Dear Legislators,

I would like to take this opportunity to respond to Wisconsin’s Class I Railroads and AB-3 14 (Revised)

In Representative Molepske’s new form, the current legislation no longer causes great problems for Wisconsin railroad companies. The onerous parts have been changed or eliminated; however, the main topics are still covered under federal regulations. With the onerous parts of the bill no longer a problem, let’s consider what is covered by federal regulation.

The EPA protects the “Environment;” that is not challenged in AB314. The environment has rights that railroad workers do not, i.e. “protection.” That is, protection from entering a contaminated area before the proper reentry time has been observed after application.

I have not found any federal regulation in FRA, OSHA or, EPA that requires a railroad to notify workers of the application of herbicide/pesticide in any given area. Railroads notify workers for their own protection. There are regulations for agricultural worker notification. Railroads do not train employees on reading product label, reentry times and, long term /short term effects of said products.

After doing extensive research, I find OSHA and EPA do not have any regulatory control over the training of railroad workers. Why is it such a problem for rail workers to make sure these applicators are doing a proper application of herbicide/pesticide? Currently railroad workers do not know if “licensed applicators” are following product labels. As a railroad worker, I am surethat knowing the safe reentry time under FIFRA (Federal Insecticide Fungicide Rodenticide Act) would benefit the railroad.

The problem is substantiated by railroad workers not knowing product labeling, reentry times and, long term and short term effects of the product being applied. This is not the case of a solution in search of a problem, but more a solution to mitigate future problems in regards to herbicide/pesticide applications.

**§ 213.37   Vegetation.** Vegetation on railroad property which is on or immediately adjacent to roadbed shall be controlled 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; (This paragraph (b) (2) is applicable September 21, 1999.)

(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 from their normal duty stations.

Nowhere does the above statute pertain to reading labels and reentry times for locomotive Engineers, Conductors and maintenance personnel.

§ 20106. Preemption

**(a)** **National Uniformity of Regulation.—**

**(1)** Laws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable.

**(2)** A State may adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the State requirement. 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—

**(A)** is necessary to eliminate or reduce an essentially local safety or security hazard;

**(B)** is not incompatible with a law, regulation, or order of the United States Government; and

**(C)** does not unreasonably burden interstate commerce.

**(b)** **Clarification Regarding State Law Causes of Action.—**

**(1)** Nothing in this section shall be construed to preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party—

**(A)** has failed to comply with the Federal standard of care established by a regulation or order issued by the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), covering the subject matter as provided in subsection (a) of this section;

**(B)** has failed to comply with its own plan, rule, or standard that it created pursuant to a regulation or order issued by either of the Secretaries; or

**(C)** has failed to comply with a State law, regulation, or order that is not incompatible with subsection (a)(2).

**(2)** This subsection shall apply to all pending State law causes of action arising from events or activities occurring on or after January 18, 2002.

**(c)** **Jurisdiction.—** Nothing in this section creates a Federal cause of action on behalf of an injured party or confers Federal question jurisdiction for such State law causes of action

Only if the federal regulation on this matter is more stringent would it supersede state legislation, butWisconsin would be more stringent this case.

The reason one may think this proposed legislation fails to acknowledge the broad scope of existing federal regulation is the railroad worker falls not within OSHA, Agricultural, or any FRA regulation.

This legislation is informational to rail workers and emergency dispatchers about what and when herbicide/pesticide products are sprayed.

No one is trying to prohibit vegetation management, but only to regulate it in the interests of safety for railroad workers and state populace. Commonly used herbicides have been shown to be carcinogens, for instance. Note that the claim of ‘low acute toxicity,’ by admitting that there is ANY toxicity, contradicts the claim of inherent safety. Concern only for Acute toxicity does not address the problems associated with long term exposure.

What was sprayed? Why is my child sick? The railroads spray during the day when most parents are at work. Not knowing the exact questions to ask is not the crime; but not being forthcoming is. Why is this material such a secret after it has been sprayed? The information about products sprayed on railroad property would give emergency responders a helpful edge in chemical poisoning to the person who eats that “poison berry” next to their yard and to the trespasser. If this new state regulation helps to improve the safe co-existence between national railroads and state populace, then take a few extra minutes for the benefit of railroad and state.

I ask you to vote yes on this legislation. Railroad workers are not asking for penalties to be assessed- just the knowledge to prevent future needless exposure to herbicide/pesticides. I ask for all my friends and co-workers who have had trouble breathing and had rashes that developed after an application, as well as for those among my fellow workers who have not gone home, but have instead gone to the emergency room when these symptoms became severe.

To all that say it’s safe to drink, have a glass!

Anthony Dimond, Chairman

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