there may be an increased likelihood that field tests are required on an applied sealant.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

There would be no revenue from the bill. Possible expenses are discussed in #2, although the magnitude of these expenses cannot be determined.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not Applicable

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Not Applicable

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Not Applicable

7. An estimate of the staff time needed to implement the bill.

Uncertain. This depends primarily on the level of field enforcement involved.

8. An explanation of how the addition of new staff responsibilities would affect other duties.

Uncertain. This depends primarily on the level of field enforcement involved.

9. An estimate of costs when an additional appropriation is needed.

Possible expenses are discussed in number 2, although the magnitude of these expenses cannot be determined.

10. A description of any variable that could affect revenue and cost estimates.

The cost of outreach could be affected by the timing of the County's ban compared to other neighboring jurisdictions. The cost of enforcement will depend on the effectiveness of the outreach efforts and the level of field enforcement involved.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

See number 10

12. If a bill is likely to have no fiscal impact, why that is the case.


See number 2 and number 10

13. Other fiscal impacts or comments.

The effectiveness of this bill could be increased, and the costs decreased, if the enactment of this ban were coordinated with other jurisdictions in the region (Washington, DC; Prince George's County, Anne Arundel County, etc.) that currently have a coal tar ban.

14. The following contributed to and concurred with this analysis:

Stan Edwards, Department of Environmental Protection
Trevor Lobaugh, Office of Management and Budget



Richard S. Madaleno, Director
Office of Management and Budget

4/5/2019
Date

Economic Impact Statement
Bill 8-19, Erosion, Sediment Control and Stormwater Management – High PAH

Background:

This legislation would prohibit the use of a sealant to cover an asphalt or concrete surface, including a driveway or parking area, that contains more than 0.1% Polycyclic Aromatic Hydrocarbons (PAH). Bill 8-19 would require the Director of Environmental Protection (DEP) to establish a system to approve alternative sealants that complies with this legislation.

Bill 21-12 prohibited the use of asphalt sealing products containing coal tar on or after December 18, 2012. However, non-coal tar asphalt sealants were not banned and are currently used in the County that contain high levels of PAH. Bill 8-19 would expand the ban on non-coal tar sealants containing more the 0.1% PAH.

1. The sources of information, assumptions, and methodologies used.

There are no sources of information used in the preparation of the economic impact statement. The Department of Finance (Finance) did not make assumptions or develop/use methodologies in the preparation of the economic impact statement.

2. A description of any variable that could affect the economic impact estimates.

There are no economic variables that could affect the economic impact estimates.

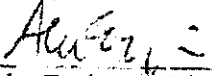
3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.

Bill 8-19 would have no effect on employment, spending, savings, investment, incomes, and property values in the County.

4. If a Bill is likely to have no economic impact, why is that the case?

The alternatives that are in compliance with Bill 8-19 would provide the same protection as banned sealants. Since the alternative sealants have similar prices as banned sealants, there is no economic impact to Bill 8-19.

5. The following contributed to or concurred with this analysis: David Platt, Finance, and Stan Edwards, DEP.



Alexandre Espinosa, Director
Department of Finance

4/2/2019

Date