

2009 DRAFTING REQUEST

Bill

Received: 01/12/2009

Received By: btradewe

Wanted: As time permits

Identical to LRB:

For: Louis Molepske Jr (608) 267-9649

By/Representing: Lloyd Clark

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:

Like 2007 AB 836

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>
/?	btradewe 01/13/2009	bkraft 01/29/2009		_____			State
/1			phenry 01/30/2009	_____	sbasford 01/30/2009		State
/2	btradewe 05/06/2009	bkraft 05/06/2009	rschluet 05/06/2009	_____	sbasford 05/06/2009	sbasford 05/27/2009	

FE Sent For:

*et
intro*

<END>

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/1			pherry 01/30/2009	_____	sbasford 01/30/2009		
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12bjk 5/6

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PT
5/6

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/?	btradewe	1 ljk 1/29	1/30 ph	1/30 ph			

FE Sent For:

<END>

Tradewell, Becky

From: Duerst, Christina
Sent: Monday, January 12, 2009 4:28 PM
To: Tradewell, Becky
Subject: FW: Bill Draft Request - Rep. Molepske

The LRB for this draft is 07-2281 if you need it.

From: Clark, Lloyd
Sent: Monday, January 12, 2009 3:50 PM
To: LRB.Legal
Subject: Bill Draft Request - Rep. Molepske

Date: 1/12/09

Legislator: Rep. Molepske
Staff Contact: Lloyd Clark 267-9649

Bill Description:

Redraft of 2007 AB 836

This bill would:

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.

Some provisions may already exist in current Wisconsin statute.

Keep Confidential

LLOYD CLARK

OFFICE OF REPRESENTATIVE LOUIS J. MOLEPSKE, JR.
CHAIR - COMMITTEE ON JOBS, THE ECONOMY, AND SMALL BUSINESS
608-267-9649
888-534-0071

01/12/2009

IN 1/13

bjk

rmv

2007 ASSEMBLY BILL 836

February 21, 2008 - Introduced by Representatives MOLEPSKE, SOLETSKI, SMITH, BERCEAU and SINICKI, cosponsored by Senators HANSEN and KAPANKE. Referred to Committee on Transportation.

SAV
X-REF V

reger

- 1 AN ACT to create 20.115 (7) (i) and 94.697 of the statutes; relating to: pesticide
- 2 use by railroads, granting rule-making authority, and making an
- 3 appropriation.

Analysis by the Legislative Reference Bureau

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.

ASSEMBLY BILL 836

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

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

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

2 20.115 (7) (i) *Railroad pesticide use.* All moneys received under s. 94.697 (6)

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

X
4 **SECTION 2.** 94.697 of the statutes is created to read:

5 **94.697 Railroad pesticide use.** (1) DEFINITIONS. In this section:

6 (a) “Railroad” means a person that owns or operates any railroad or part of a
7 railroad as a common carrier in this state.

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

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

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

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

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

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

19 (3) AVAILABILITY OF PLAN. A railroad shall make the plan under sub. (2) available
20 to persons who own land adjacent to rights-of-way that the railroad owns or

ASSEMBLY BILL 836

1 maintains, persons who conduct agricultural activities on land adjacent to the
2 rights-of-way that the railroad owns or maintains, and the railroad's employees.

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

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

9 1. The application of pesticides within 5 feet of the center line of a railroad
10 track.

11 2. The application of pesticides for structural pest control.

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

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

16 (5) EMPLOYEE INFORMATION AND PROTECTION. (a) A railroad may not require an
17 employee of the railroad or of a contractor, other than an employee who applies a
18 pesticide, to work in an area in which a pesticide has been applied within 48 hours
19 after application of the pesticide.

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

ASSEMBLY BILL 836

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

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

6 (b) The department may promulgate rules that limit the times and weather
7 conditions in which pesticides may be applied by or on behalf of a railroad to prevent
8 damage to persons who own land adjacent to railroad rights-of-way or who conduct
9 agricultural activities on land adjacent to railroad rights-of-way and to protect the
10 health of employees of railroads and contractors.

11

(END)

Tradewell, Becky

From: Clark, Lloyd
Sent: Wednesday, April 08, 2009 8:43 AM
To: Tradewell, Becky
Subject: Submitted: LRB 09-1464/1 Topic: Application of pesticides to railroad right-of-way

Hi Becky,

Rep. Molepske has asked for a few changes with this LRB.

He wants the provision requiring a Plan (94.697 (2) removed, however, he wants to change that to Information Required - keeping lines 15 - 18 (list of pesticides, commercial applicator, etc.).

New provisions-

A copy of what is to be sprayed must be given to all train pilots that will be going through the affected area within the time limit for employees to stay out (reduce to 24 hours after spraying before work can begin in the affected area). This information must also be conspicuously posted where all train employees can see and read.

There can be no over spraying, and spraying must be limited to only the designated rights-of-way that the railroad owns (the target area).

No spraying during inclement weather.

There will be no spraying in bridge areas or along permanent waterways (creeks, streams, rivers, ponds, lakes).

Also, we spoke before about having DATCP promulgate rules to cover railroad workers in a similar way as agricultural workers are in ATCP 29. Do you have any suggestions on that?

Thanks, and give me a call if you have any questions.

LLOYD CLARK

OFFICE OF REPRESENTATIVE LOUIS J. MOLEPSKE, JR.
CHAIR - COMMITTEE ON JOBS, THE ECONOMY, AND SMALL BUSINESS
608-267-9649
888-534-0071

Tradewell, Becky

From: Tradewell, Becky
Sent: Tuesday, April 21, 2009 11:10 AM
To: Clark, Lloyd
Subject: RE: Submitted: LRB 09-1464/1 Topic: Application of pesticides to railroad right-of-way

Lloyd,

I have been looking at your message, the draft, and DATCP's rules about pesticide applications and have some questions. We can discuss this by phone or in a meeting if you want, but I thought it might help to provide the questions in writing first.

It isn't clear to me how proposed s. 94.697 (2) should be changed. Should it say that a railroad shall annually provide to the department the information on lines 15 to 18 relating to the its pesticide applications for the 9 months beginning on April 1? And then should sub. (3) require the railroad to make that information available to the same people listed in sub. (3) now? If not, what changes should be made? *Not provided to DATCP*

Is the intent to delete proposed s. 94.697 (4) [page 3, lines 3 to 15]? If not, how should it be changed?

I am unsure of who is meant by "train pilot." Is it the individual operating the engine? *An agent for the railroad who takes contractors along the rights-of-way and shows them where to spray. Also to road master = first line supervisor of workers.*
DATCP's rules regarding pesticide application address the issue of overspray:

ATCP 29.50 (2) (a) No person may use or direct the use of a pesticide in a manner that results in pesticide overspray or significant pesticide drift. This paragraph does not apply to mosquito control applications, made by or under the direction of a governmental entity for public health purposes, that use proper mosquito control application methods.

Overspray is defined as "pesticide deposited outside a target application site as a result of an applicator's failure to control the direct flow or application of pesticide from the application equipment so as to confine it to the target application site" and drift is "pesticide deposited outside a target application site as a result of pesticide movement caused by air currents or diffusion."

DATCP's rules also prohibit causing a pesticide to enter the waters of the state and using a pesticide in any manner which the user knows or should know will result in contamination of the waters of the state. ATCP 29.50 (4). (I believe that DNR also has rules in this area.)

Do the current rules adequately address the concerns in the second and fourth items under "new provisions"? *yes, re second. concern*

Regarding rules to protect railroad workers, I think that the draft could require DATCP to promulgate rules that provide railroad workers with equivalent protection to that provided to agricultural workers by DATCP's rules and federal regulations. How does that sound? Should some of sub. (5) be deleted or changed (other than changing 48 hours to 24 hours)? *Sounds good.*

about people under bridges

I am sorry for the delay in getting back to you: things had really piled up when I returned from vacation.

Becky Tradewell
6-7290

From: Clark, Lloyd
Sent: Wednesday, April 08, 2009 8:43 AM
To: Tradewell, Becky
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✓ A copy of what is to be sprayed must be given to all train pilots that will be going through the affected area within the time limit for employees to stay out (reduce to 24 hours after spraying before work can begin in the affected area). This information must also be conspicuously posted where all train employees can see and read.

OK There can be no over spraying, and spraying must be limited to only the designated rights-of-way that the railroad owns (the target area).

✓ No spraying during inclement weather.

✓ There will be no spraying in bridge areas or along permanent waterways (creeks, streams, rivers, ponds, lakes).

✓ Also, we spoke before about having DATCP promulgate rules to cover railroad workers in a similar way as agricultural workers are in ATCP 29. Do you have any suggestions on that?

Thanks, and give me a call if you have any questions.

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888-534-0071



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1464/2

RCT:bjk:ph rmv

stays

soon (in 5/6)

2009 BILL

SA

Inserts

regen

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2 use by railroads, granting rule-making authority, and making an
3 appropriation.

make information about

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make information about

24

requires

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

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

Information

Ca)

make available

Insert from below p. 2

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

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

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

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

Insert
2-7-8

19 (3) AVAILABILITY OF PLAN. A railroad shall make the plan under sub. (2) available
20 to persons who own land adjacent to rights-of-way that the railroad owns or

Insert
to line
11



the following information concerning

BILL

Insert top of line 11

the following information concerning

1 maintains, persons who conduct agricultural activities on land adjacent to the
2 rights-of-way that the railroad owns or maintains, and the railroad's employees

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

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

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- 10 track.
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- 14 to protect public health.
- 15 4. An application of pesticides that is specifically approved by the department.

WORKER CS

16 (b) (3) (c) EMPLOYEE INFORMATION AND PROTECTION. (a) A railroad may not require an
17 employee of the railroad or of a contractor, other than an employee who applies a
18 pesticide, to work in an area in which a pesticide has been applied within 48 hours
19 after application of the pesticide.

except in case of an emergency such as a derailment

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

BILL

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

4 (B) (4) (6) RULES. (a) The department shall promulgate rules specifying fees to be paid
5 by railroads to cover the costs of administering this section.

6 (b) The department ^{shall} ~~may~~ promulgate rules that ^{do all of the following 47 10} limit the times and weather
7 conditions in which pesticides may be applied by or on behalf of a railroad to prevent
8 damage to persons who own land adjacent to railroad rights-of-way or who conduct
9 agricultural activities on land adjacent to railroad rights-of-way and to protect the
10 health of employees of railroads and contractors.

Inet 4-9 430 Provide protections for the

protections

(END)

that are equivalent to the
protections provided to agricultural
workers under
workers under 40 CFR 170
and rules promulgated by
the department

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1464/2ins
RCT:.....

1 **Insert 2-18**

2 ② ~~Q~~ (b) ^e Before an individual, on behalf of a railroad, shows a commercial applicator
3 for hire where the pesticides are to be applied, the railroad shall provide a copy of the
4 information under par. (a) 1. related to that application to the individual.

5 ~~Q~~ (c) Before pesticides are applied to a railroad right-of-way, the railroad shall
6 provide a copy of the information under par. (a) related to that application to any
7 individual who directly supervises employees who work in the right-of-way and
8 shall post that information in a location where it can be seen by any railroad
9 employee who works in the right-of way or travels through the right-of-way.

10 **Insert 4-9**

11 ~~Q~~ 2. Ensure that pesticides applied by or on behalf of railroads do not affect
12 surface waters or individuals near or under bridges.

Basford, Sarah

From: Clark, Lloyd

Sent: Tuesday, May 26, 2009 4:50 PM

To: LRB.Legal

Subject: Draft Review: LRB 09-1464/2 Topic: Application of pesticides to railroad right-of-way

Please Jacket LRB 09-1464/2 for the ASSEMBLY.