

Pesticide Application in Railway Corridors

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Issue

Describe the following:

1. Massachusetts laws on pesticide application in railway corridors and railway rights-of-way (ROW), including applicable penalties;
2. the scope of federal authority over pesticide application procedure in railway corridors and railway ROWs; and
3. any regulatory action by the federal Environmental Protection Agency (EPA) on the pesticide “method 240” concerning its use.

The Office of Legislative Research is not authorized to provide legal opinions and this report should not be considered one.

Summary

Massachusetts law requires railroad companies to have vegetation management plans and it allows entities to apply pesticide to railways after meeting certain notification requirements. Specifically, the state Department of Agricultural Resources (DAR) and certain municipal officials must be informed at least three weeks before an application occurs, and there must be newspaper notice at least 48 hours beforehand. The law also requires railroads that apply pesticide to have DAR-approved five-year Vegetation Management Plans (VMP) and Yearly Operational Plans (YOP) setting out their target vegetation and management methods. State regulations also set out specific application restrictions, such as those for setbacks in water supply areas.

Railway safety is primarily managed at the federal level and federal rail safety regulations require railroads to control the growth of vegetation along their tracks. States or municipalities may only adopt rail safety requirements when the requirement is (1) not already federally regulated or (2) necessary for local safety, compatible with federal requirements, and does not unreasonably burden interstate commerce.

Method 240 SL is a soluble liquid herbicide used to control broadleaf weeds, vines, and brush. It appears that the EPA actions related to Method 240 are limited to the review and acceptability determination of its label (submitted related to its registration under the Federal Insecticide, Fungicide, and Rodenticide Act). [Here](#) is an example of such acceptance from 2022.

Railway Vegetation Management Laws in Massachusetts

Notice

Massachusetts law allows entities to apply pesticide to railways if they first (1) notify DAR and certain municipal officials at least 21 days before the application and (2) publish notice in at least one general circulation newspaper at least 48 hours before the application ([Mass. Gen. Laws ch. 132B § 6B](#)).

By law, the newspaper notice must include the following information:

1. the method and locations of pesticide application;
2. the approximate dates during which the application will begin and end, but the application cannot occur more than 10 days before or end more than 10 days after the published dates;
3. a list of potential pesticides to be used and a description of the purpose of the application;
and
4. the name, title, address, and phone number of a designated contact person.

The notice to the municipal officials must include the above information and also (1) a copy of all information provided by the manufacturers about the pesticide; (2) a DAR-approved factsheet and EPA registration number for each pesticide; and (3) the contact information of the pesticide applicator or the contractor, employer, or employee responsible for carrying out the application.

Application Restrictions

Massachusetts has specific pesticide application requirements for ROWs, including railroad ROWs. It requires applications to be done according to a DAR-approved VMP and YOP, and applicators must be certified by DAR or licensed and working with a certified person. There are also limits on

use. For example, herbicide concentrate cannot be handled or mixed on a ROW within 100 feet of a sensitive area (i.e., certain areas in which public health, environmental, or agricultural concerns warrant special protection) and herbicide cannot be applied during measurable precipitation, when the wind velocity makes it highly likely that herbicide will drift off target, or in a way that causes herbicide to drift into a no-spray area. Applicators must also be aware of nearby public and private ground water sources, and certain application prohibitions and setback requirements apply to these areas (e.g., herbicide application is prohibited within 100 feet of a Class A public surface water source and within 50 feet of an identified private well) ([333 Mass. Code Regs. § 11.01 et seq.](#)).

Additional restrictions apply to using herbicide in sensitive areas such as water supply areas, wetlands, state-listed species habitats, and inhabited areas. For example, only DAR-specified herbicides may generally be used and by the minimum labeled rate for the site, pest, and application method. Application must be selective and by low pressure.

A VMP identifies target vegetation and management methods over a five-year period and a YOP describes an organization's operational program for the year (e.g., target vegetation, type of pesticide, methods, and techniques). These plans are subject to public notice, review, and comment before DAR approves them. There is also a right-of-appeal for someone aggrieved by a DAR decision to approve, deny, modify, or revoke a VMP or YOP. An example of a railroad VMP is the Pioneer Valley Railroad, Inc.'s [2021-2025 VMP for Railroad Rights-of-way in Massachusetts](#).

DAR may issue waivers of the VMP and YOP requirement to apply herbicide for a limited one-time use or an emergency application for public health or safety, but the law's public and municipal notice requirements apply and only herbicide that is on DAR's "Herbicides Recommended for Use in Sensitive Areas List" may be used.

Penalties

A violation of the state's pesticide application requirements is subject to a (1) fine of up to \$1,000, or prison for up to six months, or both for second and subsequent offenses committed knowingly or (2) civil penalty of up to \$10,000 per offense ([Mass. Gen. Laws ch. 132B § 14](#)).

By law, the superior court has the authority to enjoin violations of, or give other necessary or appropriate relief to obtain compliance with, the state's pesticide laws or associated regulations, orders, permits, certifications, or registrations.

DAR may also (1) modify, suspend, or revoke a VMP or YOP or (2) deny, modify, suspend, or revoke an applicator certification ([333 Mass. Code Regs. § 10.10](#)).

Federal Jurisdiction for Railway Pesticide Application

Rail safety is primarily managed at the federal level, principally through the Federal Railroad Safety Act (FRSA) ([49 U.S.C. § 20101 et seq.](#)). FRSA establishes uniform national safety standards for railroads to abide by and grants the Secretary of Transportation broad authority to create regulations and issue orders for every area of railroad safety. The secretary delegates his authority under FRSA to the Federal Railroad Administration (FRA).

FRA track safety regulations require railroads to control vegetation on their property that is on or immediately adjacent to roadbed (i.e., tracks). Specifically, vegetation must be controlled so that it does not do the following:

1. become a fire hazard to track-carrying structures,
2. obstruct visibility of railroad signs and signals (along ROWs and at crossings),
3. interfere with railroad employees performing normal trackside duties,
4. prevent proper functioning of signal and communication lines, and
5. prevent railroad employees from visually inspecting moving equipment from normal duty stations ([49 C.F.R. § 213.37](#)).

FRSA preempts state or municipal laws, regulations, orders, or standards related to railroad safety and security subject to two exceptions. First, a state may adopt a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (concerning railroad safety matters), or the Secretary of Homeland Security (concerning railroad security matters), prescribes a regulation or issues an order covering the subject matter of the state requirement. Second, a state may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order (1) is necessary to eliminate or reduce an essentially local safety or security hazard; (2) is not incompatible with a law, regulation, or order of the U.S. government; and (3) does not unreasonably burden interstate commerce ([49 U.S.C. § 20106](#)).

A Westlaw federal case search yielded no results setting specific pesticide application requirements for vegetation management along railway lines. Rather, there were several cases related to a railroad's liability for failure to maintain vegetation or to applicator health concerns from pesticide use.

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