

**2009 DRAFTING REQUEST**

**Assembly Substitute Amendment (ASA-AB314)**

Received: **07/21/2009**

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: **DATCP**

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 by railroads, various changes

**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>
/?	btradewe 07/21/2009	bkraft 07/22/2009		_____			
/P1			mduchek 07/22/2009	_____	lparisi 07/22/2009		
/P2	btradewe 07/23/2009	bkraft 07/23/2009	mduchek 07/24/2009	_____	cduerst 07/24/2009		
/P3	btradewe	nmatzke	mduchek	_____	lparisi		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	07/27/2009	07/27/2009	07/27/2009 _____		07/27/2009		
/1	btradewe 07/28/2009	jdyer 07/28/2009	mduchek 07/28/2009 _____		cduerst 07/28/2009	cduerst 07/28/2009	

FE Sent For:

**<END>**

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/P1		<i>1 7/28 jld</i> bkraft	mduchek 07/22/2009	_____	lparisi 07/22/2009		
/P2	btradewe 07/23/2009	bkraft 07/23/2009	mduchek 07/24/2009	_____	cduerst 07/24/2009		
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	07/27/2009	07/27/2009	07/27/2009	_____	07/27/2009		

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WD  
7/28  
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/P2	btradewe 07/23/2009	bkraft 07/23/2009	mduchek 07/24/2009	_____	cduerst 07/24/2009		

ND 7/27  
RS 7/27

FE Sent For:

**<END>**

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Wanted: As time permits

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By/Representing: Lloyd Clark

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Drafter: btradewe

May Contact: DATCP

Addl. Drafters:

Subject: Agriculture - pesticides

Extra Copies:

Submit via email: YES

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

Carbon copy (CC:) to:

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#### Pre Topic:

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#### Topic:

Application of pesticides by railroads, various changes

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#### Instructions:

See attached

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#### Drafting History:

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/?	btradewe 07/21/2009	bkraft 07/22/2009		_____			
/P1			mduchek 07/22/2009	<i>Km 7</i> <i>J 24</i>	lparisi 07/22/2009		

*/P2 bjk 7/23*

*MD*  
*7/23*  
*<END>*

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**Assembly Substitute Amendment (ASA-AB314)**

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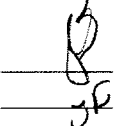
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**Instructions:**

See attached

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<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	/P/ljk 7/22					

FE Sent For:

<END>



**Tradewell, Becky**

---

**From:** Clark, Lloyd  
**Sent:** Tuesday, July 21, 2009 10:45 AM  
**To:** Tradewell, Becky  
**Subject:** Submitted: LRB 09-1464/2 Topic: Application of pesticides to railroad right-of-way?body=

Hi Becky,

After having a few meetings with DATCP, we would like to ask for a substitute amendment with the following:

- √ Remove language regarding notification of landowners. Mandate that the information be publicly available on their website and that they contact municipalities along the route to be sprayed prior to spraying (48 hours minimum).
- √ RR must post pesticide safety information at a central location accessible to RR workers no later than 48 hours before the spraying this information shall include:
  1. An EPA pesticide safety poster;
  2. The location and description of the are to be treated;
  3. The product name, EPA registration number and active ingredients of the pesticide;
  4. The time and date the pesticide is to be applied;
  5. The restricted-entry interval for the pesticide;
  6. Access to the pesticide label
  7. DATCP contact information.
  8. Emergency medical contact information.
- √ This information must remain posted at the central location for 30 days following application of the pesticides.
- √ This same info should be shared on company website and with local towns/cities (DATCP should enforce).
- √ RR 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. (DATCP to monitor/enforce).
- √ Restricted-entry interval is specified on the product label. Bill should specify that reentry interval should comply with label time frames.
- √ Personal Protective Equipment is already federal law – not needed in bill.
- √ DATCP doesn't need the rule making authority or the fees.

I have also been instructed to allow you to discuss this directly with Lori Bowman and DATCP attorneys.

If you have any questions, please give me a call.

07/21/2009

Thanks!

**LLOYD CLARK**

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



State of Wisconsin  
2009 - 2010 LEGISLATURE

50092/P1  
LRB-1464/2  
RCT:bjk:rs  
stays

by 7/23  
Please → 500W (in 7/21)

Assembly Substitute Amendment

To 2009 ASSEMBLY BILL 314

Note

Inserts  
SA

June 16, 2009 - Introduced by Representatives MOLEPSKE JR., BERCEAU, RICHARDS, SINICKI, MILROY, BLACK, BENEDICT, TURNER, ZIGMUNT, JORGENSEN, ROYS, A WILLIAMS, SOLETSKI and SMITH, cosponsored by Senators WIRCH, LASSA, PLALE, HANSEN and LEHMAN. Referred to Committee on Natural Resources.

please regenerate  
↓

- 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.

Analysis met

This bill requires a railroad to annually make information about its pesticide use available to the railroad's employees and those who own land adjacent to the railroad's 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 24 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 requires 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 314**

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:*

**SECTION 1.** 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 (4)

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

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

**94.697 Railroad pesticide use. (1) DEFINITION.** In this section "railroad"

means a person that owns or operates any railroad or part of a railroad as a common carrier in this state.

Insert 2-8

**(2) INFORMATION REQUIRED. (a)** A railroad shall annually, by March 15, make

available to persons who own land adjacent to rights-of-way that the railroad owns or maintains, persons who conduct agricultural activities on land adjacent to the rights-of-way that the railroad owns or maintains, and the railroad's employees the following information concerning its pesticide applications for the 9 months beginning on April 1:

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

2. The name, training, and contact information for each commercial applicator for hire with whom the railroad contracts to apply pesticides.

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

ASSEMBLY BILL 314

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

6 (3) WORKER INFORMATION AND PROTECTION. (a) A railroad may not require an  
7 employee of the railroad or of a contractor, other than an employee who applies a  
8 pesticide, to work in an area in which a pesticide has been applied within 24 hours  
9 after application of the pesticide, except in case of an emergency such as a  
10 derailment.

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

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

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

20 (b) The department shall promulgate rules that do all of the following:

- 21 1. Limit the times and weather conditions in which pesticides may be applied  
22 by or on behalf of a railroad to prevent damage to persons who own land adjacent to  
23 railroad rights-of-way or who conduct agricultural activities on land adjacent to  
24 railroad rights-of-way.

Insert  
3-10

Insert  
3-8

**ASSEMBLY BILL 314**

**SECTION 2**

1

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

2

3

3. Provide protections for the health of employees of railroads and contractors that are equivalent to the protections provided to agricultural workers under 40 CFR

4

5

170 and rules promulgated by the department.

6

(END)

Note

2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBs0092/P1ins  
RCT.....

1           **Analysis insert**

This substitute amendment requires a railroad to make pesticide safety information available no later than 48 hours before applying a pesticide to a railroad right-of-way. A railroad must make the information available by posting it in a central location accessible to employees of the railroad, making it available to the public on the railroad's Internet site, and providing it to each city, village, and town in which the pesticide will be applied.

The substitute amendment also requires a railroad to provide pesticide safety training to all of its employees annually and to keep records of that training.

2           **Insert 2-8**

3           <sup>NO</sup>~~A~~ No later than 48 hours before applying a pesticide to a right-of-way that a  
4 railroad owns or maintains, the railroad shall provide pesticide safety information  
5 at a central location accessible to employees of the railroad, make the information  
6 available to the public on the railroad's Internet site, and provide the information to  
7 each city, village, and town in which the pesticide will be applied. A railroad shall  
8 include all of the following in the safety information provided under this paragraph:

- 9           1. A pesticide safety poster that complies with 40 CFR 170.135 (b).
- 10          2. The location and description of the area to be treated.
- 11          3. The name of the pesticide, its active ingredients, and its and registration  
12 number under the federal act.
- 13          4. The time and date that the pesticide is to be applied.
- 14          5. Any restricted entry interval specified on the pesticide labeling.
- 15          6. The information required to be on the pesticide label under the federal act  
16 or under ss. 94.67 to 94.71.
- 17          7. Contact information for the department.
- 18          8. Emergency medical contact information.

1 (b) A railroad shall keep the information under par. (a) posted at the location  
2 accessible to employees of the railroad for at least 30 days after the day of application.

3 **Insert 3-8**

4 ~~NO~~ before a restricted entry interval specified on the pesticide labeling has expired

5 **Insert 3-10**

6 ~~A~~ (b) A railroad shall provide pesticide safety training to all of its employees  
7 annually and shall keep records, for each training session, of the date, the employees  
8 attending, and the name of the trainer and the trainer's employer.



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBs0092/P1dn

RCT:.....

ljk

Date

Lloyd Clark:

2009

> This is a draft of the substitute amendment to AB 314. There are many changes from the bill and I suggest that you have it reviewed by DATCP. I have produced a preliminary version so that it is not necessary for you to return the stripes if a redraft is needed.

I wonder whether it is possible that a railroad would not have an Internet site. If so, the draft should either require railroads that apply pesticides to have Internet sites or require posting on an Internet site if the railroad has one.

Please let me know if you have any questions or redraft instructions.

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

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBs0092/P1dn  
RCT:bjk:md

July 22, 2009

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

**Tradewell, Becky**

---

**From:** Clark, Lloyd  
**Sent:** Wednesday, July 22, 2009 2:49 PM  
**To:** Tradewell, Becky  
**Subject:** RE: I know I'm being a pest

Hi Becky,

My fault - in section (2) we want to include notification of "any individual who directly supervises employees who work in the right-of-way" as well.

Everything else looks great.

Thank you so much.

Lloyd

---

**From:** Tradewell, Becky  
**Sent:** Wednesday, July 22, 2009 12:17 PM  
**To:** Clark, Lloyd  
**Subject:** RE: I know I'm being a pest

Lloyd,

A preliminary version of the sub is being typed now. I hope there will be time for you and DATCP to review it and for me to make any needed changes before the hearing.

Becky

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**From:** Clark, Lloyd  
**Sent:** Wednesday, July 22, 2009 10:40 AM  
**To:** Tradewell, Becky  
**Subject:** I know I'm being a pest

Hi Becky,

I was out on vacation last week and found out at the end of the day yesterday that the railroad pesticide bill will be up for a public meeting next Wednesday. Any chance that I can get a rush on the substitute draft so that I can have it introduced and in front of the committee next week? I'll owe you big!

Thanks,

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CHAIR - COMMITTEE ON JOBS, THE ECONOMY, AND SMALL BUSINESS  
608-267-9649  
888-534-0071

07/22/2009

**Tradewell, Becky**

---

**From:** Clark, Lloyd  
**Sent:** Wednesday, July 22, 2009 3:31 PM  
**To:** Tradewell, Becky; Bowman, Lori G - DATCP; Bowman, Lori G - DATCP  
**Subject:** RE: I know I'm being a pest

Good question. I would think that supervisors would need the info in order to alert their workers that the areas are going to be sprayed. We would want to limit it to employees that would be working in affected areas and the supervisors would have the information on what is being sprayed, a copy of the label, the reentry time frames and the location of the central posting information.

The supervisors need this info to keep them in compliance with the law. The nature of their work takes railroad employees over long distances and in differing areas each week, it is my understanding that their supervisors are their primary line of communication with the company.

---

**From:** Tradewell, Becky  
**Sent:** Wednesday, July 22, 2009 3:00 PM  
**To:** Clark, Lloyd  
**Subject:** RE: I know I'm being a pest

Am I correct in understanding that you want to require a railroad, in addition to posting the information where employees can see it, to provide a copy of the information to each supervisor?

Becky

---

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CHAIR - COMMITTEE ON JOBS, THE ECONOMY, AND SMALL BUSINESS  
608-267-9649  
888-534-0071



State of Wisconsin  
2009 - 2010 LEGISLATURE

Tomorrow (Fri. 7/24)

LRBs0092/P

RCT:bjk:md

stays

r/mf

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**ASSEMBLY SUBSTITUTE AMENDMENT,**  
**TO 2009 ASSEMBLY BILL 314**

SA-  
Insert

providing it to individuals who supervise employees who work in the area to be treated

1 **AN ACT to create** 94.697 of the statutes; **relating to:** pesticide use by railroads.

***Analysis by the Legislative Reference Bureau***

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

This substitute amendment requires a railroad to make pesticide safety information available no later than 48 hours before applying a pesticide to a railroad right-of-way. A railroad must make the information available by posting it in a central location accessible to employees of the railroad; making it available to the public on the railroad's Internet site; and providing it to each city, village, and town in which the pesticide will be applied.

The substitute amendment also requires a railroad to provide pesticide safety training to all of its employees annually and to keep records of that training.

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

2 **SECTION 1.** 94.697 of the statutes is created to read:

1           **94.697 Railroad pesticide use. (1) DEFINITION.** In this section "railroad"  
2 means a person that owns or operates any railroad or part of a railroad as a common  
3 carrier in this state.

4           **(2) INFORMATION REQUIRED.** (a) No later than 48 hours before applying a  
5 pesticide to a right-of-way that a railroad owns or maintains, the railroad shall  
6 provide pesticide safety information at a central location accessible to employees of  
7 the railroad; make the information available to the public on the railroad's Internet  
8 site; and provide the information to each city, village, and town in which the pesticide  
9 will be applied. A railroad shall include all of the following in the safety information  
10 provided under this paragraph:

- 11           1. A pesticide safety poster that complies with 40 CFR 170.135 (b).
- 12           2. The location and description of the area to be treated.
- 13           3. The name of the pesticide, its active ingredients, and its registration number
- 14           under the federal act.
- 15           4. The time and date that the pesticide is to be applied.
- 16           5. Any restricted entry interval specified on the pesticide labeling.
- 17           6. The information required to be on the pesticide label under the federal act
- 18           or under ss. 94.67 to 94.71.
- 19           7. Contact information for the department.
- 20           8. Emergency medical contact information.

21           (b) A railroad shall keep the information under par. (a) posted at the location  
22 accessible to employees of the railroad for at least 30 days after the day of application.

22  
Insert  
2-23  
22

24           **(3) WORKER INFORMATION AND PROTECTION.** (a) A railroad may not require an  
25           employee of the railroad or of a contractor, other than an employee who applies a  
              pesticide, to work in an area in which a pesticide has been applied before a restricted

1 entry interval specified on the pesticide labeling has expired, except in case of an  
2 emergency such as a derailment.

3 (b) A railroad shall provide pesticide safety training to all of its employees  
4 annually and shall keep records, for each training session, of the date, the employees  
5 attending, and the name of the trainer and the trainer's employer.

6 (END)



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

LRBs0092/Psins  
RCT:.....

1           **Insert 2-22**

2           (c) No later than 48 hours before applying a pesticide to a right-of-way that  
3 a railroad owns or maintains, the railroad shall provide all of the following to each  
4 individual who directly supervises employees who work in the area to be treated:

5           1. The information described in par. (a) 2. to 6.

6           2. A description of the central location where the railroad provides the pesticide  
7 safety information to employees under par. (a).

**Tradewell, Becky**

---

**From:** Clark, Lloyd  
**Sent:** Thursday, July 23, 2009 3:57 PM  
**To:** Tradewell, Becky  
**Cc:** Bowman, Lori G - DATCP  
**Subject:** FW: I know I'm being a pest

Hi Becky,

It would be each person who is supervising employees in areas targeted for spraying.

I have spoken with a few railroads and none of them seemed concerned about the internet posting, so I think that we should keep it in. Lori and her folks are going to huddle on this tomorrow and will likely have a few suggestions, but could you go ahead with this info and get me another prelim draft? I am getting contacted by a lot of concerned railroads and their lobbyists and want to be able to give them something soon.

Thanks tons,

Lloyd

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**From:** Clark, Lloyd  
**Sent:** Wednesday, July 22, 2009 3:31 PM  
**To:** Tradewell, Becky; Bowman, Lori G - DATCP; Bowman, Lori G - DATCP  
**Subject:** RE: I know I'm being a pest

Good question. I would think that supervisors would need the info in order to alert their workers that the areas are going to be sprayed. We would want to limit it to employees that would be working in affected areas and the supervisors would have the information on what is being sprayed, a copy of the label, the reentry time frames and the location of the central posting information.

The supervisors need this info to keep them in compliance with the law. The nature of their work takes railroad employees over long distances and in differing areas each week, it is my understanding that their supervisors are their primary line of communication with the company.

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**From:** Tradewell, Becky  
**Sent:** Wednesday, July 22, 2009 3:00 PM  
**To:** Clark, Lloyd  
**Subject:** RE: I know I'm being a pest

Am I correct in understanding that you want to require a railroad, in addition to posting the information where employees can see it, to provide a copy of the information to each supervisor?

Becky

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**Tradewell, Becky**

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**From:** Clark, Lloyd  
**Sent:** Thursday, July 23, 2009 4:54 PM  
**To:** Tradewell, Becky  
**Subject:** RE: I know I'm being a pest

Hi Becky,

It has been brought to my attention that we are being overbroad with the mandate that all RR employees have the training (office people, etc. won't need it) - so for the training provision can we specify that "maintenance of way", "rail yard workers" and other employees that may potentially work in treated areas, are required to get the training?

I apologize for being a pain.

Thanks again.

Lloyd

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**From:** Tradewell, Becky  
**Sent:** Wednesday, July 22, 2009 3:00 PM  
**To:** Clark, Lloyd  
**Subject:** RE: I know I'm being a pest

Am I correct in understanding that you want to require a railroad, in addition to posting the information where employees can see it, to provide a copy of the information to each supervisor?

Becky

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**From:** Clark, Lloyd  
**Sent:** Wednesday, July 22, 2009 2:49 PM  
**To:** Tradewell, Becky  
**Subject:** RE: I know I'm being a pest

Hi Becky,

My fault - in section (2) we want to include notification of "any individual who directly supervises employees who work in the right-of-way" as well.

Everything else looks great.

Thank you so much.

Lloyd

07/24/2009

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**From:** Tradewell, Becky  
**Sent:** Wednesday, July 22, 2009 12:17 PM  
**To:** Clark, Lloyd  
**Subject:** RE: I know I'm being a pest

Lloyd,

A preliminary version of the sub is being typed now. I hope there will be time for you and DATCP to review it and for me to make any needed changes before the hearing.

Becky

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**From:** Clark, Lloyd  
**Sent:** Wednesday, July 22, 2009 10:40 AM  
**To:** Tradewell, Becky  
**Subject:** I know I'm being a pest

Hi Becky,

I was out on vacation last week and found out at the end of the day yesterday that the railroad pesticide bill will be up for a public meeting next Wednesday. Any chance that I can get a rush on the substitute draft so that I can have it introduced and in front of the committee next week? I'll owe you big!

Thanks,

**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**

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**From:** Clark, Lloyd  
**Sent:** Monday, July 27, 2009 9:48 AM  
**To:** Tradewell, Becky  
**Subject:** FW: Pesticide Use by Railroads.doc

Hi Becky,

Here are the final changes (as per DATCP). Also, 94.697 (3) (b) should specify that the training requirements are for employees that work along railroad right-of-ways and in railyards and those that may, due to the nature of their employment, work in areas in which these herbicides have been applied.

Thanks tons, Becky, I really appreciate the help.

Lloyd

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**From:** Bowman, Lori G - DATCP [mailto:Lori.Bowman@Wisconsin.gov]  
**Sent:** Friday, July 24, 2009 3:30 PM  
**To:** Clark, Lloyd; Tradewell, Becky  
**Cc:** Heaton-Amrhein, Jennifer A - DATCP; Moll, Keeley A - DATCP  
**Subject:** FW: Pesticide Use by Railroads.doc

Lloyd and Becky, I am sorry that I did not get back to you earlier. Jenni Heaton from my staff prepared the summary of comments that is attached. We thought it might help to see in print versus verbal only. If you would like to discuss, I am in the office until about 4 PM today. I will be in on Monday. Hope this helps and have a great weekend.

Lori G. Bowman  
Agrichemical Management Bureau Director  
Dept. of Agriculture, Trade and Consumer Protection  
608/224-4550

**Pesticide Use by Railroads**  
**Comments on Preliminary Draft Assembly Substitute Amendment to AB 314**

**94.697(2)(a) and (c)**

*Not per Lloyd*

Suggest deleting the existing proposed section (c) and including supervisors under 94.687(2)(a). Could include supervisors at the end of line 6 to read, "...accessible to employees and employees' supervisors of the railroads". Recommend a new subsection (c) as described below.

Suggest deleting the language in lines 7, 8, and 9 re: providing the information to the public and to each city, village and town. The information provided to the public and the cities, villages and towns will be different and less specific than the information provided to employees.

Suggest making this a separate subsection in the information required section. Recommend using some of the original AB 314 language for a revised subsection (c) that would say something like this,

"A railroad shall annually, by March 15, make information available to the public on its website concerning its planned pesticide activities for the 9 months beginning on April 1, and shall notify annually, by March 15, the clerk of each city, village and town in which the pesticide will be applied that the information is available. The information shall include:

*Per Lloyd -  
Not 9 months in advance, but at least 48 hours.*

- A list of the pesticides that are expected to be used, their active ingredients and their registration numbers under the federal act.
- Where the complete pesticide label is available to review.
- The name and contact information for each commercial application company or commercial applicator-for-hire with whom the railroad contracts to apply pesticides.
- The months in which applications are planned to occur.
- Contact information for questions

If you prefer the information be made available prior to the applications, you could change the timeline from what we have above.

✓ **94.697 (2) (a) 6**

Recommend revising this language to say, "Where the complete pesticide label is available to review"

**94.697(2)(a) 7**

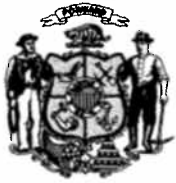
✓ Recommend deleting this language

**94.697 (3) (a)**

✓ The worker protection requirements are currently part of federal law. It is not necessary to include here.

✓ **94.697 (3) (b)**

Suggest more concrete training requirements, such as, "A railroad shall provide pesticide training that covers pesticide label reading, re-entry intervals, personal protective equipment requirements and incident and complaint reporting annually. . . ."



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRBs0092/P~~2~~<sup>3</sup>  
RCT:bjk:md (my  
+nwn

today

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**ASSEMBLY SUBSTITUTE AMENDMENT,**  
**TO 2009 ASSEMBLY BILL 314**

Regen.

1 **AN ACT to create** 94.697 of the statutes; **relating to:** pesticide use by railroads.

***Analysis by the Legislative Reference Bureau***

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

This substitute amendment requires a railroad to make pesticide safety information available no later than 48 hours before applying a pesticide to a railroad right-of-way. A railroad must make ~~the~~ information available by posting it in a central location accessible to employees of the railroad; making it available to the public on the railroad's Internet site; providing it to individuals who supervise employees who work in the area to be treated; and providing it to each city, village, and town in which the pesticide will be applied.

annually

The substitute amendment also requires a railroad to provide pesticide safety training to all of its employees annually and to keep records of that training.

who work in areas that are treated with pesticides

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

2 **SECTION 1.** 94.697 of the statutes is created to read:

1           **94.697 Railroad pesticide use. (1) DEFINITION.** In this section "railroad"  
2 means a person that owns or operates any railroad or part of a railroad as a common  
3 carrier in this state.

4           **(2) INFORMATION REQUIRED.** (a) No later than 48 hours before applying a  
5 pesticide to a right-of-way that a railroad owns or maintains, the railroad shall  
6 provide pesticide safety information at a central location accessible to employees of  
7 the railroad; make the information available to the public on the railroad's Internet  
8 site; and provide the information to each city, village, and town in which the pesticide  
9 will be applied. A railroad shall include all of the following in the safety information  
10 provided under this paragraph: ✓

- 11           1. A pesticide safety poster that complies with 40 CFR 170.135 (b).
- 12           2. The location and description of the area to be treated.
- 13           3. The name of the pesticide, its active ingredients, and its registration number
- 14 under the federal act.
- 15           4. The time and date that the pesticide is to be applied.
- 16           5. Any restricted entry interval specified on the pesticide labeling.
- 17           6. <sup>A description of where ~~the~~</sup> The information required to be on the pesticide label under the federal act
- 18 or under ss. 94.67 to 94.71. <sup>is available for review ✓</sup>
- 19           7. Contact information for the department.
- 20           8. <sup>927</sup> Emergency medical contact information. ✓

21           (b) A railroad shall keep the information under par. (a) posted at the location  
22 accessible to employees of the railroad for at least 30 days after the day of application.

23           (c) No later than 48 hours before applying a pesticide to a right-of-way that  
24 a railroad owns or maintains, the railroad shall provide all of the following to each  
25 individual who directly supervises employees who work in the area to be treated:



1 1. The information described in par. (a) 2. to 6.

2 2. A description of the central location where the railroad provides the pesticide  
3 safety information to employees under par. (a).

*Insert  
3-3*

4 **(3) WORKER PROTECTION.** (a) A railroad may not require an employee of the  
5 railroad or of a contractor, other than an employee who applies a pesticide, to work  
6 in an area in which a pesticide has been applied before a restricted entry interval  
7 specified on the pesticide labeling has expired, except in case of an emergency such  
8 as a derailment.

*move*

9 (b) A railroad shall provide pesticide safety training to <sup>annually</sup> all of its employees  
10 <sup>Insert 3-10</sup> annually and shall keep records, for each training session, of the date, the employees  
11 attending, and the name of the trainer and the trainer's employer. <sup>Insert</sup> 3-11

12

(END)

1

2

**Insert 3-3**

3

4

5

6

(d) No later than 48 hours before applying a pesticide to a right-of-way that a railroad owns or maintains, the railroad shall provide all of the following to the clerk of each city, village, and town in which the pesticide will be applied and make the information available to the public on the railroad's Internet site:

7

1. The information under par. (a) 2. to 4 and 6. <sup>3.5</sup> ✓

*business company*

8

2. The name and contact information for each commercial application company

9

or commercial applicator for hire ✓ with whom the railroad contracts to apply the pesticide. ✓

10

11

3. Contact information for <sup>A description of how to</sup> obtaining answers to questions about the pesticide

12

application. ✓

13

**Insert 3-10**

14

who work along railroad rights-of-way and in rail yards and to other employees

15

who, due to the nature of their employment, may work in areas to which pesticides have been applied. ✓

17

**Insert 3-11**

18

In the training under this subsection, ✓ a railroad shall include information

19

about restricted entry intervals, requirements for personal protective equipment,

20

how to read pesticide labels, and incident and complaint reporting. ✓

**Tradewell, Becky**

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**From:** Clark, Lloyd

**Sent:** Monday, July 27, 2009 4:07 PM

**To:** Tradewell, Becky

**Subject:** FW: Draft review: LRB 09s0092/P3 Topic: Application of pesticides by railroads, various changes

Becky, looks perfect! Let's go ahead and do a stripped substitute.

Thanks again for all your hard work.

Lloyd

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**From:** Parisi, Lori

**Sent:** Monday, July 27, 2009 3:36 PM

**To:** Rep.Molepske

**Subject:** Draft review: LRB 09s0092/P3 Topic: Application of pesticides by railroads, various changes

**Following is the PDF version of draft LRB 09s0092/P3.**



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRBs0092/12 I  
RCT:bjk&nwn:md

This morning

rnr

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

**ASSEMBLY SUBSTITUTE AMENDMENT,**

**TO 2009 ASSEMBLY BILL 314**

No changes

X

Regen

1 AN ACT *to create* 94.697 of the statutes; **relating to:** pesticide use by railroads. ✓

***Analysis by the Legislative Reference Bureau***

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This substitute amendment requires a railroad to make pesticide safety information available no later than 48 hours before applying a pesticide to a railroad right-of-way. A railroad must make information available by posting it in a central location accessible to employees of the railroad; making it available to the public on the railroad's Internet site; providing it to individuals who supervise employees who work in the area to be treated; and providing it to each city, village, and town in which the pesticide will be applied.

The substitute amendment also requires a railroad to provide pesticide safety training annually to its employees who work in areas that are treated with pesticides annually and to keep records of that training.

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

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

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6 pesticide to a right-of-way that a railroad owns or maintains, the railroad shall  
7 provide pesticide safety information at a central location accessible to employees of  
8 the railroad. A railroad shall include all of the following in the safety information  
9 provided under this paragraph:

- 10           1. A pesticide safety poster that complies with 40 CFR 170.135 (b).
- 11           2. The location and description of the area to be treated.
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13 under the federal act.
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- 15           5. Any restricted entry interval specified on the pesticide labeling.
- 16           6. A description of where the information required to be on the pesticide label  
17 under the federal act or under ss. 94.67 to 94.71 is available for review.
- 18           7. Emergency medical contact information.

19           (b) A railroad shall keep the information under par. (a) posted at the location  
20 accessible to employees of the railroad for at least 30 days after the day of application.

21           (c) No later than 48 hours before applying a pesticide to a right-of-way that  
22 a railroad owns or maintains, the railroad shall provide all of the following to each  
23 individual who directly supervises employees who work in the area to be treated:

- 24           1. The information described in par. (a) 2. to 6.

