

PROVIDENCE AND WORCESTER RAILROAD COMPANY  
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TESTIMONY of P&W IN OPPOSITION TO S.B. No. 385 (RAISED), AN ACT CONCERNING  
NOTICE OF PESTICIDE APPLICATIONS MADE TO ANY RAILROAD RIGHTS-OF-WAY

Before the Environment Committee

March 11, 2016

Good afternoon. My name is David Cuthbertson and I am Chief Engineer of Providence and Worcester Railroad Company ("P&W"), a member of the Connecticut Railroad Association ("CRA"), a group comprised of freight railroads operating within the State of Connecticut. I am here today to discuss Senate Bill No. 385, An Act Concerning Notice of Pesticide Applications Made to Any Railroad Rights-of-Way (the "Proposed Bill"). As Chief Engineer of P&W, I am responsible for vegetation management on P&W's rights-of-way, including those in Connecticut. P&W operates over approximately 305 miles of track within Connecticut including the approximately 116 mile portion of Amtrak's right-of-way located between Stonington and Greenwich, State-owned rights-of-way such as the 29 mile Middletown Cluster between Hartford and Durham and P&W-owned rights-of-way including the approximately 54 mile Norwich Branch between Groton and Thompson and the approximately 10 mile Willimantic Branch between Plainfield and Sprague. The P&W also maintains approximately 16 additional miles worth of branch lines and industrial tracks. Other members of the CRA own and/or operate many more miles of railroad rights-of-way in Connecticut.

Adoption of the Bill addresses notification of certain railroad maintenance activities, an activity that has been previously been regulated within Connecticut only by the requirements of law requiring state licensure of parties responsible for application of herbicides.

Before addressing the specific requirements of notice, I'd like to outline briefly the maintenance activity the Proposed Bill seeks to limit. Vegetation management is a vitally important aspect of railroad maintenance and protecting public safety, rather than simply a matter of convenience. Vegetation in and around the track causes the rapid deterioration of the main components of track, which must support the heavy loads they carry. In addition, it is only through direct visual inspection of railroad tracks can proper inspection, detection of defects, and repair or replacement of defects in track components be completed. Without proper detection and remedial action, vegetation poses a danger to both railroad employees and public safety. In addition, vegetation on rights-of-way pose additional concerns; it can increase stopping distances during brake application, comprise a fire hazard and poses a tripping hazard for train personnel. At grade crossings (areas where a right-of-way crosses a public or private roadway), vegetation can affect or eliminate train crews' sight lines of vehicles and their occupants, as well as pedestrians. In summary, improper or incomplete vegetation management can cause a catastrophic event. Vegetation management is vital to railroad safety.

Accordingly, vegetation management by railroads is required by federal law. In Part 213.37 of Title 49 of the Code of Federal Regulations, the Federal Railroad Association (FRA) requires control of vegetation so that it does not:

- (a) Become a fire hazard to track-carrying structures
- (b) Obstruct visibility of railroad signs and signals
  - 1. along the right-of-way, and
  - 2. at highway rail crossings;
- (c) Interfere with railroad employees performing normal trackside duties;
- (d) Prevent proper functioning of signal and communication lines; or
- (e) Prevent railroad employees from visually inspecting moving equipment for their normal duty stations.

49 CFR Sec. 213.37.

Herbicides have proven very effective in safely controlling vegetation on railroad rights-of-way. Using equipment on track-mounted vehicles, herbicide is sprayed across the fifteen foot (15') to twenty foot (20') wide right-of-way as the vehicle traverses it just once per year. In addition, herbicide is applied via handheld hose to off-track locations where vital track equipment (e.g., relay cases, material stockpiles, emergency access roads, etc.) is located annually only. When applied in a professional and responsible manner, and regulated by licensee requirements like those in place in Connecticut, the products used have a documented lack of mobility and lack of persistence. In short, there are simply NO documented instances of harm to environmental resources or the public from the use of herbicides on railroad rights-of way.

The Proposed Bill seeks to condition the application of herbicides by State-licensed applicators upon written notices to the Connecticut Department of Energy & Environmental Protection ("DEEP") and the chief elected official or board of selectmen of each municipality where an herbicide application will be made not more than twenty-one (21) days prior to the date of application AND publication of notice in a newspaper of record not more than seven (7) days prior to the date of application AND filing with DEEP a vegetation management plan ("VMP") identifying the target vegetation and management methods not less often than every five (5) years.

The requirement of a VMP, while stated simply enough within the Proposed Bill which purports to require "notice" by the railroads, will require each railroad to engage a consultant to formulate a plan for submission to and review by DEEP, and would put into place an entirely new regulatory likely to include review, commentary and extended processes which could well threaten the ability of railroads to complete their federal mandate. It cannot be argued (convincingly, anyway) that the Proposed Bill requires simple "notice" of application of herbicides. This statute will be the source of detailed regulations to "flesh out" the requirements of a VMP.

The actual notice requirements of the Proposed Bill would add a level of complexity which is not warranted and should not be required. Even if the requirement of a VMP is sustained, it is difficult to understand why the property rights of railroads in their privately-owned rights-of-way should be compromised by requiring prior notification of activity. Railroad rights-of-way are privately owned property, not public ways. No one except railroad personnel or parties allowed access by the owners have rights to them.

Even if notice of herbicide application will be required, the Proposed Bill's requirement of written notice to DEEP and each municipality is overbroad. First, the timing of such a notice, to be given not more than twenty-one (21) days prior to an herbicide application, requires specificity which frustrates, rather than advances, the public interest. The exact date on which an herbicide application will be completed is

dependent upon many factors, including weather conditions, a factor which could have a direct bearing on public health, for example, mobility of the herbicide in wind conditions. By requiring prior notice of an application, the Proposed Bill may frustrate rather than promote public health. The requirement of prior notice within the short period prescribed, twenty-one (21) days, is simply not workable.

Next, the administrative burden of providing written notice to both DEEP and each municipality in which an herbicide application is to be made cannot be explained away. If a notice must be made, it is clear that DEEP, the state agency charged with responsibility for such matters, is the proper recipient. What possible action will take place at the municipal level on receipt of a notification of herbicide application? Balanced against the railroads' responsibility to complete monthly inspections of track and related structures to ensure safety, it is clear that furnishing a notice to municipalities unnecessarily increases the potential for unnecessary delay in railroads' completion of the vital work of vegetation management.

The same argument pertains to the requirement of notice by publication. It is difficult to see what legitimate purposes are advanced. Will trespassers over the railroads' rights-of-way be forewarned to stay away from railroad property on the date of application? Or will the notification merely prompt citizens' concerns which might result in delay of the railroads' legitimate interest in keeping its rights-of-way clear of vegetation.

Therefore, P&W urges the Committee to reject S.B. 385. Thank you.