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Details:

(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2009-10

(session year)

Assembly

(Assembly, Senate or Joint)

**Committee on ... Natural Resources
(AC-NR)**

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**
- Record of Comm. Proceedings ... **RCP**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt**
- Clearinghouse Rules ... **CRule**
- Hearing Records ... bills and resolutions
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (Sept/2010)

Assembly

Record of Committee Proceedings

Committee on Natural Resources

Assembly Bill 314

Relating to: pesticide use by railroads, granting rule-making authority, and making an appropriation.

By Representatives Molepske Jr., Berceau, Richards, Sinicki, Milroy, Black, Benedict, Turner, Zigmunt, Jorgensen, Roys, A. Williams, Soletski and Smith; cosponsored by Senators Wirsch, Lassa, Plale, Hansen and Lehman.

June 16, 2009 Referred to Committee on Natural Resources.

July 29, 2009 **PUBLIC HEARING HELD**

Present: (12) Representatives Black, Danou, Molepske Jr.,
 Steinbrink, Hraychuck, Hebl, Mason, Milroy, J. Ott,
 LeMahieu, Mursau and Nerison.
Absent: (3) Representatives Clark, Gunderson and Huebsch.

Appearances For

- Rep. Louis Molepske, Jr., Stevens Point
- Mike Koziara, Holmen — BMWED/IBT
- Anthony Dimond, Reedsburg — Brotherhood of Locomotive Engineers and Trainmen
- Tim Deneen, Madison — United Transportation Union

Appearances Against

- Ben Meighan, Madison — Wisconsin and Southern Railroad
- Gary Nyberg, Fort Worth — BNSF Railway
- Gerald Blase, Willow Grove — National Railroad Contractors Association

Appearances for Information Only

- Lori Bowman, Madison — Wisconsin Department of Agriculture, Trade, and Consumer Protection

Registrations For

- Sen. Jeff Plale, South Milwaukee — 7th Senate District
- Tom Millonzi, Milwaukee — Teamsters Local 200

- Jennifer Giegerich, Madison — WLCV
- Thomas Bennett, Milwaukee — Teamsters Local 200

Registrations Against

- Joe Strohl, Madison — BNSF
- Sam Gratz, Madison — BNSF, CP, VP, CN Railroads
- David Spata, Prince George — Canadian Pacific
- R.J. Pircot, Madison — Wisconsin Manufacturers and Commerce
- Michael Shank, Huntington
- Amy Winters, Madison — Crop Life America

Registrations for Information Only

- None.

September 2, 2009

EXECUTIVE SESSION HELD

Present: (14) Representatives Black, Danou, Molepske Jr., Hraychuck, Hebl, Mason, Milroy, Clark, J. Ott, Gunderson, Huebsch, LeMahieu, Mursau and Nerison.
 Absent: (1) Representative Steinbrink.

Assembly substitute amendment LRB-S0116 introduction by unanimous consent of committee.

Moved by Representative Black, seconded by Representative Molepske Jr. that **Assembly Substitute Amendment 2** be recommended for adoption.

Ayes: (14) Representatives Black, Danou, Molepske Jr., Hraychuck, Hebl, Mason, Milroy, Clark, J. Ott, Gunderson, Huebsch, LeMahieu, Mursau and Nerison.

Noes: (0) None.

Absent: (1) Representative Steinbrink.

**ASSEMBLY SUBSTITUTE AMENDMENT 2 ADOPTION
 RECOMMENDED, Ayes 14, Noes 0**

Moved by Representative Molepske Jr., seconded by Representative Hebl that **Assembly Bill 314** be recommended for passage.

Ayes: (14) Representatives Black, Danou, Molepske Jr.,
Hraychuck, Hebl, Mason, Milroy, Clark, J. Ott,
Gunderson, Huebsch, LeMahieu, Mursau and
Nerison.

Noes: (0) None.

Absent: (1) Representative Steinbrink.

PASSAGE RECOMMENDED, Ayes 14, Noes 0

John Maycroft
Committee Clerk





EAST WISCONSIN COUNTIES RAILROAD CONSORTIUM

JUL 15 2009

127 East Oak Street, Juneau, WI 53039-1329
Telephone: (920) 386-3592 – Fax: (920) 386-3596

John F. Corey
Dodge County Corporation Counsel
Attorney for East Wisconsin Counties Railroad Consortium

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Stan Kline,
Vice Chairman
Jef Hall, Secretary

July 14, 2009

TO: Chairman Spencer Black
Members of the Assembly Committee on Natural Resources

RE: **AB314 – Use of Herbicides by Wisconsin Railroads**

Dear Chairman Black and Committee Members:

The East Wisconsin Counties Railroad Consortium (EWCRC) represents nine Wisconsin counties throughout eastern Wisconsin, including the counties of Winnebago, Fond du Lac, Green Lake, Columbia, Dodge, Washington, Ozaukee, Sheboygan and Milwaukee. Since 1980, the EWCRC has worked collectively with the State of Wisconsin, local units of government, local businesses and private railroad operators in strengthening our publicly-owned railroad system to continue meeting the needs of our communities, businesses and our economy.

The Wisconsin & Southern Railroad Co. (WSOR) is our railroad operator which operates a 600-mile rail system throughout Southern Wisconsin, including approximately 280 miles of railroad track throughout the EWCRC territory. Over the past 30 years, the WSOR has been successful in attracting high quality, highly reputable businesses to our area as a result of the reliable and cost effective service the WSOR provides. Today, the WSOR serves over 80 Wisconsin businesses employing more than 12,000 Wisconsin residents in our 9-county region. And each year, these 80 industries import or export approximately 8 Million Tons of Commerce used to manufacture various products, including automotive parts, newspaper print, magazines, canned foods, construction equipment, vessels and renewable fuels.

The WSOR is able to provide this critical service to communities within our state, while being committed to safety. In 2007, the WSOR was honored as a recipient of the “2007 Jake Award” for keeping *frequency* and *severity* of employee injuries at a national low. Likewise, in 2008, the WSOR received the prestigious “E.H. Harriman Award” for most improved in employee injuries amongst other railroads in its class. Nationally, rail accident rates have dropped 71% and railroad employee injury rates have dropped a staggering 80% since 1980 (ASLRA).

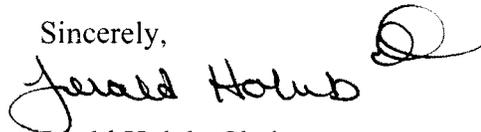
At its July 8, 2009, meeting, the Board of Directors of the EWCRC voted unanimously to oppose AB314. The bill proposes “redundant” governmental oversight of how railroads apply herbicides to their railroad corridors. As you may know, all railroads, including those in Wisconsin, must already follow strict federal and state guidelines related to weed control.

Chairman Spencer Black
Members of the Assembly Committee on Natural Resources
July 14, 2009
Page 2 of 2

More importantly, passage of AB314 will cause fragmentation in freight rail service throughout the State of Wisconsin by restricting train service and obstructing the movement of interstate commerce. The disruptions of rail service caused by AB314 will lead to extensive highway/rail grade crossing blockages in our urban areas and will adversely impact the environment because many locomotives will remain stationary with their diesel engines operating at idle speed during all re-entry restriction periods.

Noting the many positive benefits that railroads provide in terms of interstate commerce and employee safety, the EWCRC asks you to recognize the positive impacts that railroads have on the businesses and citizens in your district and **OPPOSE AB314**.

Sincerely,

A handwritten signature in black ink that reads "Jerald Holub". The signature is written in a cursive style with a large, looping flourish at the end.

Jerald Holub, Chairman
East Wisconsin Counties Railroad Consortium

cc: All other Wisconsin State Legislators with a constituency in the following Wisconsin Counties: Winnebago, Fond du Lac, Green Lake, Columbia, Dodge, Washington, Ozaukee, Sheboygan and Milwaukee



AB 314 ?

→ 7-16-09

RWK —

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3 packages 72167-4974477

TRICLOPER 3 SL

3 packages 81527-17

Picloram K

3 packages 66222-14181527

Panoramc 2 SL





Wisconsin & Southern Railroad Co.

1890 E. Johnson Street

Madison, Wisconsin 53704

Phone 608-243-9101 Web Site www.wsorrailroad.com

July 20, 2009

RE: AB314 – Restricting Herbicide use by Wisconsin Railroads

Dear Member of the Assembly Committee on Natural Resources:

As you consider the proposed actions contained in AB314, sponsored by Rep. Molepski, the Wisconsin & Southern Railroad Co. (WSOR) asks you to consider the ramifications this bill will have on railroad operators, rail shippers/receivers, communities, employees, and suppliers who rely upon cost effective and reliable rail service throughout Southern Wisconsin. As contract operator for the state-owned railroad system in Wisconsin, the WSOR shares the following concerns regarding AB314.

AB314 WILL:

Adversely impact quality of service that hundreds of Wisconsin businesses rely upon to keep their workforce busy and production optimal. Consistent and reliable freight rail service allows Wisconsin businesses to remain highly competitive in our global economy by maintaining optimal production and optimal employment. The re-entry clause in this bill will shut down train operations for a full 24-hour period thus causing service interruptions to rail-based businesses here in Wisconsin and throughout every legislative district in Wisconsin. If we have to hold trains and postpone our work crews during a 24 hour period or any timeframe for that matter with no options for re-routing traffic – our service plan will become fragmented.

Presume application plans are in place by March 15th. Generally, the WSOR does not have a plan in place this early in the year as a result of a number of variables including weather patterns, spring growth, financial resources and contractor availability. To require the WSOR to have a plan in place by March 15th seems to prohibit us from conducting annual spraying on an “as needed” basis, especially if secondary spraying is needed in certain areas. Adjoining landowners, farmers, communities and other property owners are not required to make this same info available to the railroad when they conduct their annual spraying activities so why is reciprocity not applied here?

This bill will create “overlapping” regulatory policies regarding herbicide application. Currently, all railroad workers are subject to rules and guidelines of federal agencies when it comes to employee safety and herbicide applications. All our employees and contractors follow OSHA rules pertaining to applications and all abide by all applicable USDA and FRA guidelines including labeling and notification requirements.

Increase the cost of doing business in Wisconsin. In an already competitive environment, railroads continue to lose market share to other modes as state and federal regulations impose greater restrictions on how railroads provide quality service at competitive rates. This provision increases a railroads cost of doing business in increased car hire (per hour fee for handling foreign railcars), fuel usage, and assessment fees imposed by DATCP. For example, if we have a train with two locomotives waiting for the re-entry restriction to expire, that train would have burned over 500 gallons of fuel alone by just waiting. How should railroads like the WSOR recover this additional cost and is this good for our environment?

Railroads are responsible herbicide applicators. A majority of railroads including the WSOR only apply herbicides approx. 10-15 feet from centerline of track on either side. When a railroad corridor is typically 100 feet wide, this leaves 35 to 40 feet on either side of the track that does not get treated. Most railroads including the WSOR have a policy to not spray herbicides during windy days to prevent overspraying. Applications are typically done on a calm mild day. WSOR's annual weed control program already follows State DOT standards.

Today's railroads do provide an enormous public benefit across our nation and here in Wisconsin. In general, today's trains can haul one ton of freight **436 miles on just one gallon of diesel fuel.** And today's trains are three times more fuel efficient and up to four times cleaner to the environment than competing modes. Last year alone, the WSOR hauled over 60,000 carloads of freight to local, regional and national markets. This equated to over 250,000 semi trucks eliminated from our roadway systems – **or a distance from Seattle, WA to Miami, FL.**

For the reasons noted above, I ask that you **oppose AB314** and vote to protect the economic and environmental benefits that Wisconsin communities, businesses and citizens enjoy as a result of our Wisconsin railroads.

Sincerely,



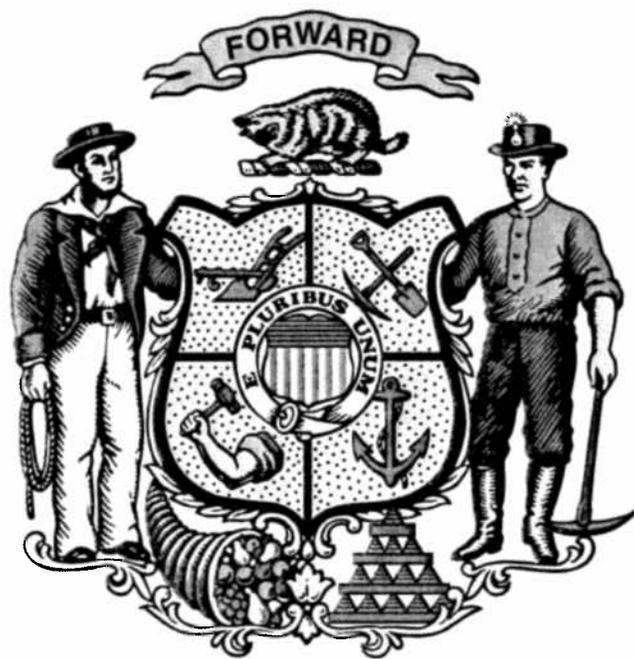
Ken Lucht, Mgr. of Community Development
Wisconsin & Southern Railroad Co.

KEN LUCHT
Community Development Manager



**WISCONSIN & SOUTHERN
RAILROAD CO.**

1890 E. Johnson Street • Madison, WI 53704
(608) 243-9101 ext. 207 • FAX (608) 243-9225 • CELL (414) 750-6402
E-mail: klucht@wsorrailroad.com





UNITED TRANSPORTATION UNION

TIMOTHY S. DENEEN
(0312)

State Director
TELE: (608) 251-4120
FAX: (608) 251-7870
CELL: (608) 695-6116

7 N. Pinckney Street Ste. 320
Madison, WI 53703-4262
E: utulo56@gmail.com



www.mailbag.com/users/utulo56

Packet

AB 314 ?

Date: July 22, 2009



Dick Ebel
General Manager
TWIN CITIES DIVISION

6818.09
ATT #2

BNSF Railway Company

80 - 44TH Avenue N.E.
Minneapolis, MN 55421

Telephone: 763-782-3467

Fax: 763-782-3019

Email: Richard.Ebel@BNSF.com

July 22, 2009

TE Deneen
UTU
7 N Pinckney Street Suite 320
Madison WI, 53707

Mr. Deneen, I am responding to your letter (6523.09) of 7/14/2009 addressed to Mr. Greg Fox regarding employees involved in vegetation control efforts at Superior Wisconsin on June 18 and 19th.

We became aware of this possible exposure through a discussion that our Superintendent operations at Superior, WI had with Foreman Flagstad on Monday June 22. We initiated an investigation which involved local operating personnel, Twin Cities Division Safety and BNSF Industrial Hygiene.

This investigation determined that the employees in question were briefed on the spray activities and their role in the operation. MSDS sheets were present at the briefing and available to them. Special accommodations had been made to other employees who had expressed known allergies and accommodations would have been made for these employees had they requested them.

We will continue to review spray processes with the applicators and with our employees and will coach our team on the importance of taking an active roll in briefings and reducing risk for themselves and their coworkers.

Thank you for your concern in this matter.

Please feel free to contact this office directly with any items pertaining to BNSF personnel in Superior WI.

Dick Ebel
General Manager
TC Division

6818.09
ATT #1



MIKE STODDART, CIH
Manager, Industrial Hygiene
Medical and Environmental Health

BNSF Railway Company
80-44th Avenue, N.E.
Minneapolis, MN 55421
Office (763) 782 - 3418
Fax (763) 782 - 3118
Cell (952) 818 - 7841
mike.stoddart@bnsf.com

July 13, 2009

Richard A. Olsen, Safety Coordinator
United Transportation Union

Dear Mr. Olsen,

I am writing in response to your letter of July 3, 2009 regarding the Switch Foreman, Helper, and Driver who worked pull-out job Y-DUL 1101-18 in the Allouez yard on June 18-19, 2009. Thank you for taking up this matter on behalf of our employees.

In following up on this incident, I spoke with Pete Hamell, Superintendent of Operations for BNSF in Superior, and asked him to send me the MSDS sheets for the chemicals that were used by the weed sprayers on that job. I reviewed the MSDSs and then made the following recommendations to Mr. Hamell.

1. The procedures for spraying the yards should be reviewed with the contractor to ensure the products being used are applied according to manufacturer's instructions.
2. BNSF and contracted personnel should be instructed to avoid contact with sprayed areas until the product has had time to dry or adhere to the plant material and the ground.

If these precautions are taken, there should be no need for additional respiratory protection or other personal protective equipment. However, BNSF Industrial Hygiene has approved the 3M 8233 disposable HEPA filter respirator for voluntary use. These respirators would offer additional protection for employees working in affected areas if they chose to wear them. The 3M 8233s are available in the BNSF Safety Equipment catalog or through my office.

If you have any questions about these recommendations, or if I can be of help in any way, please do not hesitate to contact me.

Again, I appreciate your concern for our employees.

Sincerely,

Mike Stoddart, CIH
Manager, Industrial Hygiene
BNSF, TWI DIV

- cc. Pete Hamell, BNSF Sup. Ops., Superior, WI
Michael Leonard, BNSF Mgr. of Safety, TWI DIV
Connie John Swanson, BNSF MEH, TWI DIV



6818.09

Tim Deneen <utulo56@gmail.com>

Weed Spraying activity

3 messages

Ebel, Richard L <Richard.Ebel@bnsf.com>

To: "utulo56@gmail.com" <utulo56@gmail.com>

Cc: Phillip Qualy <uturnlegbd@visi.com>, "Leonard, Michael A" <Michael.Leonard1@bnsf.com>, "Olson, Richard A (Duluth)" <Richard.Olson4@bnsf.com>, "Stoddart, Mike" <Mike.Stoddart@bnsf.com>, "Fox, Gregory C" <Gregory.Fox@bnsf.com>, "Sexhus, Sanford C" <Sanford.Sexhus@bnsf.com>, "Derosa, Mike D" <Mike.Derosa@bnsf.com>, "Ebel, Richard L" <Richard.Ebel@bnsf.com>

Thu, Jul 23, 2009 at 7:46 .

Tim we have investigated the incidents raised in your letter to Greg Fox dated July 14. We have determined that briefings did begin with the crew base at Duluth and Superior at the end of the week prior to the spraying activity in the terminal complex. The spray schedule was JSB'd by Trainmasters and Yardmasters. MSDS sheets were made available to all employees. In fact it resulted in employees identifying that they were allergic to the activities being undertaken and resulted in reassignment of duties.

Additional details are included in my letter of reply attached. We do take the spraying activity very seriously and continue to enhance our procedures around this seasonal activity.

In addition our Industrial Hygiene Team investigated the event and provided the attached communication which you should already have received.

0

Feel free to contact me directly with additional questions.

Richard (Dick) Ebel
General Manager, Twin Cities Division

80 44th Avenue NE
Minneapolis, MN 55421
763-782-3467
763-782-3019 (fax)
817-235-7136 (cell)
richard.ebel@bnsf.com

2 attachments

 Superior Weed Spraying.DOC
56K

 AllouezWeedSprayLet.pdf
27K

noreply@google.com <noreply@google.com>
To: utulo56@gmail.com

Thu, Jul 23, 2009 at 10:38 AM

You used Gmail's "Open as a Google document" link to view the attachment called "Superior Weed Spraying".

By doing this you saved an editable copy online at Google Docs: http://docs.google.com/Doc?id=ddq7dcx4_0gqx5x8d8&btr=EmailImport

Google Docs allows you to:

- **Create and edit** documents, spreadsheets and presentations online, from anywhere you have Internet access.
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Thanks,
The Google Docs Team

Questions? Take a [quick tour](#) or visit the [Google Docs Help Center](#). Please note this is an automated message -- we won't see it if you Reply to this.

Tim Deneen <utulo56@gmail.com>

Thu, Jul 23, 2009 at 10:48 AM

To: Danell Buck 832 LR <danel629@chartermi.net>, "Rick Olson (UTU MN)" <1raoul@charter.net>, SLD Phil Qualy MN <utumlegbd@visi.com>, "SLD Jerry L. Gibson MI" <utumi@comcast.net>, SLD Bob Guy IL <utuilinors@aol.com>, "James Stern (NLD)" <Jamesastern@aol.com>, "GC R. Knudson GO245" <utursk@earthlink.net>, Jay Schollmeyer GCA 386 <jay@utu386.org>, "Rick Hauser (0311)" <hauser@centurytel.net>

[Quoted text hidden]

--
Tim Deneen, Director
United Transportation Union
Wisconsin Legislative Board, LO 056
7 N Pinckney Street, Suite 320
Madison, Wisconsin 53703-2840
608 251 4120
utulo56@gmail.com
<http://www.mailbag.com/users/utulo56/index.html>

2 attachments

 Superior Weed Spraying.DOC
56K

 AllouezWeedSprayLet.pdf
27K



6206.09
832

united transportation union

Richard A. Olson, Safety Coordinator (TWI DIV)
United Transportation Union
1701 Kenwood Avenue, # 304
Duluth, MN 55811

July 3rd, 2009

Mike Stoddart, Mgr., Industrial Hygiene
BNSF Railway
80 - 44th Avenue NE
Minneapolis, MN 55421

Re: MSDS - Weed Sprayer Procedure, Chemical Exposure To Humans

Mr. Stoddart:

This correspondence is in reference to multiple weed spraying events that occurred on June 18-19, 2009 in the BNSF TWI DIV Superior, WI Allouez Yard. It has been reported to me by the switchmen, who worked the pull-out job, Y-DUL1101-18 that pulled the cars out of the tracks to make clear for the weed sprayer vehicle to then spray the clear tracks that they along with their contract van driver experienced severe effects from exposure to the applied chemical spray.

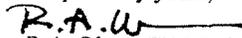
On both Thursday, June 18th and Friday, June 19th the Duluth Yard Job Y-DUL1101 was instructed to pull railcars out of the Allouez yard tracks as to allow the weed sprayer to spray its chemicals. On the second day of performing these duties the switch foreman Tom Flagstad experienced swelling and redness of the face, a metallic taste in the throat, and a numbing of the lips. The contract van driver that shadowed the switch crew, Randy Meade experienced vomiting from exposure to the chemicals. Both the switchman Flagstad and the helper, Mike Bailey noted that from years of experience of experiencing weed spraying events stated to me that the weed spraying application was more intense in content than in other years. In other years they stated there would be liquid dribbles filtering down from the rails after the spray event, this year they stated the whole area was saturated in a white liquid film.

Switch foreman Flagstad stated to Supt. Hamell on the following Monday after Mr. Flagstad's two rest days (Sat.-Sun.) of his 3 day physical reaction to the exposure of the chemical spray. Mr. Hamell stated to him that he would talk to the engineering staff of possibly cutting the percentage of the chemical spray applied.

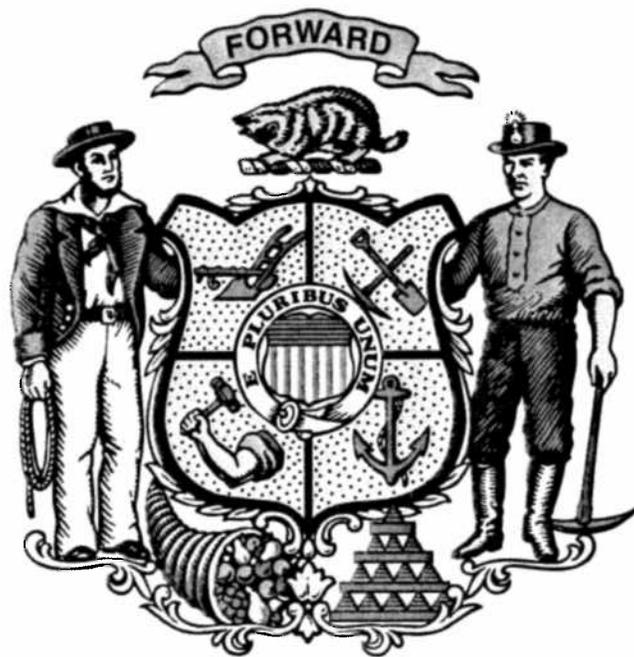
I asked two main questions of Switch Foreman Flagstad, 1.) Were you given a JSB on the MSDS Material Safety Data Sheet? He stated "No", and 2.) Why didn't he empower himself to stop the movement of the weed spraying event. He stated that he has taken for granted that the company (BNSF) is looking out for his interest. He also stated that the MSDS fact sheet after reading it after the occurrence of exposure calls for proper PPE chemical protective equipment such as masks, and of washing of clothes and of the dangers of harmful chemical affects to human skin exposure.

I would ask that your department look into the events of these dates as to assure other BNSF employees that they are fully protected to chemical exposure and that proper notification before the fact is maintained. Thank you.

Respectfully yours,


R.A. Olson, TWI Safety Coordinator
United Transportation Union

Cc Mike Leonard, BNSF Mgr. of Safety, TWI DIV
Tim Deneen, UTU WI State Legislative Director
Phil Qualy, UTU MN State Director



JUL 27 2009

WISCONSIN RIVER RAIL TRANSIT COMMISSION

719 Pioneer Tower • 1 University Plaza • Platteville, Wisconsin 53818

Karl Nilson, Chair • Commission Office Phone 608.342.1636 • Fax 608.342.1220 • Website www.wrrtc.org

MEMBER COUNTIES: CRAWFORD • DANE • GRANT • IOWA • ROCK • SAUK • WALWORTH • WAUKESHA

July 23, 2009

To: Members of the Assembly Committee on Natural Resources

Re: **AB-314 – Herbicide Use on Railroad Corridors**

Dear Members of Natural Resources Committee:

On behalf of the eight-county region represented by the Wisconsin River Rail Transit Commission in South Central Wisconsin, we ask you to oppose AB-314 as it relates to herbicide use on railroad property. AB-314 stands to create overlapping government regulation that will constrict our nation's railroads from providing a necessary function in our state and local economies.

Currently, all railroad companies, including their workers, are subject to rules and guidelines of the Federal Railroad Administration, OSHA and the U.S. Department of Agriculture, when it comes to employee safety and herbicide applications. Additionally, all railroads must follow existing rules set forth by the Wisconsin Department of Agriculture, Trade & Consumer Protection pertaining to their weed control programs, which includes employee protection.

Railroads are "around the clock" transportation facilities like our highways, ports & airport facilities for the most part. AB-314 proposes to "shut down" train operations for a 24-hour period thus causing service interruptions to rail-based businesses here in Wisconsin and throughout each of your legislative districts. Many times rail customers want next day service so their workforce remains busy and production remains optimal. This legislation will disrupt localized rail service and quite possibly cause urban congestion and reduce quality of life for our residents.

Again, the Wisconsin River Rail Transit Commission (<http://www.wrrtc.org/>) represents eight counties in southern Wisconsin including the counties of Crawford, Grant, Sauk, Iowa, Dane, Rock, Walworth & Waukesha. Our partnerships with communities, private sector business & state government has worked to preserve local rail service to 90 Wisconsin businesses employing more than 8,000 Wisconsin residents.

The WRRTC kindly asks you to **OPPOSE AB-314** so that Wisconsin businesses can keep our residents working and our nation's railroads can continue doing their part in moving our economy along.

Sincerely,


on behalf of

Karl Nilson, Chairman

Wisconsin River Rail Transit Commission

cc: WRRTC Legislative Delegation





Wisconsin & Southern Railroad Co.

1890 E. Johnson Street
Madison, Wisconsin 53704
Phone 608-243-9101 Web Site www.wsorrailroad.com

July 28, 2009

RE: AB314 Substitute Amendment– Restricting Herbicide use by Wisconsin Railroads

Dear Member of the Assembly Committee on Natural Resources:

On behalf of Wisconsin & Southern Railroad Co., I thank you for your willingness to work towards a compromise between competing parties regarding the use of herbicides by Wisconsin Railroads.

The substitute amendment still contains a couple key concerns to our company as it relates to public notification and worker protection. Providing notification to each local unit of government on a railroad's intent to apply herbicides in a certain area can compromise the safety of the general public including our train crews and railway workers. According to the U.S. Department of Homeland Security, it is harmful to railway security to encourage consistent and planned observations of railroad activities, particularly those activities involving chemicals. Making information available to the public such as **where, when** and **what date** the application will take place could easily end up in the wrong hands and could result in an act of terrorism against our railway equipment and employees.

In terms of Worker Protection, federal regulations already have worker protection rules in place that accomplish nearly the same result as would employee training. First, each time a qualified contractor applies herbicides, all employees are informed and governed by federally-regulated Material Safety Data Sheets (MSD's). The MSD's and all herbicide labels are made available to all employees at a centralized location usually 2-4 weeks in advance of a treatment to address various items as: type of chemicals, their effects on humans, first aid treatment, and re-entry restrictions. Contained within the MSD's are regulations governed by U.S. EPA, U.S. DOT & OSHA.

Second, when a contractor applies herbicides to our corridors, they must first acquire an "exclusive use of the right of way" or track warrant, in order to occupy any area of our railroad property. This means that no other employee or railroad contractor is allowed within the area targeted for spraying while the track warrant is in place, which could be hours after application.

I ask that you "reconsider" the public notification and worker protection provisions in Assembly Bill 314 as public notification will compromise railway security efforts and worker protection is considered "redundant" to federal rules already in place.

Sincerely,

Ken Lucht, Mgr. of Community Development
Wisconsin & Southern Railroad Co.



Assembly Committee on Natural Resources
Public Hearing July 29, 2009 1:00p.m.

Testimony Provided by
Ben Meighan
Wisconsin & Southern Railroad Co.
Phone (608) 243-9101

Hello! My name is Ben Meighan and I am the Superintendent of Maintenance of Way for the Wisconsin & Southern Railroad Co. Thank you for this opportunity to address you here today.

First, I want to thank you for offering a substitute amendment to AB314. As compared to previous language, the substitute does recognize that railroads are a service provider and that there is considerable federal oversight of how railroads do business here in Wisconsin and throughout our country.

As Superintendent, my duties include overseeing the annual maintenance program of over 600 miles of publicly-owned railroad track in 21 counties in Southern Wisconsin. I oversee the work activities of over 60 maintenance of way employees, not including railway contractors. I have 35 years experience in the industry.

Each year, Wisconsin & Southern conducts weed spraying activities on our railroad rights of ways as part of our annual maintenance program. Annually, we contract with a qualified and licensed contractor who will apply herbicides only 10-15 feet from centerline of track on either side. When a railroad corridor is typically 100 feet wide, this leaves 35 to 40 feet on either side of the track that does not get treated. Herbicide applications are typically done on a calm mild day. If weather patterns change for the worse that would prohibit the safe and efficient application of herbicides, the planned application will be delayed until appropriate weather patterns would allow for such application.

Regarding the substitute, our primary concern is that of notification to the general public. According to the U.S. Department of Homeland Security, it is harmful to railway security to encourage consistent and planned observations of railroad activities, particularly those activities involving chemicals. Making a “blanket” notification to local units of government on a railroads intent to apply herbicides in a certain area can compromise the safety of the general public including our train crews and railway workers. Making information available such as **where, when** and **what date** the application will take place can and will end up in the wrong hands and could result in terrorist activity if another chemical or weapon is used in conjunction with our herbicides.

Under Worker Protection, federal regulations already have worker protection rules in place that accomplish nearly the same result as would employee training. First, when a contractor applies herbicides to our corridors, they must first acquire an “exclusive use of the right of way” or track warrant in accordance with federal guidelines, in order to occupy any area of our railroad property. This means that no other employee or railroad contractor is allowed within the area targeted for spraying while the track warrant is in place. Once spraying is completed, it is usually hours after that a track warrant is removed and other employees and contractors are then allowed access to the corridor – far after the time the spray has dried and no longer becomes harmful to railway workers.

Second, each and every time a qualified contractor applies herbicides to our railway corridors, our employees are informed and governed by federally-regulated Material Safety Data Sheets (MSD’s). The MSD’s and all herbicide labels are made available to all employees at a centralized location usually 2-4 weeks in advance of a treatment to address various topics as: type of chemicals applied, their effects on humans, first aid treatment, and re-entry restrictions. Contained within the MSD’s are regulations governed by the United States Environmental Protection Agency, United States Department of Transportation & the Occupational Safety & Health Administration. This information is made available upon request by any community, or member of the general public.

I am happy to report to you today that through the life of our company – and that is going on 35 years - there have been NO known incidents involving any employee or a member of the public who came into contact with a harmful chemical that was applied to our railroad corridors. I believe this achievement reflects directly on our commitment to employee safety and on the importance of the federal regulations we follow each and every day.

With over 140,000 miles of rail track all across the U.S. spanning across all state borders, interstate commerce and railway safety should indeed be enforced by our federal government. We are fully committed to working together with federal agencies such as the U.S. EPA, U.S. DOT, OSHA & others in protecting our railway workers while not impairing our absolute need to keep our economy moving.

For the reasons stated above, I ask that you “reconsider” the public notification and worker protection provisions in Assembly Bill 314 as public notification will compromise railway security efforts and worker protection is considered “redundant” to federal rules already in place.

THANK YOU FOR YOUR TIME!



Department of Agriculture, Trade and Consumer Protection Testimony

Assembly Committee on Natural Resources

Public Hearing relating to AB 314, application of pesticides by railroads

July 29, 2009

Chairman Black and Committee members, thank you for the opportunity to comment today on Assembly Bill 314. I am Lori Bowman, Director of the Agrichemical Management Bureau, representing Secretary Nilsestuen and the Department of Agriculture, Trade and Consumer Protection. The Agrichemical Management Bureau is responsible for enforcing state and federal pesticide laws, including those relating to pesticide use and worker protection. My comments are intended for information only as you deliberate the bill.

Over the past several weeks, I have worked with Representative Molepske's staff to better understand the intent of this bill and to ensure it is written to meet this intent and it is enforceable. It is my understanding from these discussions that the primary intent of this bill is to ensure railroad workers are protected from exposure to pesticides that are applied by railroads in their right-of-ways.

Several of the provisions included in the original bill are already mandated under federal and state law. In addition, there were several other provisions in the original bill that were not enforceable as written. The substitute amendment being introduced today has addressed our concerns. I am available to continue to work with this committee to ensure the final bill meets the committee's intent and can be enforced by my staff.

Thank you for the opportunity to provide these comments.





WISCONSIN STATE REPRESENTATIVE
Louis J. Molepske, Jr.
71ST ASSEMBLY DISTRICT

July 29, 2009

**Testimony for the Assembly Natural Resources Committee
Assembly Bill 314
Use of Pesticides (Herbicides) by Wisconsin Railroads**

Background-

Under current law, railroads are not required to provide notification to anyone, including employees or adjacent property owners, of their intent to apply pesticides. This can place anyone with prolonged exposure to sprayed areas at risk to pesticides that often times have extremely serious effects on both the nervous system and on the endocrine system (some pesticides are also known carcinogens). The term "pesticide" is the legal terminology for herbicide in state and federal statute.

I am introducing a substitute after meeting with representatives of DATCP, the railroad employees union and in consideration of concerns brought to me by the railroads themselves.

- It was determined that it would be nearly impossible, and extremely expensive, to have notification of all property owners along the track that is to be sprayed. While DATCP currently has the Landscape Pesticide Advance Notice Registry, a similar registry for the Railroads was determined to be an extremely expensive program to both implement and maintain.
- Because of the federal laws, DATCP does not need rule making authority or the fees specified in the original bill language.
- Mandating that railroads provide personal protective clothing and equipment is already federal law and not needed.

Provisions of ASA 1 – AB 314

Railroad must post pesticide safety information at a central location accessible to railroad workers no later than 48 hours before the spraying. The information shall include:

1. An EPA pesticide safety poster;
2. The location and description of the area to be treated;
3. The product name, EPA registration number and active ingredients of the pesticide;

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1. The time and date the pesticide is to be applied;
2. The restricted-entry interval for the pesticide;
3. Access to the pesticide label (most are available on the Internet and are downloadable)
4. DATCP contact information.
5. Emergency medical contact information.

This information must remain posted at the central location for 30 days following application of the pesticides.

- Illnesses related to exposure to these chemicals may not become apparent for days following exposure. If an employee becomes ill, this will allow them to have the essential information of what chemicals to which they may have been exposed to provide to their doctor.

This same info should be posted on company website and shared with local towns/cities (DATCP should enforce).

- There are more than 4600 miles of railroad track in Wisconsin. The original language that railroads must notify or make information available to persons who own land along the tracks was onerous and impractical. Utilizing the Internet and alerting the municipalities along the route to be sprayed is a more cost effective and efficient way to allowing property owners to have access to this information. DATCP already investigates issues of overspraying of pesticides. In many instances, landowners of property affected by overspraying are unaware of whom to contact. By ensuring that municipalities are informed, landowners would be able to get information on the chemicals sprayed and contact information for a DATCP investigation more readily.

Railroads would alert supervisors in the affected areas no later than 48 hours before spraying.

- Due to the nature of their work, and the distances that they work over on a daily basis, even a central posting might not ensure that the information gets to potentially affected workers. Having the railroads ensure that the supervisory personnel know and disseminate this info will greatly increase the percentage of workers who are aware of the spraying, what to do and where to go if exposed, and necessary information for any needed medical care.

Railroads must provide pesticide safety training to all employees (this is done by the pesticide contractors for agricultural workers) annually and keep records of the date of the training, employees attending and name/employer of the trainer.

- For more than 20 years there have been state and federal laws on mandated pesticide education and safety training for agricultural workers in the United States. These laws were enacted reduce the risk of pesticide poisonings and

injuries among agricultural workers and pesticide handlers. The chemical combinations used in the pesticides along railroad right of ways are both more potent and more dangerous than those used in most agricultural settings. These pesticides are designed to kill *all* vegetation along the railroad track and their composition poses a greater danger to health of individuals working in the area. Mandating employee training and education is only common sense and will reduce the number of inadvertent exposures and potential for adverse health effects.

AB 314 is an environmental impact bill; an education bill; and, most importantly, it is an employee protection bill.

It is an environmental impact bill as it gives landowners and local municipalities the needed information in the case of an overspray, what they might have been exposed to, and whom to contact about reporting it.

It is an education bill as it gives employees, and the railroads, vital information about potentially dangerous pesticides that are being used in their work areas, how to respond if they are exposed and whom to contact to report spills, oversprays, or exposure.

Finally, it is an employee protection bill. By educating the employees on the proper procedures for working in areas that have been sprayed and ensuring that their supervisors inform them of the areas sprayed and what chemicals are used it raises the employee's awareness of the situation and greatly reduces the chance that the employees will become exposed.

Louis J. Molepske, Jr.
State Representative
71st Assembly District



July 29, 2009

**Testimony for the Assembly Natural Resources Committee
Assembly Bill 314
Use of Pesticides (Herbicides) by Wisconsin Railroads**

Dear Legislators,

My testimony today is about safety and security - knowing that railway workers, the public and the railroads will all have a more progressive approach to a safe environment.

First off, a little story to illustrate the need for this legislation. Just two weeks ago, I was notified by the adjoining Section Foreman, about two hours after starting time, that weed spraying contractors were headed my way for spraying. I have a small interchange track with the CN railroad and a couple of sidings and four miles of road along the right of way near Winona Junction. This area is in the middle of a wildlife refuge.

My crew met with the contractor and briefed them on what needed to be sprayed. We noticed that the sprayers were not wearing any PPE (person protective equipment), which is unusual, however, depending upon the herbicides being used PPE may not be needed. We went to the next location which was just shy of the Mississippi River and large lake. Before allowing them to spray, I asked them for the product labels of the chemicals they were using. They produced three labels, but said they weren't sure that this was all of the chemicals in the herbicide. I then asked them if they were properly trained in the usage of the chemicals and they told me that they were.

But, after reading the labels, I began to wonder about their training. The labels instructed the users to discard clothing after application. Further, there were inhalation hazards and other human hazards listed on the labels that made me question their lack of PPE.

On top of this, we had a wind that day of 30 mph. The sprayers were using a fire hose to apply the herbicide cocktail. In my opinion, the two young men had no idea what they were doing beyond mixing and spraying the herbicide as they were instructed.

This is a prime example of why we need this legislation. The next day everything they had sprayed had "melted". I doubt that they were actually trained or qualified applicators, as they displayed a lack of knowledge on safe application procedures.

I kept them away from water, but the crew from the CN RR would have no idea when switching later that night that we had applied spray earlier that day. Considering the instructions on the labels I did read, I have grave concerns over the potential for incidents of accidental exposure to these chemicals.

I believe the railroads can set a shining example in protecting their employees from accidental exposure. Implementing these new standards will provide a safer work

environment for workers along railroad right of ways and also protect the public from being exposed to these chemicals.

Thank you, I am willing to answer any questions that you may have.

Mike Koziara
Wisconsin Legislative Director
Brotherhood of Maintenance of Way Employees Division
International Brotherhood of Teamsters



Hearing on AB-314 Pesticide use on Railroads 7-29-09

Introduction: My name is Gary Nyberg my job is the Manager Vegetation Control for BNSF Railway with headquarters in Ft. Worth, TX. I have 42 years of experience with BNSF and predecessor railroads. I have worked for the last eleven years as Manager Vegetation Control and cover the BNSF system. As a BMW employee my seniority district was in Minnesota and Wisconsin, so I am familiar with the Wisconsin area. I would like to talk about the proposed legislation and how it will affect railroads, railroad operations and our employees.

Railroads already have extensive notification processes in place to notify our employees of spray activities. Further legislation would be redundant and a duplication of what is already in place. For instance on the BNSF we have Engineering Instructions for our employees to follow for work processes and procedures. **Engineering Instruction 12 (Vegetation Control)** outlines our vegetation control program and **System General Order 70** details how notification takes place. The Contractor notifies the Roadmaster 10 days in advance of spraying then the following takes place: **Read System General Order 70**. All railroad employees are required to comply with these instructions. Safety Briefings are held with employees that may be affected by spray operations. We have a **BNSF Medical safety briefing for Herbicides** that gives the basic information needed to safely work in and near treated areas. A list of the herbicides that will be used and MSDS sheets are provided and posted. In addition, MSDS sheets are available to all employees 24 hours a day 7 days a week through a fax on demand system. We have a Medical staff on call 24 hours a day, an Industrial Hygiene and Engineering staffs available to answer questions employees may have concerning the safety of pesticides.

Spray programs are weather driven and delays are numerous throughout the season. In some cases you may be delayed for days at a time due to wind and weather conditions that do not allow you to spray. Available track time for spray equipment changes constantly because of traffic flows and train delays. So we put out a two week schedule in our Engineering dept Outlook mail Intranet and update it once a week so all affected departments can follow the program. Because of all the variables it is near impossible to hit the exact dates of application. We have 50,000 operated miles of railroad and if a truck or trucks is delayed because of weather or track time issues the schedule changes for the next territory etc.

All applications take place on and within railroad rights of way and notification to adjacent landowners would be onerous and unnecessary. In some cases there are non resident landowners that do not even live in the state. One of the concerns we have with the notification process is after the events and circumstances of 9/11, homeland security was concerned about spraying equipment being stolen and used to disperse chemical and biological weapons. Because of those concerns we have elected not to make public the location of spray equipment.

All our contract applicators are required to complete Contractor Orientation and "E" Rail safe training before they are allowed to work on the railroad. These are training programs specifically designed for working around railroads. This training is on file electronically and is available if there are any questions. In addition to the safety training each applicator is required to carry a picture ID that shows the training has been completed and to make them easily identifiable to railroad employees. Requiring a list of commercial applicators that are hired for railroad work is not necessary as each applicator has their commercial pesticide applicators license with them and is available upon request.

Railroads have vegetation control programs for a number of reasons. Some of which are the following:

1. Maintain a safe working environment for our employees

- a. Railroads operate 24/7 and our employees are working around heavy moving equipment so we need to have a reasonably weed free area to work in.
- b. Section crews are replacing ties, rail other track material and trainmen are making up trains in yards around the clock and unwanted vegetation is a walking and tripping hazard to them as they perform their duties.

2. Maintain drainage of ballast and waterways

- a. Railroad tracks are an engineered structure designed to drain water away from the ties, rail and ballast to help maintain the tracks surface and alignment.
- b. Any type of vegetation in the ballast section does not allow for proper drainage and leads to problems with a stable track structure, which compromises railroad safety. Vegetation retains fine particles such as silt or clays and increases organic matter within the ballast and decreases ballast integrity. When the ballast's ability to support the weight of trains is reduced the results are problems with track support, alignment and profile that are common causes of train derailments.
- c. Vegetation growing in ditches at the ballast shoulder can impede proper drainage and contribute to flooding or washout of the track structure and surrounding areas.

3. Allow for inspection of structures and trains

Any number of circumstances requires our train crews to inspect their trains either in yards or out on line. Defective equipment detectors are located at various locations across territories, high or wide load detectors, HBD, dragging equipment detectors just to name a few. Inspections must be made of moving and stopped trains. Overgrown vegetation creates a walking and tripping hazard while performing these duties and it creates an ideal habitat for snakes and other animals.

4. Maintain visibility at grade crossings, signs and signals

Vegetation must be controlled at grade crossings to ensure highway vehicles and trains have adequate sight distances.

5. Comply with regulations

Railroads are required to comply with Federal Railroad Administration rules and regulations governing vegetation on its rights of ways. If vegetation is not controlled our employees will not be able to see critical signs or properly inspect the track structure and train crews will be unable to make proper train inspections. If trees and brush are allowed to grow into the wires of a pole line it could create a short in the signal system causing the signal system to malfunction.

6. Reduce the spread of non native invasive species of weeds

Railroads are required by Federal and state laws to control the spread of certain non- native, invasive or noxious weeds on our rights of ways.

7. Reduce fire hazard associated with train traffic

The vegetation control programs are necessary to reduce the potential fire hazards on railroad rights of way related to railroad operations.

To accomplish these goals a variety of control methods are used and we have an "Integrated Pest Management" plan in place that utilizes mechanical, biological and chemical controls. These methods are used to comply with existing regulations and to provide for the safety of our employees and the public.

The manufacturer's labels for pesticides are documents that contain very specific language pertinent to mixing, applying, handling and working around pesticides. By changing this language, important information may be left out and would compromise the safety of employees and applicators.

The EPA has basically registered pesticides for use under two types of labels. Agricultural which applies to the production of agricultural crops and Non Crop which applies to non crop producing areas such as highways, roadsides, utility rights of way, industrial sites, sub stations, farm sites and railroads. Although many of the products active ingredients are the same, they are very different in types of application methods, frequency of applications and the scope of work required.

To require railroad employees to not work in an area for 24 hours after pesticide application conflicts with existing Federal guidelines and would shut the railroads down while application is taking place. Pesticides are registered by the EPA and re-entry time periods are much shorter for non crop or railroad applications than Ag operations.

Agricultural spraying and the scope of work are very different. All products used for railroad applications state to not enter the area until the sprays have dried. That normally takes 5 to 10 minutes; in contrast, growers may flood or pivot irrigate crops with herbicide in the water and it takes much longer for those areas to dry. Agricultural workers are in constant contact with treated crops or in the case of an orchard the treated

trees. Their duties require them to pick, thin, prune or work on and with the treated vegetation. A typical railroad application is to spray a 24 foot pattern down the track with a fixed boom about 18" to 24" above the rail and most booms are shielded to prevent drift. A 24 foot pattern is equal to 2.9 acres per mile of track. If a mile of an Ag field is sprayed that equates to 640 acres. They also have multiple applications that take place throughout the growing season. For instance some fruit growers may spray a fungicide up to 20-25 times a year to control blight. Most railroad applications are once a year. Both the Ag labels and the Non Crop labels do not say you can not enter the treated area before the time period is up. But if you do, you need to have personal protective equipment and most labels require you to have a long sleeved shirt, long pants, shoes and socks and waterproof gloves. Railroad employees are already required to wear most of the PPE to perform their normal duties. If waterproof gloves are needed they are provided by the railroad.

"Pesticides" include the families of Fungicides, Insecticides, Rodenticides and herbicides fall under that umbrella. Many of the herbicides used on railroads can be purchased over the counter and are used by homeowners all across the state and there is no scientific basis for requiring longer re-entry periods than those currently required by Federal law.

Herbicides are much different than Insecticides or Rodenticides for instance. Herbicides control by interfering with a plants metabolism such as Photosynthesis. The EPA registration process takes in some cases up to 10 years before pesticides are approved for use. They have determined that longer re-entry time periods are not required when spraying in a railroad or non crop environment. Keep in mind when pesticides are going through this process, the tests are done using undiluted products. This is to simulate worst case scenarios such as workers in the manufacturer's plant actually making the product. Each product has a maximum annual use rate according to manufacturers label requirements. Railroad application rates are well below the maximum rates and are further diluted in 20-50 gallons of water per acre so solution concentration levels are very low. Adjuvants are also added to prevent drift. The **"2004 Annual Report of the American Association of Poison Control Centers Toxic Exposure Surveillance System"** included 2,438,644 human exposure cases reported during 2004. Of the entire reported cases 92.7 % occurred at a residence, with only 2 % occurring in a workplace.

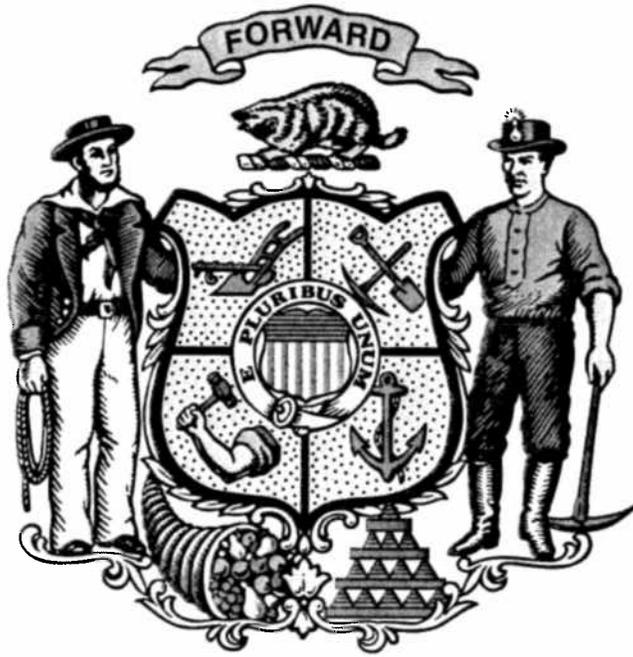
It would be redundant for the Department of Agriculture, Trade and Consumer Protection (**DATCAP**) to set standards as to the time and weather conditions necessary relating to pesticide application. Pesticide applicators are already required to comply with Federal laws and manufacturers label requirements that govern wind and weather conditions. They are also required to comply with the same strict requirements concerning surface waters and spraying near individuals. By adding additional language it would be a duplication of existing laws already in place.

It is unfair to single out the railroads to pay for a program that is already regulated by Federal and State laws concerning pesticide application to the railroads. Having another governing body will only create confusion and may conflict with existing laws. Railroad

applications are a very small percentage of all pesticide application that takes place in Wisconsin and other states.

In Summary railroads already have extensive notification processes in place to notify our employees of spray activities. These activities take place entirely on railroad property and are necessary to ensure the safety of our employees and the public and to comply with Federal and State laws for vegetation control on railroads. Pesticide production and use whether it is on Agricultural land or Non Crop is already one of the most highly regulated industries in the United States. Strict guidelines, procedures and safety requirements must be followed in accordance with existing Federal laws and manufacturers label requirements. New or additional regulations would only create confusion or could conflict with existing laws. All applications that take place on railroads are by licensed, trained professional applicators and take place entirely within railroad property. The products used are approved by the EPA and each state they are applied in. Many of the products used on railroads are the same as those used in the Ag market and are sprayed on consumable food crops. They are applied at well below maximum label rates. Having longer re-entry time periods than required by Federal law will result in not allowing us to provide a safe work environment for railroad employees and would disrupt service to our customers in Wisconsin. Spray activities could not take place without unnecessarily shutting down the railroad and would not allow reducing the risk to our employees and the public. It would cause employees to have to vacate buildings, equipment and other facilities for 24 hours when we in fact would not do this in our own homes. Thank you for the time allowed talking about our concerns.

Gary Nyberg
Manager Vegetation Control
BNSF Railway





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August 11, 2009

To: Members of the Assembly Natural Resources Committee

I appreciated the opportunity to testify before your committee on AB-314, the Railroad Pesticide Bill. You may recall at the hearing that a representative of the Brotherhood of Maintenance of Way Employees testified about a possible unsafe and unhealthy application of pesticides along the BNSF line in western Wisconsin.

It is unfortunate that we had to wait two weeks to find out about a possible unsafe condition or act. One of the requirements on the railroad is to report anything that may affect safety by the first available means of communication so corrections can be made to prevent accidents or injuries.

The area that was identified as the location was a storage area for rail at East Winona. On July 30th, the day after the hearing, I inspected the site where the application took place and found absolutely no evidence of an off target application. The date of the spraying was on July 15th. One of the comments was that they were spraying in 30 mph winds. If that were the case, vegetation would have been affected by drift over a large area. The applicator had a wind gauge to determine if a safe application could take place. He also had weather channels on his radio to monitor the weather in the area. The highest wind speed recorded on that day was 20 and the lowest was 5 mph. The on site inspection showed dead or dying vegetation around the rail piles and green vegetation just outside the spray pattern. The spraying was confined to the targeted area entirely on railroad property and is consistent with our requirements for controlling vegetation around track material storage locations.

The name of the contractor that sprays that area for us is RWC Inc; their headquarters is in Westerville, OH. They have been in the railroad vegetation control business for over 40 years and in addition to the work they do for the BNSF Railway; they also work for Amtrak, Norfolk Southern, Canadian National, CSX and various short line railways. They have worked in the Wisconsin area for us and other railroads for 13 years and have never had an accident, personal injury, or damage claim in that time.

The applicator that sprayed the area was Brice Korobka, he is a licensed commercial applicator in Wisconsin. He is a graduate of Kansas State University, is 25 years old, and has been an applicator for 6 years. He has received annual training to properly and safely mix, handle and apply herbicides. He has also completed "Contractor Orientation" and "E" Rail Safe training for contractors working on railroads.

Reference was made that the spraying was done with "something like a fire hose". The equipment that was used is a hose and handgun assembly similar to the equipment used on lawns and other spot applications. The diameter of the hose was 1/2", which is quite different than a fire hose. The proper personal protective equipment was being worn in compliance with regulations and label requirements for the products used.

The supervisor in charge of that area for the railroad is Mike Veitz, Roadmaster, with headquarters at LaCrosse. His territory is from LaCrosse, WI to St. Croix, which is just North of Prescott, WI. Mr. Veitz is in charge of the track maintenance for that area. There are maintenance employees at various locations across his territory and he stated that no one had reported any unsafe applications or concerns while the contractors were working across his territory.



I hope this gives you a better understanding of what occurred. If you have any further questions, please do not hesitate to give me a call.

Thank you,

Gary A Nyberg
Manager Vegetation Control
BNSF Railway

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