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## 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><b>Location</b></i>	<i><b>Prohibited Actions</b></i>
DEEP-determined sensitive areas	<ul style="list-style-type: none"> <li>• Mixing herbicide within 100 feet of the sensitive area</li> <li>• Not making the area’s perimeter readily visible before application</li> <li>• Not using a low-pressure application method on leaves, at the base of vegetation, or on cut-stumps when mechanical control is not possible</li> </ul>
Water supply areas (see BACKGROUND)	Applying herbicide within the following distances: <ul style="list-style-type: none"> <li>• 100 feet of a Class A public surface water source</li> <li>• 100 feet of a tributary or associated surface water body located within Zone A of the Class A source or 10 feet of a tributary or associated surface water source outside of Zone A</li> </ul>

<b>Location</b>	<b>Prohibited Actions</b>
	<ul style="list-style-type: none"> <li>• lateral distance of 100 feet for 400 feet upstream of a Class B drinking water intake</li> <li>• between 100 feet from a Class A surface water source and a Zone A outer boundary</li> <li>• 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</li> <li>• 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</li> </ul>
Private wells	<p>Applying herbicide within the following distances:</p> <ul style="list-style-type: none"> <li>• 50 feet of the well</li> <li>• 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</li> </ul>
Wetlands	<p>Applying herbicide within the following distances:</p> <ul style="list-style-type: none"> <li>• 10 feet of a wetland, the mean annual high-water line of a river, or vernal pool</li> <li>• 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</li> </ul>
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)