

2007 DRAFTING REQUEST

Bill

Received: **03/19/2007**

Received By: **btradewe**

Wanted: **As time permits**

Identical to LRB:

For: **Louis Molepske (608) 267-9649**

By/Representing: **Chris (aide)**

This file may be shown to any legislator: **NO**

Drafter: **btradewe**

May Contact:

Addl. Drafters:

Subject: **Agriculture - pesticides**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Molepske@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Application of pesticides to railroad right-of-way

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	btradewe 05/11/2007	lkunkel 05/23/2007	nmatzke 05/23/2007	_____	sbasford 05/23/2007		State
/1	btradewe 06/04/2007	lkunkel 06/05/2007	pgreensl 06/05/2007	_____	lparisi 06/05/2007	cduerst 02/12/2008	

FE Sent For: ¹/₁ @ intro. 2-20-08 <END>

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/P1	btradewe 05/11/2007	lkunkel 05/23/2007	nmatzke 05/23/2007	_____	sbasford 05/23/2007		

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1/mk6/5

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1?	btradewe	p/lmk 5/23	nwm 5/23	nwm/rs 5/23			

FE Sent For:

<END>

Becky-

This is a copy of the bill we discussed. If you have any questions, please let me know. Thanks for your help!

Chris

Needs a draft (wis)

H.F. No. 1838

as introduced

85th Legislative Session (2007-2008)

Posted on Mar 08, 2007

1.1

A bill for an act

MN would like to see something here

1.2

relating to agriculture; regulating certain pesticide applications; authorizing 1.3

rulemaking; appropriating money; proposing coding for new law in Minnesota 1.4

Statutes, chapter 18B.1.5

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:1.6

Section 1. **[18B.40] PESTICIDE APPLICATION LIMITATIONS.**1.7

Subdivision 1. Application plan. Annually, by March 15, each railroad company 1.8

must file with the commissioner of agriculture a schedule detailing dates, times, places, 1.9

and locations of its pesticide application plan for the ensuing nine months and identify for 1.10

the commissioner the specific pesticides to be used, their chemical ingredients, and their 1.11

known short-term and long-term effects on humans. The schedule must be maintained 1.12

in a manner readily available to adjoining landowners and horticulturists as well as the 1.13

railroad's employees. Each railroad company must also furnish to the commissioner the 1.14

name, training, licensure, and contact information for each contract pesticide applicator 1.15

that it hires.1.16

Subd. 2. Conformance with plan. (a) Pesticides may only be applied on a railroad 1.17

right-of-way in accordance with the schedule filed under subdivision 1. Each person 1.18

applying pesticide must be familiar with and comply with that schedule. 1.19

(b) This subdivision does not prohibit application of a pesticide within five feet from 1.20

either side of the center of a railroad track. 1.21

Subd. 3. Exemptions. Except as necessary to comply with the Endangered Species 1.22
Act, Public Law 100-478, this section does not apply to persons engaged in: 1.23

(1) farming on farmland and farm right-of-way; 1.24

(2) commercial application of pesticides on farmland and farm right-of-way; 2.1

(3) structural pest control; 2.2

(4) residential lawn applications; 2.3

(5) forest management activities; or 2.4

(6) control of noxious weeds or mosquitoes, arthropods, or insects of public health 2.5

importance under chapter 18 or section 473.04. 2.6

Sec. 2. **[18B.41] EMPLOYEE INFORMATION.** 2.7

A railroad company may not require an employee or an employee of a subcontractor 2.8

other than the pesticide applicator to work in an area subjected to pesticide for 48 hours 2.9

following the pesticide application. Each employee required to work in an area subjected 2.10

to pesticide within 168 hours following the pesticide application must be provided a 2.11

written description, in easily comprehensible language, of the pesticides used and their 2.12

known effects on humans. The railroad company must also, at its own expense, furnish 2.13

to each of its employees and to each employee of each of its subcontractors personal 2.14

protective equipment sufficient to preserve the employee's health. 2.15

Sec. 3. **[18B.42] RULES.** 2.16

To prevent damage to adjoining landowners and horticulturists and preserve the 2.17

health of employees, the commissioner of agriculture may adopt rules necessary to 2.18
limit times and weather conditions during which pesticide may be applied by a railroad 2.19
company.2.20

Sec. 4. **COST RECOVERY PLAN.2.21**

By January 2, 2008, the commissioner of agriculture shall present to the legislature 2.22
a plan to recover costs of the registration, list maintenance, and rulemaking required 2.23
by sections 1 to 3.2.24

Sec. 5. **APPROPRIATION.2.25**

\$..... in fiscal year 2008 is appropriated from the general fund to the commissioner 2.26
of agriculture for administration of sections 1 to 4.2.27

Sec. 6. **EFFECTIVE DATE.2.28**

Sections 1 to 5 are effective the day following final enactment. No railroad company 2.29
is required to file a pesticide application plan under section 1 until March 15, 2008



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-2281/P1

RCT:.....

lmk

SOON (m s/11)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

ONote

Benlat

✓

1 AN ACT ...; relating to: pesticide use by railroads and granting rule-making
2 authority. ✓

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version. ✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows: ✓

3 SECTION 1. 94.697 of the statutes is created to read: ✓

4 **94.697 Railroad pesticide use.** (1) DEFINITIONS. In this section:

5 (a) "Railroad" means a person that owns or operates any railroad or part of a
6 railroad as a common carrier in this state. ✓

7 (b) "Structural pest control" means the control of a pest, other than a plant, in
8 or around a building or other structure, including a boxcar. ✓

9 (2) PLAN REQUIRED. A railroad shall annually, by March 15, file with the
10 department a plan for its pesticide applications for the ²⁹nine months beginning on
11 April 1. A railroad shall include all of the following in the plan:

1 (a) A schedule showing the dates, times, and places at which pesticides will be
2 applied. ✓

3 (b) A list of the pesticides that will be used, including ingredient statements
4 and the known long-term and short-term effects on humans of each pesticide. ✓

5 (c) The name, training, and contact information for each commercial applicator
6 for hire with whom the railroad contracts to apply pesticides. ✓

7 (3) AVAILABILITY OF PLAN. A railroad shall make the plan under sub. (2) available
8 to persons who own land adjacent to rights-of-way that the railroad owns or
9 maintains, persons who conduct agricultural activities on land adjacent to the
10 rights-of-way that the railroad owns or maintains, and the railroad's employees. ✓

11 (4) CONFORMANCE WITH PLAN. (a) Except as provided in par. (b), a railroad and
12 any person under contract with a railroad may only apply pesticides to a railroad
13 right-of-way in conformance with the plan under sub. (2). A railroad shall ensure
14 that an individual applying pesticides to rights-of-way that ^{is the railroad} it owns or maintains is
15 familiar with and complies with the plan. ✓

16 (b) Paragraph (a) does not apply to any of the following: ✓

17 1. The application of pesticides within 5 feet of the center line of a railroad
18 track. ✓

19 2. The application of pesticides for structural pest control. ✓

20 3. The application of pesticides when applications provided for by the plan
21 under sub. (2) are insufficient to control noxious weeds, as required by s. 66.0407, or
22 to protect public health. ✓

23 4. An application of pesticides that is specifically approved by the department. ✓

24 (5) EMPLOYEE INFORMATION AND PROTECTION. (1) A railroad may not require an
25 employee of the railroad or of a contractor, other than an employee who applies a

1 pesticide, to work in an area in which a pesticide has been applied ^{within} for 48 hours after
2 application of the pesticide. _{10e}

3 ^(b) ② A railroad shall provide an employee of the railroad or of a contractor who
4 is required to work in an area within 168 hours after application of a pesticide to the
5 area with a written description, in easily comprehensible language, of the pesticide
6 used and its known effects on humans. ✓

7 ^(c) ③ A railroad shall furnish, at its expense, protective equipment sufficient to
8 protect the health of an employee of the railroad or of a contractor from the effects
9 of pesticides on humans. ✓

10 (6) RULES. The department may promulgate rules that limit the times and
11 weather conditions in which pesticides may be applied by or on behalf of a railroad
12 to prevent damage to persons who own land adjacent to railroad rights-of-way or
13 who conduct agricultural activities on land adjacent to railroad rights-of-way and
14 to protect the health of ~~railroad~~ employees. ^{of railroads and contractors}

15 SECTION 2. Nonstatutory provisions.

16 (1) No later than the first day of the 6th month beginning after the effective date
17 of this subsection, the department of agriculture, trade and consumer protection
18 shall submit a report to the legislature, in the manner provided in s. 13.172 ⁽²⁾,
19 recommending methods to provide the funding needed to administer s. 94.694 ₂₇ of the
20 statutes, as created by this act. ✓

21 (END)

action (2x)
Note
of the statutes

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2281/P1dn

RCT:.....

ML

(date)

✓
Chris McKinny:

This is a preliminary draft of the proposal relating to railroads and pesticides. The draft is based on the Minnesota bill that you provided. ✓

I have tried to clarify some of the language from the Minnesota bill, but am uncertain that this draft captures the intent of that bill in all respects. ✓ I tried without success to get more information about the Minnesota proposal by searching Minnesota legislative Internet sites and doing general Internet searches. ✓ Some of the differences between this draft and the Minnesota bill are due to differences in our current laws. ✓ I based proposed s. 94.697 (4) (b) 3. and 4. in part on current s. 23.094 (3r) (c). ✓

The Department of Agriculture, Trade and Consumer Protection (DATCP) has broad rule-making authority concerning pesticides under s. 94.69. ✓ In light of that provision, and especially s. 94.69 (1) (i), the rule-making authority in this draft may be unnecessary. ✓

* This draft requires DATCP to submit a report to the legislature recommending methods to fund the activities required in the draft. In order to ensure that funding is ultimately provided, you might want to include a funding mechanism in the bill. *seems to* *a* *ing*
* ~~It appears that~~ the Minnesota bill contemplates providing start-up funding, but it does not specify an amount. It appears that the intent is to add an appropriation amount during the legislative process. Please let me know if you want to add funding to the draft. ✓

* I am not an expert on federal transportation law, but my understanding from Aaron Gary, our senior transportation drafter, is that federal law preempts state law on certain aspects of railroad safety. Federal law preempts state law with respect to these matters, even when the activity appears to be confined to this state. ✓ The Federal Railroad Administration, within the US Department of Transportation, exercises primary authority over rail safety and safety standards. The federal law does not preempt all state efforts to regulate railroads. States retain certain "police powers" despite the broad scope of exclusive federal railroad regulation. ✓ State laws are generally not preempted if they do not frustrate the federal scheme governing railroad safety and can be applied without interfering with federal law. ✓ Courts typically resolve issues of federal preemption on a fact-specific, case-by-case basis. It is possible that someone might challenge provisions of this proposal, particularly those related to the safety of railroad employees, on the grounds that they are preempted by federal law.

Federal

* Please let me know if you have any questions or want any changes in the draft. When you are satisfied with the draft, I will prepare a version that may be introduced.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2281/P1dn
RCT:lmk:nwn

May 23, 2007

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Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

6/4/07 Call from Chris in Rep. Molepske's office -

Authorize NATCP to impose fees eliminate nonstatutory provision.

pet



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-2281/P1

RCT:lmk:nwn

SOON (in 5/4)

↑
STMP
YMY
e

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Reisen ✓

and
3 (making an appropriation)

1 AN ACT to create 94.697 of the statutes; relating to: pesticide use by railroads
2 and granting rule-making authority.

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insert

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Insert 1-3

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6 railroad as a common carrier in this state.

7 (b) "Structural pest control" means the control of a pest, other than a plant, in
8 or around a building or other structure, including a boxcar.

9 (2) PLAN REQUIRED. A railroad shall annually, by March 15, file with the
10 department a plan for its pesticide applications for the 9 months beginning on April

11 1. A railroad shall include all of the following in the plan:

1 (a) A schedule showing the dates, times, and places at which pesticides will be
2 applied.

3 (b) A list of the pesticides that will be used, including ingredient statements
4 and the known long-term and short-term effects on humans of each pesticide.

5 (c) The name, training, and contact information for each commercial applicator
6 for hire with whom the railroad contracts to apply pesticides.

7 **(3) AVAILABILITY OF PLAN.** A railroad shall make the plan under sub. (2) available
8 to persons who own land adjacent to rights-of-way that the railroad owns or
9 maintains, persons who conduct agricultural activities on land adjacent to the
10 rights-of-way that the railroad owns or maintains, and the railroad's employees.

11 **(4) CONFORMANCE WITH PLAN.** (a) Except as provided in par. (b), a railroad and
12 any person under contract with a railroad may only apply pesticides to a railroad
13 right-of-way in conformance with the plan under sub. (2). A railroad shall ensure
14 that an individual applying pesticides to rights-of-way that the railroad owns or
15 maintains is familiar with and complies with the plan.

16 (b) Paragraph (a) does not apply to any of the following:

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18 track.

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20 3. The application of pesticides when applications provided for by the plan
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2 after application of the pesticide.

3 (b) A railroad shall provide an employee of the railroad or of a contractor who
4 is required to work in an area within 168 hours after application of a pesticide to the
5 area with a written description, in easily comprehensible language, of the pesticide
6 used and its known effects on humans.

7 (c) A railroad shall furnish, at its expense, protective equipment sufficient to
8 protect the health of an employee of the railroad or of a contractor from the effects
9 of pesticides on humans.

10 (6) RULES. ^{Φ (6)} The department may promulgate rules that limit the times and
11 weather conditions in which pesticides may be applied by or on behalf of a railroad
12 to prevent damage to persons who own land adjacent to railroad rights-of-way or
13 who conduct agricultural activities on land adjacent to railroad rights-of-way and
14 to protect the health of employees of railroads and contractors.

15 **SECTION 2. Nonstatutory provisions.**

16 (1) No later than the first day of the 6th month beginning after the effective date
17 of this subsection, the department of agriculture, trade and consumer protection
18 shall submit a report to the legislature, in the manner provided in section 13.172 (2)
19 of the statutes, recommending methods to provide the funding needed to administer
20 section 94.697 of the statutes, as created by this act.

21 (END)

(a) The department shall promulgate rules specifying fees
to be paid by railroads to cover the costs of administering
this section.

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2281/lins
RCT:.....

Analysis insert

Under current law, the Department of Agriculture, Trade and Consumer Protection (DATCP) administers laws that regulate the sale and use of pesticides, including herbicides. ✓

This bill requires a railroad to annually file with DATCP a plan for its pesticide use. The bill requires a railroad to make the plan available to others, including the railroad's employees and those who own land adjacent to the railroad's rights-of-way. ★
The bill generally requires a railroad and any person under contract with the railroad to comply with the plan when applying pesticides to rights-of-way. ★
The bill generally prohibits a railroad from requiring a person to work in an area to which a pesticide has been applied within 48 hours of the application of the pesticide. ✓

The bill requires DATCP to establish, by rule, fees to be paid by railroad companies to cover the costs DATCP incurs under the bill. ✓ The bill also authorizes DATCP to promulgate rules to limit the times and weather conditions in which pesticides may be applied by railroads to prevent damage to lands adjoining rights-of-way and to protect the health of employees of railroads and their contractors. ★

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

Insert 1-3

SECTION ~~1~~ ^X 20.115 (7) (i) of the statutes is created to read:

20.115 (7) (i) *Railroad pesticide use*. All moneys received under s. 94.697 (6) ✓

(a) for the activities under s. 94.697 related to railroad pesticide use. ✓

Duerst, Christina

From: McKinny, Chris

Sent: Tuesday, February 12, 2008 9:19 AM

To: LRB.Legal

Subject: Draft Review: LRB 07-2281/1 Topic: Application of pesticides to railroad right-of-way

Thank you!

Please Jacket LRB 07-2281/1 for the ASSEMBLY.

2/12/2008