



To: Justin Nickels, Mayor, City of Manitowoc
From: Clean Wisconsin staff and Jon Richards
Re: Summary of sealant ban enforcement elsewhere
Date: November 8, 2018

A common question we've received from municipalities and counties considering taking action on high-PAH sealants is how the ordinance is going to be enforced. To help address this, we reached out to municipalities elsewhere that have already taken action on this issue to ask about their experience. Unsurprisingly, this was a common concern for these municipalities when they started the process, especially given limited resources everyone is working with.

However, they report that enforcement does not end up being an issue. They report a temporary upfront workload for initial outreach to property owners, contractors, and applicators upon passage of the ordinance, followed by periodic reminders (e.g., in newsletters or utility bills in the spring, when people are starting to think about property maintenance). A common theme seemed to be that the outreach and education about the ordinance was the most important part of the "enforcement" process. The word quickly gets out to the limited universe of applicators and they see no, or very few, violations after the first couple of years meaning that there is minimal enforcement workload in the long term.

There are a variety of enforcement methods we heard about and are happy to discuss further, but in brief they are:

- 1) At one extreme is statutorily-required quotas for parking lot tests. This was only used by Washington, DC, where they are required to test 60 parking lots a year. Their ban included funding specific to covering this enforcement.
- 2) A more moderate approach employed by several communities in Illinois and Michigan is to have a permit or registration system for commercial applicators. There's a small annual fee (\$100-\$200) to cover some administrative costs, and applicators must state that they will only use approved sealants. When municipal staff encounter a project, they ask to see their permit or registration.
- 3) The most common approach is to simply have municipal staff ask for sealant product information when they encounter a sealing project while out and about on normal duties. This direct interaction has proven effective in increasing awareness about the ordinance within the affected community.

Taking Dane County as a specific example, potential applicators are identified each spring via an internet search, and letters informing those applicators of the County ordinance are mailed out. The County then relies on tips, mainly from other contractors, about the use of coal-tar sealants, with some opportunistic project checks when they are encountered during normal duties. The County uses the field screening test linked to below to identify potential violations that would need follow-up.

We can assist Manitowoc in helping staff know how to identify high-PAH sealants based on the product name or the product's MSDS information. For lots that have been recently sealed but staff missed the actual application, there is also an inexpensive and easy-to-use field screening test that staff can use to screen a recently-sealed parking lot for use of a coal-tar sealant: <http://www.austintexas.gov/sites/default/files/files/Watershed/coaltar/SR-12-08-sealant-solvent-screening-method.pdf>. A follow-up lab test would be needed to confirm the presence of coal tar to pursue enforcement.

All places we are aware of have fine structure (e.g., higher amounts for repeat offenders) in place for violations as a primary means of deterrence. However, it is common to not strictly enforce it on the first violation, which is instead used as an educational opportunity. This further underscores how it has been effective elsewhere to rely on the educational outreach as the main mechanism to promote compliance rather than trying to catch every application.

In terms of remediation, some places do require removal via shot blasting for egregious violations, but it is very expensive to do this, and in some areas (e.g., the upper Midwest) it is difficult to find people who can do the work. Other places require the high-PAH sealant be covered over by a low-PAH sealant. It is true that a fine alone doesn't address the environmental and health problems since the PAHs have already been introduced to the environment upon application. However, as long as the fine is stiff enough to act as a deterrent to the small percentage of intentional bad actors, the high-PAH sealants will stop being used, as evidenced by the communities we've talked to saying they don't see violations after the first few years.

A final note is that counties and municipalities in the Maryland/Washington, D.C. area mentioned how their work got easier as more and more places around them passed bans. Thus, as (hopefully) other neighboring municipalities join Manitowoc in passing bans, regional market forces kick in, further reducing enforcement workloads.