



House of Representatives

General Assembly

File No. 169

February Session, 2024

Substitute House Bill No. 5219

House of Representatives, March 28, 2024

The Committee on Environment reported through REP. GRESKO of the 121st Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING STANDARDS FOR THE SPRAYING OF HERBICIDES ALONG RAILROAD RIGHT-OF-WAYS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (j) of section 22a-66a of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective July 1,*
3 *2024*):

4 (j) (1) Any railroad company that makes any pesticide application to
5 any rights-of-way shall, not later than twenty-one days prior to such
6 pesticide application, provide notice of such pesticide application to the
7 Department of Transportation and the chief elected official or board of
8 selectmen of each municipality in which such application will be made.
9 Not later than February first of each year, each railroad company that
10 makes any pesticide application to any rights-of-way shall file a
11 vegetation management plan with the Department of Transportation
12 and each municipality in which such pesticide application will be made
13 that identifies target vegetation and management methods for the
14 forthcoming calendar year. Not later than thirty days after receipt of any

15 such vegetation management plan each such municipality shall post
16 such vegetation management plan on such municipality's Internet web
17 site, if such web site is available.

18 (2) Any vegetation management plan submitted on or after February
19 1, 2025, pursuant to subsection (a) of this section shall identify the: (A)
20 Target vegetation, (B) intended methods of vegetation management, (C)
21 equipment proposed for use in such vegetation management, (D) timing
22 of any such herbicide applications, (E) alternative control procedures to
23 be utilized, if any, (F) qualifications of individuals developing and
24 submitting an integrated pest management plan to the Department of
25 Transportation and the chief elected official or board of selectmen of
26 such municipality, as applicable, concomitantly with the submission of
27 a vegetation management plan pursuant to subdivision (1) of this
28 subsection, and (G) contents of such integrated pest management plan
29 that indicates how such plan will minimize the amount and frequency
30 of herbicide application.

31 (3) Any railroad company that makes any pesticide application, as
32 described in subdivision (1) of this subsection, shall develop a yearly
33 operational plan that consists of: (A) Maps that locate the railroad's
34 rights-of-way and sensitive areas that are not readily identifiable in the
35 field, (B) herbicides proposed to be used during such year and the
36 Environmental Protection Agency registration numbers for such
37 herbicides, the anticipated application rates, carriers and adjuvants, (C)
38 the herbicide application techniques and alternative control procedures
39 proposed, (D) the name, address and phone number of the company
40 that will perform any such herbicide treatment, (E) identification of
41 target vegetation, (F) description of methods used to designate sensitive
42 areas in the rights-of-way, and (G) all applicable herbicide fact sheets.
43 Each railroad company shall provide for a forty-five-day public
44 comment period when developing a yearly operational plan and shall
45 submit such yearly operational plan concomitantly with the vegetation
46 management plan and integrated pest management plan described in
47 this subsection.

48 (4) Notwithstanding the provisions of any vegetation management
49 plan, integrated pest management plan or yearly operation plan
50 submitted pursuant to this subsection, no railroad company or agent of
51 any such railroad company within any rights-of-way shall: (A) Apply
52 any pesticide at an exceedance of the minimum labeled rate appropriate
53 for the site, pest and application, (B) apply herbicides when, due to the
54 wind velocity, there is a likelihood of drift off target or if there is
55 measurable precipitation, (C) apply herbicides that have been identified
56 as a potential groundwater contaminant by either the Environmental
57 Protection Agency or the Department of Energy and Environmental
58 Protection, (D) engage in a foliar application of a herbicide if such
59 vegetation is greater than twelve feet in height, except for side trimming,
60 (E) for any area determined by the Department of Energy and
61 Environmental Protection to be a sensitive area: (i) Mix a herbicide
62 within one hundred feet of such sensitive area, (ii) fail to make readily
63 visible the perimeter of such sensitive area prior to application of any
64 herbicide, or (iii) fail to use a low pressure method on foliar, basal or
65 cut-stump applications when mechanical control in sensitive areas is not
66 possible, (F) in water supply areas: (i) Apply any herbicide within one
67 hundred feet of a Class A public surface water source, (ii) apply any
68 herbicide within one hundred feet of any tributary or associated surface
69 water body located within the Zone A of a Class A public surface water
70 source, or within ten feet of any tributary or associated surface water
71 body located outside of the Zone A of the Class A public surface water
72 source, (iii) apply herbicides within a lateral distance of one hundred
73 feet for a span of four hundred feet upstream of any Class B drinking
74 water intake, (iv) apply any herbicide within a distance of between one
75 hundred feet from any Class A surface water source and the outer
76 boundary of any Zone A, (v) apply any herbicide within a distance of
77 between ten feet and the outer boundary of any Zone A for any tributary
78 or associated surface water body located outside of the Zone A of a Class
79 A surface water source, or (vi) apply any herbicide within a lateral
80 distance of between one hundred and two hundred feet for a span of
81 four hundred feet upstream of a Class B drinking water intake, unless a
82 minimum of twenty-four months has elapsed since the last application

83 to the site and herbicides are applied selectively by low pressure using
84 foliar techniques or basal or cut-stump applications, (G) apply any
85 herbicide within a distance of fifty feet of any private well, (H) apply
86 any herbicide within a distance of between fifty feet and one hundred
87 feet of any private well, unless a minimum of twenty-four months has
88 elapsed since the last application to the site and such herbicides are
89 applied selectively by low pressure, using foliar techniques or basal or
90 cut-stump applications, (I) apply herbicides within ten feet of any
91 wetland, the mean annual high-water line of any river or any vernal
92 pool, (J) apply any herbicide between ten feet and one hundred feet of
93 any wetland, within ten feet from the mean annual high-water line of
94 any river and the outer boundary of any riverfront area or within a
95 distance of ten feet from any certified vernal pool and the outer
96 boundary of any certified vernal pool habitat, or (K) apply any foliar
97 herbicide within one hundred feet of an inhabited area or agricultural
98 area unless a minimum of twelve months has elapsed since the last site
99 application and such herbicide is applied selectively by low pressure,
100 using foliar techniques or basal or cut-stump applications. The
101 Commissioners of Transportation and Energy and Environmental
102 Protection may enforce the provisions of this subdivision within
103 available resources.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2024	22a-66a(j)

ENV *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill, which is not expected to have a fiscal impact to the state or municipalities, makes various changes regarding the standards and requirements for railroads that apply pesticides to their rights-of-way.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 5219*****AN ACT CONCERNING STANDARDS FOR THE SPRAYING OF HERBICIDES ALONG RAILROAD RIGHT-OF-WAYS.*****SUMMARY**

This bill does the following with respect to railroads that apply pesticide to their rights-of-way:

1. expands the types of information these railroads must include in the vegetation management plans they must submit annually to the Department of Transportation (DOT) and each town in which they will apply pesticide in the coming year;
2. requires these railroads to also develop, subject to a 45-day public comment period, yearly operational plans that include, among other things, maps showing the rights-of-way and difficult-to-identify sensitive areas and information about the herbicides that will be applied; and
3. imposes method- and area-specific restrictions on applications in railroad rights-of-way, such as those occurring near public surface water sources, private wells, or wetlands.

Under the bill, anyone who violates its provisions is subject to a fine of up to \$90. The bill gives the Department of Energy and Environmental Protection (DEEP) and DOT authority to enforce its pesticide application restrictions, but within available resources.

EFFECTIVE DATE: July 1, 2024

RAILROAD VEGETATION PLANS***Vegetation Management Plan***

Existing law requires the railroads' vegetation management plans

(VMP) to identify the targeted vegetation and management methods. Beginning February 1, 2025, the bill requires the plans to also include the following:

1. equipment proposed to be used,
2. timing of herbicide applications,
3. any alternative control procedures,
4. qualifications of the people developing and submitting an integrated pest management (IPM) plan to DOT and the chief elected official or board of selectmen of each town in which pesticide will be applied in the coming year at the same time the railroad submits its VMP (see BACKGROUND), and
5. the IPM plan's contents that show how it will minimize the amount and frequency of herbicide use.

Yearly Operational Plan

Under the bill, each railroad that intends to apply pesticide in its rights-of-way must, with its VMP and IPM plan submission to DOT and applicable towns, submit a yearly operational plan (YOP) regarding these applications. A YOP must include the following information:

1. maps locating the rights-of-way and sensitive areas that are not readily identifiable in the field and a description of the methods for designating sensitive areas;
2. targeted vegetation;
3. herbicides proposed for use, with the federal Environmental Protection Agency (EPA) registration number and applicable herbicide fact sheets for each, and the anticipated application rates, carriers (materials for dispersing effectively), and adjuvants (additives that enhance effectiveness);
4. herbicide application techniques and proposed alternative

control procedures; and

5. name, address, and telephone number of the company that will perform any herbicide treatment.

LOCATIONAL APPLICATION RESTRICTIONS

Regardless of the contents of a railroad’s VMP, IPM plan, or YOP, the bill establishes specific application restrictions for railroad rights-of-way.

Regarding the method of application, the bill prohibits railroads or their agents from doing the following:

1. exceeding the minimum labeled rate that is appropriate for the site, pest, and application involved,
2. applying herbicides when the wind’s velocity is likely to drift them off-target or there is measurable precipitation,
3. applying herbicides that EPA or DEEP identified as a potential groundwater contaminant, and
4. conducting a leaf-related herbicide application on vegetation that is higher than 12 feet, excluding side trimming.

The bill also restricts railroads or their agents from pesticide applications and associated activities in certain areas, as shown in the below table.

<i>Location</i>	<i>Prohibited Actions</i>
DEEP-determined sensitive areas	<ul style="list-style-type: none"> • Mixing herbicide within 100 feet of the sensitive area • Not making the area’s perimeter readily visible before application • Not using a low-pressure application method on leaves, at the base of vegetation, or on cut-stumps when mechanical control is not possible
Water supply areas (see BACKGROUND)	Applying herbicide within the following distances: <ul style="list-style-type: none"> • 100 feet of a Class A public surface water source • 100 feet of a tributary or associated surface water body located within Zone A of the Class A source or

Location	Prohibited Actions
	<p>10 feet of a tributary or associated surface water source outside of Zone A</p> <ul style="list-style-type: none"> • lateral distance of 100 feet for 400 feet upstream of a Class B drinking water intake • between 100 feet from a Class A surface water source and a Zone A outer boundary • between 10 feet and a Zone A outer boundary for a tributary or associated surface water body outside of a Zone A of a Class A surface water source • lateral distance of between 100 feet and 200 feet for 400 feet upstream of a Class B drinking water intake unless 24 months have passed since the site's last application, and it is applied selectively by low pressure using leaf-based techniques or base or cut-stump applications
Private wells	<p>Applying herbicide within the following distances:</p> <ul style="list-style-type: none"> • 50 feet of the well • between 50 feet and 100 feet of the well unless 24 months have passed since the site's last application, and it is applied selectively by low pressure using leaf-based techniques or base or cut-stump applications
Wetlands	<p>Applying herbicide within the following distances:</p> <ul style="list-style-type: none"> • 10 feet of a wetland, the mean annual high-water line of a river, or vernal pool • between 10 feet and 100 feet of a wetland, within 10 feet from the mean annual high-water line of a river and the outer boundary of a riverfront area, or within 10 feet of a certified vernal pool and the outer boundary of a certified vernal pool habitat
Inhabited or agricultural areas	<p>Applying leaf-based herbicide within 100 feet of the area unless 12 months have passed since the site's last application, and it is applied selectively by low pressure using leaf-based techniques or base or cut-stump applications</p>

BACKGROUND

IPM

By law, IPM is the use of all available pest control techniques, including careful pesticide use, when needed, to keep a pest population at or below an acceptable level, while decreasing pesticide use (CGS §

22a-47(dd)).

Related Federal Law

Federal regulations require railroad companies to maintain areas within railroad rights-of-way and keep vegetation in the areas controlled for safety reasons (49 C.F.R. § 213.37)

Water Quality Classes

Water quality classes define the quality of water. Inland surface waters have five quality classes (AA, A, B, SA, and SB), in which Class A areas are for potential drinking water supply, fish and wildlife habitat, recreational use, and agricultural and industrial supply. Class B waters are for fish and wildlife habitat, recreation, agricultural and industrial supply, and other legitimate uses including navigation.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 34 Nay 0 (03/15/2024)