

HB 201—"An Act relating to the application of non-aerial pesticides and broadcast chemicals near fish habitat or water for human consumption, and in public places."—Q and A

What the regulations stipulated prior to being changed.

The regulations under 18 AAC 90.500 required a permit application and approval by the Alaska Department of Environmental Conservation (ADEC) for "public pesticide programs or projects" initiated by the state, a borough or city. This permitting process required that the agency that intended to apply herbicides or pesticides (including the Alaska Railroad and Department of Transportation) submit a permit application to ADEC. ADEC then sent the application out for public review and comment. The permit application included information about the proposed pesticide application including the chemical(s) to be used, locations/maps, vulnerable public water sources and sensitive aquatic habitats in the vicinity, mitigation and monitoring measures. The public had an opportunity to review, submit written comments, and/or testify at a public hearing. Other state and federal agencies also had the opportunity to weigh in before the ADEC decided whether to issue a permit. The ADEC would then consider public and agency comments, evaluate the application, then either issue the permit, require modifications to be protective of human health and the environment, and/or establish mitigating measures and monitoring requirements. Decisions about pesticide permit applications could be appealed by the public. Anyone who disagreed with the decision could request an adjudicatory hearing.

What changed in the regulations?

In 2013, the Alaska Department of Environmental Conservation adopted new regulations that eliminate the requirement for a state agency to obtain a permit from ADEC to spray herbicides or pesticides on state lands and rights-of-way. This change in the regulations also eliminated the public's right to participate in the decision-making process. The regulatory changes mean that there is no requirement for the applicator agency to submit a pesticide application to ADEC and ADEC therefore relinquishes permitting authority. These changes also:

- Eliminate permit requirements for the spraying of pesticides by state agencies on state public lands and rights-of-ways. This, among other things, means that there is no requirement to identify water bodies, water courses, private drinking water sources, or to establish buffers necessary to safeguard the state's water resources, sensitive waterways, drinking water sources, fish and wildlife habitat, or public health;
- Prevent public participation in decisions about pesticide spraying on public lands and rights-of-way—with no public hearings, opportunity for written public comments, or a way to appeal bad decisions. This deprives Alaskans of our right to speak out about potential harm to our drinking water, fishing streams, lands held in the public trust, subsistence uses, dangers to our children and public health;
- Promote the application of potentially harmful pesticides and herbicides without consideration of toxicity and effects to human health and the environment;
- Weaken public right-to-know requirements to notify the public about places where the pesticides will be sprayed.

What the regulations stipulate today.

The regulations stipulate that "the application of one or more pesticides on land owned or leased by an agency of the state, or on a right-of-way managed by the agency, is authorized if 1) the application follows an integrated pest management plan appropriate for the pest of concern...and adopted by the agency applying a pesticide; 2) the integrated pest management plan is published on the department's website..." The regulations require only that the department be notified 15 days in advance of a pesticide application and that public notices be published in a local newspaper (and not on the site of pesticide applications) not later than 30 days before application, however with no opportunity for public comment. The IPM requirements are weak, with no opportunity for review and comment prior to a pesticide application.

How this bill fixes the issue and why this bill is so important.

HB 201 re-instates a requirement for reasonable public notification, public comment, and written notices to be posted on the application site. This would apply to applications of pesticides in public places, including common areas of apartment buildings or other multi-family dwellings; government facilities; plazas, parks, sport fields, and transportation rights-of way. HB 201 also establishes reasonable and prudent buffer zones to protect anadromous fish and fish habitat. The buffer zones that would require that pesticides not be applied within 150 feet of anadromous or resident fish habitat or within 600 feet of a public or private water source.