

## Preemption: Federal, State and Local Jurisdiction

Preemption refers to laws at one level of government taking precedence over laws of a lower level. As such, no entity at the lower level can pass a law that allows action that would violate the higher-level law.

Federal laws take precedence over state and local law, and state law can take precedence over local law. Once Congress has passed legislation, any state or local law that conflicts with federal law is invalid. Even if there is not a direct conflict, if the federal law expressly provides that it controls the entire field regulated, or if that intent can be implied from the comprehensive nature of the regulation, federal law has control over any state or local law regulating the same field. In the field of pesticides, federal law (the Federal Insecticide, Fungicide, and Rodenticide Act, FIFRA) clearly states that only the federal government has authority over pesticide labeling. In other words, no state or local government can dictate what is on a pesticide product label. However, a state can refuse to allow registration of a product and therefore the possession, sale and use of any pesticide not meeting its own health or safety standards. States can also adopt regulations more protective of health and the environment than on a product label.

The California Constitution also allows the state to preempt local jurisdictions. The Constitution states that city councils or boards of supervisors may pass laws (called ordinances at the local level) provided they do not conflict with state law. However, California law (Chapter 1386, Statutes of 1984, FAC Section 11501.1) states that no local government “may prohibit or in any way attempt to regulate any matter relating to the registration, sale, transportation, or use of pesticides, and any of these [local] ordinances, laws, or regulations are void and of no force or effect.”

The 1984 legislation was in response to a State Supreme Court ruling that same year in *The People v. County of Mendocino*. In that case, the State Attorney General had sued the county, arguing that state law preempted a 1979 initiative approved by Mendocino County voters to ban the aerial application of phenoxy herbicides in the county. The herbicides were used by a forest products company to inhibit hardwood growth in favor of conifer growth. The initiative followed a 1977 incident in which an aerial herbicide application drifted nearly three miles onto school buses.

A lower court ruled in favor of the state, finding that California law preempted county regulation of pesticide use. However, in 1984 the State Supreme Court disagreed, ruling that “the Legislature has not preempted local regulation of

pesticide use.” The court ruled that Mendocino’s “initiative ordinance neither duplicates nor contradicts any statute,” and that voters in any California county could ban the use of pesticides in that county, even if state and federal law allowed such use.

The court stated, “The legislative history (of FIFRA) does not demonstrate a clear Congressional intention to preempt traditional local police powers to regulate the use of pesticides or to preempt state power to distribute its regulatory authority between itself and its political subdivisions.”

In response, the Legislature passed a bill stating it is “the intent of the Legislature to overturn” the Supreme Court ruling, and that “matters relating to (pesticides) are of a statewide interest and concern and are to be administered on a statewide basis by the state unless specific exceptions are made in state legislation for local administration.”

In an unpublished 1986 opinion, the Court of Appeal for the Third Appellate District found FAC Section 11501.1 constitutional and in so doing invalidated a Trinity County local pesticide ordinance.

Local governing bodies may pass ordinances that regulate or restrict pesticide use in their own operations. For example, a city council may pass an ordinance that restricts or bans pesticide use in municipal buildings and in public parks. Similarly, a school district board can decree that certain pesticides cannot be used in schools.

In 1991, in *Wisconsin Public Intervenor v. Ralph Mortier*, the U.S. Supreme Court ruled that, absent state law to the contrary, federal pesticide law does not preempt local regulations dealing with the use of pesticides. The U.S. Supreme Court ruled that FIFRA “leaves the allocation of regulatory authority to the absolute discretion of the states themselves, including the options of ... leaving local regulation of pesticides in the hands of local authorities under existing state laws.” However, the ability of states to preempt local authority was left in place. Because California law clearly forbids local ordinances, the 1991 U.S. Supreme Court decision had no effect in California.

In 1996, legislation (Chapter 361, AB 124) clarified but did not significantly alter the Department of Pesticide Regulation’s preemption authority. The legislation required the department to notify any local agency that proposes an ordinance governing the sale, use or handling of pesticides whenever the department determines state law preempts the ordinance. The bill also required the department to file court action, if necessary, to invalidate the ordinance and prohibit its enforcement.