

ALASKA LEGISLATURE COMMITTEE FILES 1905-1900 0072

3577 HRES HB 608 - HB 632

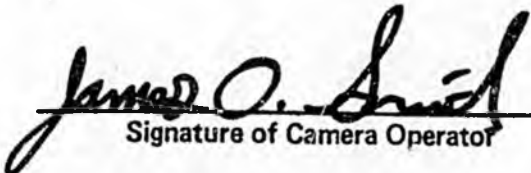
453

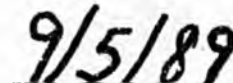


RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date

HB



HOUSE
COMMITTEE REPORT

4/22

(9)

Date referred: 3/17/86

FURTHER REFERRALS: FINANCE

DATE: April 21, 1986

The RESOURCES Committee has considered SSHB 608

"An Act relating to spraying and application of pesticides and broadcast chemicals."

and recommends:

- go pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS for SSHB 608 (Resources) same title
- new title

and recommends do pass

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

First

SIGNING DO PASS:

Shultz [Signature]

Cato [Signature]

Miller(NP) M. W. Miller

Herrmann Adelheid Herrmann

SIGNING OTHER RECOMMENDATION:

[Signature]

[Signature] Thompson

[Signature] Jenkins

[Signature] Sunc

[Signature] Co-Chairman

[Signature] Shultz

Original sponsors: Davis, Hurley,
Clocksin, et al

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 608 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to spraying and application of
7 pesticides and broadcast chemicals."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 46.03.320 is amended by adding a new subsection to
10 read:

11 (c) The department shall adopt regulations prescribing the wind
12 and other weather conditions during which spraying or application of a
13 pesticide or broadcast chemical for other than agricultural purposes
14 may be conducted, in order to protect the health and safety of the
15 public and to limit damage to crops and the environment. Regulations
16 adopted under this subsection do not apply to the spraying or applica-
17 tion of a chemical fire retardant by the Department of Natural Re-
18 sources.

19 * Sec. 2. AS 46.03.330(b) is repealed and reenacted to read:

20 (b) The department shall conduct a public hearing on the pro-
21 posed program if a hearing is requested by the governing body of the
22 affected municipality, or by a petition signed by at least 50 resi-
23 dents. The requirement for public hearing may be waived if the com-
24 missioner determines that a public emergency exists.

25 * Sec. 3. AS 46.03 is amended by adding new sections to article 6 to
26 read:

27 Sec. 46.03.340. NOTICE OF PESTICIDE APPLICATION. (a) At least
28 10 days before spraying or applying a pesticide or broadcast chemical
29 on publicly or privately owned land, the state, a municipality, a

1 utility, a public corporation, or a contractor of any of these, shall
2 publish notice of the proposed spraying or application in a newspaper
3 of general circulation serving the area where the affected land is
4 located. Notice shall also be given in any other manner necessary and
5 reasonably calculated to inform persons who lawfully reside on or use
6 (1) land on or over which the pesticide or broadcast chemical is
7 proposed or likely to be sprayed or applied; and (2) land any portion
8 of the property line of which is within 100 feet of the area on or
9 over which the pesticide or broadcast chemical is proposed to be
10 sprayed or applied. The requirement for public notice may be waived
11 if the commissioner determines that a public emergency exists.

12 (b) Notice under this section must include

13 (1) the chemical identity and product name of each pesti-
14 cide or broadcast chemical to be applied;

15 (2) the dates and locations of the spraying or application;

16 (3) the problem or pest sought to be controlled by the
17 spraying or application;

18 (4) the manner of spraying or application;

19 (5) the name, address, and telephone number of the state
20 agency, municipality, utility, public corporation, or contractor of
21 any of these, responsible for the spraying or application;

22 (6) appropriate warnings concerning

23 (A) the known or suspected acute and chronic health
24 effects of exposure to each pesticide or broadcast chemical to be
25 applied;

26 (B) evacuation of and reentry to an area affected by
27 the spraying or application; and

28 (C) the use or consumption of, or contact with, crops
29 or plants affected by the spraying or application.

1 (c) This section does not apply to the spraying or application
2 of

3 (1) a chemical fire retardant by the Department of Natural
4 Resources; or

5 (2) a pesticide or broadcast chemical for agricultural
6 research purposes by the Department of Natural Resources or the Uni-
7 versity of Alaska.

8 Sec. 46.03.350. CONTAMINATION OF DOMESTIC WATER SUPPLIES PROHI-
9 BITED. A pesticide or broadcast chemical may not be sprayed or
10 applied in a location or manner that contaminates water used for
11 domestic consumption and thereby jeopardizes the health of persons
12 consuming the water.

13 * Sec. 4. AS 46.03.330(c) is repealed.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Hein
4/7/86✓

Original sponsors: Davis, Hurley,
Clocksin, et al

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 608 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to spraying and application of
7 pesticides and broadcast chemicals."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 46.03.320 is amended by adding a new subsection to
10 read:

11 (c) The department shall adopt regulations prescribing the wind
12 and other weather conditions during which spraying or application of a
13 pesticide or broadcast chemical for other than agricultural purposes
14 may be conducted, in order to protect the health and safety of the
15 public and to limit damage to crops and the environment. Regulations
16 adopted under this subsection do not apply to the spraying or applica-
17 tion of a chemical fire retardant by the Department of Natural Re-
18 sources.

19 * Sec. 2. AS 46.03.330(b) is repealed and reenacted to read:

20 (b) The department shall conduct a public hearing on the pro-
21 posed program if a hearing is requested by the governing body of the
22 affected municipality, or by a petition signed by at least 50 resi-
23 dents. The requirement for public hearing may be waived if the com-
24 missioner determines that a public emergency exists.

25 * Sec. 3. AS 46.03 is amended by adding new sections to article 6 to
26 read:

27 Sec. 46.03.340. NOTICE OF PESTICIDE APPLICATION. (a) At least
28 10 days before spraying or applying a pesticide or broadcast chemical
29 on publicly or privately owned land, the state, a municipality, a

1 utility, a public corporation, or a contractor of any of these, shall
2 publish notice of the proposed spraying or application in a newspaper
3 of general circulation serving the area where the affected land is
4 located. Notice shall also be given in any other manner necessary and
5 reasonably calculated to inform persons who lawfully reside on or use
6 (1) land on or over which the pesticide or broadcast chemical is
7 proposed or likely to be sprayed or applied; and (2) land any portion
8 of the property line of which is within 100 feet of the area on or
9 over which the pesticide or broadcast chemical is proposed to be
10 sprayed or applied. The requirement for public notice may be waived
11 if the commissioner determines that a public emergency exists.

12 (b) Notice under this section must include

13 (1) the chemical identity and product name of each pesti-
14 cide or broadcast chemical to be applied;

15 (2) the dates and locations of the spraying or application;

16 (3) the problem or pest sought to be controlled by the
17 spraying or application;

18 (4) the manner of spraying or application;

19 (5) the name, address, and telephone number of the state
20 agency, municipality, utility, public corporation, or contractor of
21 any of these, responsible for the spraying or application;

22 (6) appropriate warnings concerning

23 (A) the known or suspected acute and chronic health
24 effects of exposure to each pesticide or broadcast chemical to be
25 applied;

26 (B) evacuation of and reentry to an area affected by
27 the spraying or application; and

28 (C) the use or consumption of, or contact with, crops
29 or plants affected by the spraying or application.

1 (c) This section does not apply to the spraying or application
2 of

3 (1) a chemical fire retardant by the Department of Natural
4 Resources; or

5 (2) a pesticide or broadcast chemical for agricultural
6 research purposes by the Department of Natural Resources or the Uni-
7 versity of Alaska.

8 Sec. 46.03.350. CONTAMINATION OF DOMESTIC WATER SUPPLIES PROHI-
9 BITED. A pesticide or broadcast chemical may not be sprayed or ap-
10 plied in a location or manner that is likely to contaminate water used
11 for domestic consumption and thereby jeopardize the health of persons
12 consuming the water.

13 * Sec. 4. AS 46.03.330(c) is repealed.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Hein
4/1/86 /

Original sponsors: Davis, Hurley,
Clocksin, et al

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 608 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to spraying and application of
7 pesticides and broadcast chemicals."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 46.03.320 is amended by adding a new subsection to
10 read:

11 (c) The department shall adopt regulations prescribing the wind
12 and other weather conditions during which spraying or application of a
13 pesticide or broadcast chemical may be conducted, in order to protect
14 the health and safety of the public and to limit damage to crops and
15 the environment. Regulations adopted under this subsection do not
16 apply to the spraying or application of a chemical fire retardant by
17 the Department of Natural Resources.

18 * Sec. 2. AS 46.03.330(b) is repealed and reenacted to read:

19 (b) The department shall conduct a public hearing on the pro-
20 posed program if a hearing is requested by the governing body of the
21 affected municipality, or by a petition signed by at least 50 resi-
22 dents. The requirement for public hearing may be waived if the com-
23 missioner determines that a public emergency exists.

24 * Sec. 3. AS 46.03 is amended by adding new sections to article 6 to
25 read:

26 Sec. 46.03.340. NOTICE OF PESTICIDE APPLICATION. (a) At least
27 10 days before spraying or applying a pesticide or broadcast chemical
28 on publicly or privately owned land, the state, a municipality, a
29 utility, a public corporation, or a contractor of any of these, shall

1 publish notice of the proposed spraying or application in a newspaper
2 of general circulation serving the area where the affected land is
3 located. Notice shall also be mailed to each person who owns or
4 resides (1) on the land, or (2) on land the property line of which is
5 adjacent to the area, on or over which the spraying or application is
6 proposed or likely to occur. The requirement for public notice by
7 mailing may be waived if the commissioner determines that a public
8 emergency exists.

9 (b) Notice under this section must include

10 (1) the chemical identity and product name of each pesti-
11 cide or broadcast chemical to be applied;

12 (2) the dates and locations of the spraying or application;

13 (3) the problem or pest sought to be controlled by the
14 spraying or application;

15 (4) the manner of spraying or application;

16 (5) the name, address, and telephone number of the state
17 agency, municipality, utility, public corporation, or contractor of
18 any of these, responsible for the spraying or application;

19 (6) appropriate warnings concerning

20 (A) the known or suspected acute and chronic health
21 effects of exposure to each pesticide or broadcast chemical to be
22 applied;

23 (B) evacuation of and reentry to an area affected by
24 the spraying or application; and

25 (C) the use or consumption of, or contact with, crops
26 or plants affected by the spraying or application.

27 (c) This section does not apply to the spraying or application
28 of a chemical fire retardant by the Department of Natural Resources.

29 Sec. 46.03.350. USE OF PESTICIDES NEAR WATER SUPPLIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

PROHIBITED. A pesticide or broadcast chemical may not be sprayed or applied within 100 feet of a body of water that is a source of water for domestic consumption.

* Sec. 4. AS 46.03.330(c) is repealed.



ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301
ANCHORAGE, ALASKA 99503 • (907) 276-3235

April 11, 1986

Representative Richard Schultz, Chairman
House Resources Committee
Pouch V
Juneau, AK 99811

Dear Mr. Chairman:

At the April 2 hearing of the House Resources Committee on HB 608, relating to the spraying and application of pesticide and broadcast chemicals, member utilities of the Alaska Rural Electric Cooperative Association presented testimony opposing the legislation.

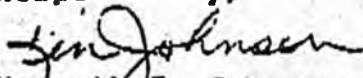
The primary concern of the electric cooperatives was the exorbitant cost associated with section three of the bill, relating to notice of pesticide application. Member cooperatives are certain their consumer/owners would incur several hundred thousand dollars in costs annually if required to provide notice as specified in the bill (CS for HB 608 dated 4/1/86).

On April 3, Marilyn Heiman, aide to Rep. Mike Davis, organized a meeting with ARECA and various special interest groups to discuss proposed amendments to the bill. Participants in the meeting reached a compromise position on the notification provision which would ensure the public is adequately notified of pesticide use while substantially reducing the cost to cooperative utilities. This compromise is reflected in the most recent version of the bill (CS for HB 608 dated 4/7/86).

Cooperative utilities recognize their responsibility to provide persons living in the affected area with reasonable notice of pesticide application and substantive information on the pesticides being used. Our members believe this can best be accomplished through use of mass media (newspaper, television, and radio), and by posting notice in local public buildings and affected areas. We support amendments to HB 608 requiring these methods of notification be used before a planned program of pesticide application is implemented.

Thank you for the opportunity to present our members concerns to the House Resources Committee.

Respectfully,


Kenneth S. Johnson
Director of Information

DEMOCRACY IN ACTION



MATANUSKA ELECTRIC ASSOCIATION, INC.

P.O. BOX 1148

PALMER, ALASKA 99645

TELEPHONE
(907) 745-3231

April 4, 1986

The Honorable Richard Shultz
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Subject: NOTICE OF PESTICIDE APPLICATION

Reference: HOUSE BILL 608, SECTION 3, ARTICLE 46.0? 340

Dear Representative Shultz:

As requested by the House Resource Committee, this letter is a summary of my testimony given on April 2, 1986 during a teleconference from the State Legislative office in Wasilla. The following testimony, is against the above referenced House Bill. In order to be in compliance with the above Section, Matanuska Electric Association would have to consider one or more of the following options:

OPTION #1

- a) Title search for one-third, or 9,000 consumers, in MEA's service area each year. (Total of 27,000 consumers over a 3-year cycle.)
- b) Field contact to identify adjacent owners of property to be treated.

Notification could not occur until items a) and b) are completed. The man-hours required to complete these items is estimated at 54,000. This is a conservative estimate, particularly when you consider the size of our service area which encompasses approximately 2,417 miles of powerlines from Eagle River to Cache Creek, located at Mile Post 121 of the Parks Highway, and to Sheep Mountain Lodge at Mile Post 113 on the Glenn Highway. In addition, most contacts take more than one trip to gather the necessary information. The written notification is also taken into account.

OPTION #2 - Hand cut or mechanically cut, no herbicides.

- a) This option would require the Utility to hire additional employees to control the re-sprouting, which would occur on broad-leaved species such as Birch, Alder, Aspen, Cottonwood, and Willow. The total estimated additional man-hours to accomplish the re-clear are 41,396. This is based upon two to three years of growth on 2929.7 acres, which MEA controls at 28.26 man-hours per acre. This would result in the re-clear of an additional 1464.85 acres due to re-sprouting.



The Honorable Richard Shultz
April 4, 1986
page 2

In conclusion, we would request that the Resources Committee review this summary and our Right-Of-Way Maintenance Standards. In addition, we would request that Public Utilities be exempt from Section 3, 46.03.340 for the following reasons:

1. The existing work plan for the use of herbicides on utility easements or fee owned land is reviewed by the DEC prior to application.
2. Public notice is given in local newspapers, and other publications such as the Ruralite Magazine, a company newsletter distributed throughout our service area, and local radio stations.
3. All applications are performed by licensed applicators. The law stipulates that the supervisor must be licensed. In addition, the majority of the herbicides applied are non-restrictive, and do not require an applicator to be licensed; however, we feel that all applicators should be licensed when applying any herbicide. Further, we (MEA) have only received two complaints in the last four years on herbicide application, and both were resolved without ramification.
4. The Right-Of-Way Maintenance Standard that MEA currently uses has also been adopted by several Utilities, either in part, or in its entirety. This Standard has been closely reviewed by the DEC prior to being adopted by MEA.
5. The cost of complying with Section 3, 46.03.340 would be prohibitive to our 27,000 consumers.
6. In any case, if this Bill passes as written, we would experience these costs in our base rate.
 - *a) The use of herbicides with prior written notice, would result in an estimated additional 54,000 man-hours, minimum.
 - *b) Use no herbicides; hand cut and mechanical cut only, which would result in an estimated additional 41,000 man-hours, minimum.

Should you have any questions or require additional information, please feel free to contact me at (907) 745-9281.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'James F. McIntosh', is written over the typed name.

James F. McIntosh
Manager of Electric Operations

enc. Vegetation Management Standard (MEA)

*9,000 consumers, 6 hours per consumer, including field identification.
*1,465 additional acres to be cut at 28.26 man-hours per acre.

VEGETATION MANAGEMENT STANDARD

MATANUSKA ELECTRIC ASSOCIATION, INC.

I. The Objectives of Vegetation Management are:

1. To assure constant reliability and safety of MEA distribution transmission system;
2. To create safe working conditions for line crew personnel and the safety of the public;
3. To create utility through plant management by conversion to useful low growing native species and grasses;
4. To reduce or, hopefully, eliminate fire hazards;
5. To produce a more pleasing appearance.
6. To establish a record-keeping system which indicates areas due for routine maintenance per the "cycle" system.

II. General

A. Herbicides

As long as distribution/transmission lines are located on or under land, right-of-ways will require maintenance. The conversion of land to right-of-way often alters the plant community and management of this community is a continuing problem and expense.

Herbicides have been an important tool in this program of vegetation management and they will continue to be an important tool. Herbicides are used (1) to control and inhibit hazardous vegetation on power line right-of-ways; and (2) to control all plant growth in substation yards. With selective ground application, the herbicides may be applied to individual species of plants or a small grouping of plants. The objective is to convert the plant family from the tall-growing species, which are hazardous to power lines, to low-growing species. The visual impact of such ground applications of herbicides is reduced to a minimum. Only target plants are treated, thus reducing greatly the amount of herbicides introduced into the environment. A single plant or small groupings may be treated. This type of application also permits greater diversity in the type of chemical used, method of treatment, and time of year when the herbicide can be applied. The use of herbicides for killing or regulating brush growth is not a method to be used indiscriminately, for the very property that makes it desirable also makes it undesirable. It is therefore necessary that the operators and brush control crew supervisors be trained in approved procedures, techniques, and methods before undertaking a chemical spray operation.

In order for the program to be successful, chemicals should be applied to only that specie of brush which is not wanted; extreme care should be exercised to avoid spraying near large subdivisions heavily populated areas, steep hillsides or extreme wetlands. These areas should be skipped and classified as hand-cutting only areas.

B. Other Methods

Once the brush is under control, it will require much less effort and expense to keep it that way. The low-growing vegetation will tend to keep tall brush and tree seeds from finding their way to the ground, as well as robbing those undesirable plants that do take root of necessary sunlight, moisture, and plant food so, at best, growth will be substantially retarded. In addition, the low-growing plant community will offer food and cover to wildlife.

USE OF DAILY BRUSH REPORT

I. Introduction

Information on this daily brush report form is designed to satisfy three requirements; First are those imposed by federal and state laws and, second, is to provide management information. The third is to satisfy completed bid documents.

II. Form usage

The form is divided into sections as follows: location, treatment method, mixture per acre, type of vegetation, wind, temperature, length, width, number of acres, man hours and equipment used.

1. Location. Contractor must list both beginning and ending structure. As long as no spans have been skipped, they may be listed as in the example provided under number 7 below. Skipped spans must be recorded as follows:

Str from	Str to
K29	K31
K33	K40

This indicates that on spans K31 to K33, no activity was performed. The reason for skipping a span or spans must be stated.

2. Treatment method. Contractor must state whether stump treatment, spraying of brush or application of pellets was used as the method of treatment. In cutting, state whether hand-cutting or hydro-axing was used.

3. Mixture per acre. This refers to the gallons or pounds per acre used.

4. Vegetation treated. The following codes are to be used to identify type of vegetation treated.

B = Birch
W = Willow
C = Cottonwood
A = Alder
S = Spruce

5. Wind and temperature. This may be recorded at the beginning and end of each section. This reading does not need to be recorded per span.

6. Length and width. Length and width of controlled area must be listed, as well as total acreage within one-tenth of an acre. (Example: Length x width divided by 43560 = acres.)

7. Man Hours. Man hours must be listed for time spent on specific locations. Example below.

Str from	Str to	MH
K1	K28	30

8. Vehicles. List all vehicles by license number.

9. Chemical Data.

a. List manufacturer name. (Dow, Amchem, Dupont, etc.)
b. List mixture ratios used. (Weedone 170 - 3 gallons per 97 gallons oil) If more space is needed, use the comment section.

10. Total. Number of gallons or pounds used per report.

11. Danger Tree Locations. List nearest structure number, and identify on map with red pencil. Use comment section if more space is needed.

12. Total. This refers to total acres and manhours.

13. General Comments. List names of property owners contacted during clearing operations. In addition, note anything of interest or importance relating to the application or the right-of-way.

III. Top of Form

Starting at the left list circuit and map number. On the right put down the time actually started on the right-of-way, and on the left the time actually finished on the right-of-way. Complete the month, day and year. The crew foreman or supervisor must sign the form. This form will be completed and given to the right-of-way clearing and maintenance officer no later than 10:00 a.m. on the morning on the business day following completion.

RIGHT-OF-WAY MAINTENANCE STANDARD

A. Clearance Criteria

The purpose of this standard is to provide time periods of trouble-free operation in which the minimum clearances listed below are not violated and for which a growth period must be allowed. With the exception of special situations, this growth period will be an estimate of 10 years. Of equal importance to the brush heights is brush density. Brush density will be controlled only to the extent necessary to permit reasonable use of the right-of-way for access to perform routine and anticipated emergency activities.

1. 2.4 kV to 34.5 kV - 10 feet from conductor
2. 34.5 kV to 138 kV - 15 feet from conductor

B. Experimental Areas

Test plots developed by MEA are to be safeguarded and special instructions will be issued prior to contractor clearing.

C. Areas Restricted by Agreement

Certain areas may be restricted by the result of negotiation with a land owner at time of acquisition. Changes do occur, particularly in land use; consequently, the restrictions may change. Restrictions currently in effect will be identified on the maps issued to contractors. Contractors will be notified of changes as they occur.

D. Coordination and Public Awareness

A coordinated effort to inform consumers of right-of-way clearing affecting their property is essential to a successful maintenance program. Every attempt must be made to contact property owners prior to commencement of work. It should also be noted that certain easement agreements require contact with the property owner prior to clearing. This requirement will be specified on maps as necessary.

E. Hand Application of Herbicide

MEA makes use of hand application of herbicides, as it offers the most effective method of selective vegetation control. The only species to be treated will be the target species. The pellets will be broadcast within the drip base of the tree or stump, using the label instructions to ensure the proper pounds per acre application.

F. Cutting

1. Hand cutting.

Hand cutting of, undesirable species is also an effective method for selective vegetation management. Hand cutting does have the decided advantage of meeting certain aesthetic criteria. This method, which can be done in any one or combination of the parts required to fit a particular situation; namely, cutting only, cutting and disposal, cutting and stump treatment or stump treatment only, as on new lines following initial clearing. Stump treatment, if applied properly will eliminate resprouting of most species.

2. Tools for Cutting.

Cutting is normally done by axe and power driven tools. The terrain, density and quantity of vegetation will determine tools to be employed.

3. Height of Cutting.

Cut conifers below the lowest limb. This will eliminate necessity of stump treatment. Cut deciduous trees about 2" to 4" above the ground line. Application of the herbicide should be made as soon as possible after cutting. All stumps of species to be treated to prevent resprouting must be cut FLAT for application of the chemical. Cutting trees at an angle is not acceptable and will be rejected. This is a safety measure, as angular cuts leave a hazardous point.

4. Safety While Cutting

Exercise extreme care in cutting trees which could fall into the power line or structure. Rarely will such a tree on the right-of-way be large enough to use a wedge. In general, tie a line (poly-dacron or equal) to the tree high enough to get good leverage. Tying the line too low can pull the tree off the stump while having little effect on direction of fall. Pull the tree so that it falls away from the conductor keeping it within the limits of the right-of-way if possible. Brush generally has considerable spring in the stems; therefore, be careful of the snap of the stem and possible ricochet of the cutting tool. While working on MEA right-of-way it is highly recommended that the following safety devices be made available and used by contractors:

- a. Safety glasses
- b. Hard hats or caps
- c. Ballistic nylon chaps

G. Disposal

1. Chipping

A chipper is a mechanical brush disposal unit which cuts up brush into chips and either spreads them over the right-of-way or deposits them in piles. Brush too large to be handled by the chipper is limbed and the limbs fed into the chipper; the trunks deposited on the edge of the right-of-way in neat piles.

2. Lopping and Scattering

This is an ideal method of disposal in many areas where chipping is not a requirement. The objective is to get the trunk of the tree flat on the ground with all branches removed by axe or saw. For safety, the limbs will be cut as close to the trunk of the tree as possible.

H. Stump Treatment

Application of herbicides to freshly cut stumps prevents resprouting. Therefore, treat brush stumps immediately after cutting. Spray mixtures for stump treatment will be found in the herbicide chapter.

1. Time of Year

Stumps can be successfully treated at any time of year. If spray is not applied within 24 hours following cutting, it is best to wait until resprouting or apply pellets.

2. Squeeze Bottles

Squeeze bottles are becoming popular. They are easy to use and carry. They are proving to be efficient and economical. Back pack sprayers are another method that has become popular with many contractors.

I. Screens

Screening as a recent development in right-of-way vegetation management has been the leaving of brush and trees on the right-of-way at highway crossings and other critical viewpoints. The purpose of these screening has been to reduce as much as possible the visual effect of a cleared right-of-way. Most screenings have resulted from special clearing specifications for new construction. Every effort should be made to develop vegetation screens on existing lines when the opportunity is available.

Maintenance of screens presents a continuing control problem. All activities directed to the control of the tall growing trees and brush must be performed in such a manner that evidence of maintenance activity is minimal. Most screens do not have the safety factor of 15 years of growth if they are to effectively serve as a screen; therefore, they require more periodic inspection and maintenance.

Topping in screens, when practical, can be performed on the hardwoods and conifers. Use of herbicides should be minimal, preferably limited to individual plants. Depending on the site, size, and shape of the plant, the treated plant may be left in place.

When feasible, consideration should be given to the possibility of converting the screen from fast growing problem species to slow growing species which are native to the areas.

J. Topping and Pruning

In special instances, topping or pruning of trees may be required to attain special management goals. The need to top rather than cut trees generally occurs in areas where special aesthetic effects are desired. On newer lines, such instances were included in the clearing specifications and were part of the right-of-way when the line was energized. On the older lines such instances will be cases where a more acceptable appearance will be created and are initiated by line maintenance personnel or are created for us by the landowner. Some typical situations which require topping are:

1. Scenic area road crossing.
2. Major highway crossings.
3. Recreational areas.
4. Danger tree areas when a part of residential home site or recreational area.
5. Home site or agricultural.
6. Other

Due to the great variety of high growing brush and trees indigenous to the MEA operation area, knowledge of growth habits is quite essential. Observations of each species in its native habitat is the easiest way to make topping judgments. In general, hardwoods can be topped so that a pleasing form is retained in a healthy growing condition while enough growth is removed so that a reasonable maintenance free period is attained. Conifers present a real challenge. Topping can be a severe blow to a tree where it is weakened by the loss of too much crown. Most conifers are readily susceptible to insects and disease under such a condition. It is imperative that at least a good one-third (1/3) of the crown be left to sustain the tree.

Keep in mind that, regardless of which one of the five situations identifies the problem trees or brush, all we are really talking about are Danger Trees or Danger Brush which require special handling. In those situations which are particularly delicate and may require expertise to top prune, do not hesitate to secure the services of an expert.

EPA APPROVED HERBICIDES

The following herbicides are approved by the Environmental Protection Agency.

A. Non-Restrictive. These herbicides do not require applicator's license to apply.

1. Banvel 720 Brush Killer
Active ingredients, 1 lb/gal Dicamba
As amine salt and 2 lb/gal 2,4-D AS
Amine salt. Liquid, water soluble
EPA Reg. # 876-177A Ref: Velsicol Chemical Co.

2. Banvel 520 Brush Killer
Active ingredients, 1 lb/gal Dicamba
As acid and 2 lb/gal 2,4-D AS
Ester. Liquid oil soluble.
EPA Reg. # 876-168AA Ref: Velsicol Chemical Co.
3. Banvel XP Pellets Brush Killer
Active ingredient, Dicamba, 10%
Pellets
EPA Reg. # 876-178AA Ref: Velsicol Chemical Co.
4. Weedone 170 (BK-170) Brush Killer
Active Ingredients, 2 lb/gal 2,4-D
and 2 lb/gal 2,4-DP as low volatile
Esters, liquid, oil and water soluble
EPA Reg. # 264-222AA Ref: Amchem Chemical Co.
5. Garlon 3A Brush Killer
Active ingredients Triclopy
3 lb/gal acid equivalent
EPA Reg. # 464-546 Ref: Dow Chemical Co.
6. Roundup. Weed control in substations.
Active ingredient Isopropylamine salt of Glyphosate
4 lbs/gal acid equivalent
EPA Reg. # 524-308 Ref: Monsanto Co.

B. Restrictive. These herbicides require and applicators license to apply.

1. Tordon 101 Brush Killer
Active ingredients, .5 lb/gal
Picloram as amine salt and
2 lbs/gal 2,4-D as amine salt.
Liquid mixture. Water soluble.
EPA Reg. # 464-306 Ref: Dow Chemical Co.
2. Tordon 10K Pellets Brush Killer
Active ingredient, 10% Picloram as
potassium salt. Pellets.
EPA Reg. # 464-320 Ref: Dow Chemical Co.

MIX RATES

HERBICIDE	MIXING FORMULA	TREATMENT
Banvel 520	Undiluted with equal parts oil	Stumps
Banvel 720	Undiluted with equal parts water	Stumps
Banvel XP	Pellets as label directs	Brush
Weedone 170	3 gal. per 97 gal. oil	Stumps

Garlon 3A	Undiluted on treated areas	Stumps
Roundup	3 qts. to 30 gal./30 gal. per acre	Weed control
Tordon 101	Equal parts Tordon 101 & water	Stumps
Garlon 3A	2 gal. Garlon, 98 gal. water	Brush control
Tordon 101	1 to 3 gal. per 97 gal. water	Brush control
Tordon 10K	40 to 60 lbs per acre	Brush control

TIME: START _____ / FINISH _____

D A I L Y B R U S H R E P O R T

CIRCUIT NO. _____

MAP NO. _____

DATE: _____
month-day-year

SUPERVISOR: _____

SIR FROM	SIR TO	TREATMENT METHOD			HAND CUT	MECH CUT	MIXTURE PER ACRE	VEGETATION TREATED	WIND MPH	TEMP.	LENGTH	WIDTH	ACRES	MAN HOURS	LICENSE NO. OF EQUIPMENT USED
		STUMP	SPRAY	PELLET											
CHEMICAL DATA		MANUFACTURE	MIXTURE	TOTAL	DANGER TREES LISTED BY SIR NUMBER					TOTAL	TOTAL NUMBER OF VEHICLES ON JOB				

GENERAL COMMENTS



Alaska Center for the Environment
Suite 1A
411 West 4th Ave.
Anchorage, Alaska 99501 274-3621

April 2, 1986

Richard Shultz
Alaska State Legislature
Box V (MS 3100)
Juneau, Alaska 99811

Re: HB 608, Pesticide notification

Dear Representative Shultz:

I am writing on behalf of the Alaska Center for the Environment in support of HB 608, an act relating to spraying and application of pesticides and broadcast chemicals.

So far, EPA has confirmed the safety of only 37 of more than 600 active ingredients used in 450,000 pesticides commercially available. Recently, EPA has ranked pesticides as their number one major issue.

Pesticides are designed to kill and they can endanger the environment and human health. People deserve to be informed about activities which could have such serious consequences.

This bill provides for advance notification which would allow people to attempt to avoid exposing themselves to pesticides, or to express their concerns to the applicator.

It would also encourage better record keeping, which could resolve doubts about exposure, should someone claim to have been injured as a result of pesticide spraying.

Keep in mind that this bill does not ban or in any way restrict pesticide use, but simply allows people to receive information about activities which greatly concern them.

We urge you to support this bill.

Sincerely,

Ursula Barril, Executive Director

cc: Adelheid Herrmann
Mike Davis
Scott Highleyman
Mary Core



UNIVERSITY OF ALASKA - FAIRBANKS
Fairbanks, Alaska 99775
School of Agriculture and Land Resources Management
Agricultural and Forestry Experiment Station

April 2, 1986

Alaska State Legislature
Representative Dick Shultz
Pouch V (MS 3100)
Juneau, Alaska 99811

The Honorable Dick Shultz:

Dear Sir:

Sponsor substitute for House Bill No. 608 is a concern to both public and private interests in agricultural production. As the bill is now written, those persons involved in producing food and feed products and those involved in providing research and extension support to the agricultural industry in Alaska would be required to spend valuable time justifying these efforts to gain community support where in most cases this support already exists.

The concerns expressed in CSHB608 are valid concerns. However, they are concerns of which the agricultural industry in Alaska is already cognizant. Therefore I would suggest the changes made on the enclosed copy of CSHB608 be incorporated during hearings of the House Resources Committee.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Carol E. Lewis".

Carol E. Lewis
Associate Professor
of Resource Management

CEL:me

cc: James V. Drew
Wayne C. Thomas

Introduced: 3/17/86
Referred: Resources and Finance

BY DAVID, HURLEY, CLOCKSIN,
KOPONEN, UEHLING, M.M. MILLER
GOLL AND BOUCHER

IN THE HOUSE

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 608
IN THE LEGISLATURE OF THE STATE OF ALASKA
FOURTEENTH LEGISLATURE - SECOND SESSION
A BILL

For an Act entitled: "An Act relating to spraying and application of
pesticides and broadcast chemicals."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 46.03.320 is amended by adding a new subsection to read:

(c) The department shall adopt regulations prescribing the wind and other weather conditions during which spraying or application of a pesticide or broadcast chemical may be conducted, in order to protect the health and safety of the public and to limit damage to crops and the environment. Regulations adopted under this subsection do not apply to the spraying or application of a chemical fire retardant by the Department of Natural Resources. These regulations will also not apply to persons or corporations or public agencies involved in research pertaining to and/or endeavors leading to the production of agricultural products.

* Section 2. AS 46.03.330 (b) is repealed and reenacted to read:

(b) The department shall conduct a public hearing on the proposed program if a hearing is requested by the governing body of the affected municipality, or by a petition signed by at least 50 residents. The requirement for public hearing may be waived if the commissioner determines that a public emergency exists.

* Section 3. AS 46.03. is amended by adding a new section to read:

Section 46.03.340. NOTICE OF PESTICIDE APPLICATION

(a) at least 10 days before spraying or applying a pesticide or broadcast chemical on publicly or privately owned land, the state, a municipality, a utility, or a public corporation, or a contractor of any of these, shall provide written notice to each person who owns or resides on the

SSHB 608

1 land, or land adjoining the land, on or over which the spraying or
2 application is proposed or likely to occur. Notice shall be published
3 in a newspaper of general circulation serving the areas where the
4 affected land is located. Notice also shall be mailed to persons who
5 own or reside on land affected by the spraying or application. The
6 requirement for public notice by mailing may be waived if the com-
7 missioner determines that a public emergency exists.

8 (b) Notice under this section must include

9 (1) the chemical identity and product name of each pesti-
10 cide or broadcast chemical to be applied;

11 (2) the dates and locations of the spraying or application;

12 (3) the problem or pest sought to be controlled by the
13 spraying or application;

14 (4) the manner of spraying or application;

15 (5) the name, address, and telephone number of the state
16 agency, municipality, utility, public corporation, or contractor of
17 any of these, responsible for the spraying or application;

18 (6) appropriate warnings concerning

19 (A) the known or suspected acute and chronic health
20 effects of exposure to each pesticide or broadcast chemical to be
21 applied;

22 (B) the time of and reentry to an area affected by
23 the spraying or application; and

24 (C) the use or consumption of, or contact with, crops
25 or plants affected by the spraying or application.

26 (c) This section does not apply to the spraying or application
27 of a chemical fire retardant by the Department of Natural Resources.

28 * Sec. 4. § 46.03.330(c) is repealed.

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date : _____

REQUEST

Bill/Resolution No. : SSHouse Bill 608
 Title : An Act relating to spraying and application of pesticides and broadcast chemicals
 Sponsor : Davis/Hurley/Clocksın/Koponen/
 Requestor : Uehling/MM Miller/Goll
 Date of Request : 3/13/86

FISCAL DETAIL

Agency Affected : Environmental Conservation
 BRU : Environmental Health
 Components : Director's office / Pesticide Program

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
----------------	----------	----------	----------	----------	----------	----------

REVENUE	0	0	0	0	0	0
----------------	----------	----------	----------	----------	----------	----------

FUNDING : (Thousands of Dollars)


GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0


POSITIONS :

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : Attach a separate page if necessary

No fiscal impact is anticipated by passage of HB 608

Prepared by : Doug Donegan  Phone : 465-2609
 Division : Environmental Health Date : 3/13/86

Approved by Commissioner : Bill Ross  Date : 3/13/86
 Agency : Environmental Conservation

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Municipality of Anchorage



P.O. BOX 196550
ANCHORAGE, ALASKA 99519-6650
(907) 264-4111

TONY KNOWLES,
MAYOR

MUNICIPAL HEALTH & HUMAN SERVICES COMMISSION

March 17, 1986

Representative Richard Shultz
Co-Chair, House Resources Committee
Alaska Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Rich
Dear Representative Shultz:

The Anchorage Municipal Health and Human Services Commission is charged with reviewing and making recommendations on "legislation which affects the health and social well-being of the residents" of Anchorage (Anchorage Municipal Code 4.60.060). In accordance with this responsibility, the commission reviewed and supports the passage of HB 608 - An Act Relating to Spraying and Application of Pesticides and Broadcast Chemicals. This legislation is consistent with the recent position the Health and Human Services Commission took on a municipal policy regarding the application of pesticides.

The Health and Human Services Commission is in the process of developing a comprehensive plan for health and human services which will establish priorities among services. The Commission's support for this legislation does not reflect any prioritization of services and needs.

Sincerely,

James K. Barnett
James K. Barnett, Chair
Health and Human Services Commission

NC25/dPDI

cc: Brad Bradley, Commission Liaison, Anchorage Assembly
Chip Dennerlein, Intergovernmental Affairs, MOA
John F. Franklin, Commissioner of Public Safety, MOA
Jewel Jones, Director, Department of Health and Human Services
Tony Knowles, Mayor
Dave Walsh, Chair, Anchorage Assembly
Kay Wallis, House Resources Committee, Alaska Legislature
John Sund, House Resources Committee, Alaska Legislature
David Thompson, House Resources Committee, Alaska Legislature
M.W. Miller, House Resources Committee, Alaska Legislature
Bette Cato, House Resources Committee, Alaska Legislature
Drue Pearce, House Resources Committee, Alaska Legislature
Roger Jenkins, House Resources Committee, Alaska Legislature

REPORT
OF
PESTICIDE COMMITTEE
TO THE
MUNICIPALITY OF ANCHORAGE
DECEMBER 1985

ATTACHMENT E
PESTICIDE COMMITTEE
Minority Report

The undersigned, a minority of the Committee, appointed to advise the Department of Health and Human Services, the Mayor and the Assembly about spraying of pesticides, not agreeing with a majority vote on September 19, 1985, wish to express support for a meaningful solution to the problem as it impacts human health in residential areas of Anchorage. To this end, we support a system of prior notification as a means of allowing commercial enterprises to continue serving community needs for insect control while simultaneously allowing for individual property owners to protect families from direct and indirect pesticide contamination through application methods which release excessive amounts of pesticides into the air.

Through research conducted by members of the Pesticide Committee, differing systems of prior notification were found to be the responses of communities faced with similar dilemmas of pesticide application in residential areas. The list of states, counties and cities from across the United States who have implemented a system of prior notification and for which the Committee has information available, are as follows:

Georgetown University Law Center, Washington, D.C.

Berkley, California

Montgomery County, Maryland

Eugene, Oregon

Santa Monica, California

Milwaukee County, Wisconsin

Wauconda, Illinois

Lakewood, Ohio

Philadelphia, Pennsylvania

Cincinnati, Ohio

San Diego, California

Madison, Wisconsin

Salinas, California

Alameda County, California

New Jersey

New York

Connecticut

The system of prior notification we are supporting was developed by members of the Anchorage Pesticide Committee. Prior notification places responsibility on those who apply pesticides. It is the intent of prior notification that individuals on adjacent property to where pesticides will be applied will receive information which allows them the opportunity of protecting gardens, children and pets. Our recommendation for prior notification is as follows:

(1) Notice of at least 24 hours and not more than 72 hours.

(a) Posting of the property where commercial application will take place.

(b) Placard or other type notice to all contiguous properties -- i.e. parcels within 100 feet of actual application.

(c) Notification includes the following information:

(1) name of pesticide to be applied

(2) name and phone number of applicator

(3) statement of warning concerning garden vegetables or fruits

(4) re-entry time if available

(5) approximate time of application or the atmospheric conditions under which it is to be applied

(2) In the case of parks, Municipality would take responsibility for posting notices of intent to apply pesticide by spray (ground) application.

(3) Windspeed -- Limit applications to windspeeds of 5 knots per hour or less as measured at site of application.

Prior notification responds to needs identified by the Pesticide Committee through discussion and testimony.

(1) Individual Rights Of Property Owners -- Prior notification allows individuals the use of pesticides on their property as well as allowing adjacent property owners protection from unknown contamination of gardens, childrens' play areas, outside equipment, etc.

(2) Basic Right To Know -- Prior notification allows individuals to determine the level of hazard for their families and themselves to which a particular pesticide might pose a danger because of the known chemical sensitivity of a family member.

(3) Home Safety -- While no pesticide is completely safe, EPA has identified allowable levels of use under specific conditions. Prior notification complements, but does not exceed or replace, EPA standards in providing accurate information to property owners.

Mark Callan

Mark Callan

Christina Byrd



March 30, 1986

Representative Mike Davis
Capitol, Room 13
Juneau, Alaska 99801

Dear Representative Davis,

The League of Women Voters of Alaska urges the passage of Sponsor Substitute for House Bill 608, An Act relating to spraying and application of pesticides and broadcast chemicals.

The League of Women Voters of the United States supports the position that democratic government depends upon the informed and active participation of its citizens at all levels of government. The League further maintains that governmental bodies must protect the citizens' right to know by giving adequate notice of proposed actions, holding open meetings and making public records accessible.

The proposed changes to AS 46.03 will enable the citizens to know ten days in advance of the application of a pesticide or broadcast chemical if the material is being applied by the state, a municipality, a utility or a public corporation or a contractor of any of these.

The League of Women Voters of the United States supports the position that action should be taken to support responsible management of our finite land resources and developed environment to ensure consideration of public interests and private rights.

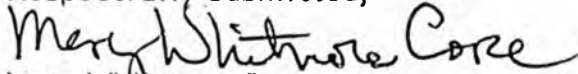
The proposed amendments to AS 46.03.320 directs the Department of Environmental Conservation to strengthen regulations prescribing the application of pesticides. The present regulations do not address weather conditions or wind speeds. It is important to protect private property rights and values in accordance with overall consideration of public health, safety and welfare.

The League of Women Voters of the United States supports policies and procedures that promote comprehensive long-range planning for conservation and development of water resources. Nationally ground water and aquifer contamination from pesticide runoff and misapplication is a critical problem. Passage of HB608 will help Alaskans avoid this serious and as yet irreversible problem.

The proposed legislation is timely direction from the Alaska State Legislature as the management of pesticides is a high priority on the Environmental Protection Agency's (EPA) 1986 agenda resulting in funds being made available to ADEC to hire one person as of July 1, 1986 to evaluate the Alaska State pesticide program and to bring the state program into compliance with the federal law. The basis of federal pesticide law is The Federal Insecticide, Fungicide, and Rodenticide Act now undergoing Congressional amendment.

Thank you for your leadership on this critical issue.

Respectfully submitted,



Mary Whitmore Core
Chairperson, Natural Resource Portfolio

Pesticides Finally Top the Problem List at E.P.A.

By PHILIP SHABECOFF

Special to The New York Times

WASHINGTON, March 5 — This year, nearly 25 years after Rachel Carson first warned of danger in her book "Silent Spring," the Environmental Protection Agency has put pollution by pesticides at the top of its list of most urgent problems.

A ranking of major issues distributed to key agency officials by the agency's Administrator, Lee M. Thomas, places in the No. 1 position control of pesticides already in commercial use.

Until recently, agency officials said, efforts to control air and water pollution and deal with toxic waste overshadowed the program for regulating public exposure to pesticides. Now Mr. Thomas and other officials say the agency is finally beginning to take the actions necessary to protect the public and wildlife from the effects of pesticides, the broad term the officials use for insecticides, herbicides, fungicides and other chemicals used to combat pests.

Environmentalists, scientists and other experts interviewed recently said the threat of pesticides to public health and the environment had increased with their use in the last quarter century. They said the Government had so far failed to carry out Congress's mandate of 1972 to protect people and the land, air, water and wildlife from the chemicals.

These critics acknowledged that under Mr. Thomas, under Dr. Jack A. Moore, the Assistant Administrator in charge of pesticides, and particularly under Steven Schatzow, assigned last year to head the pesticide division, the Environmental Protection Agency had begun to act aggressively to regulate pesticides.

But they also said it might be well into the next century before all the dangerous pesticides were banned, restricted or otherwise regulated.

In an interview, Mr. Thomas said increased resources would be brought to bear on pesticide regulation. President Reagan's budget for the fiscal year 1987, while cutting most other Federal programs, contains a modest \$1 million increase for the pesticide program, which would bring total spending to



United Press International

Lee M. Thomas, head of the Environmental Protection Agency.

\$22.4 million. And Mr. Thomas said other agency programs would join in the effort.

Exposed to Pesticides: 'Virtually Everyone'

"Pesticides dwarf the other environmental risks the agency deals with," Mr. Schatzow said. "The risks from pesticides are so much greater because of the exposures involved. Toxic waste dumps may affect a few thousand people who live around them. But virtually everyone is exposed to pesticides."

A number of developments in recent years have added new urgency to the need to regulate pesticides, experts say. Among them are these:

The discovery that pesticides are appearing in underground water supplies despite an earlier belief that they would not pass through the soil. To date, 17 pesticides, including aldicarb and ethylene dibromide, either of which might cause cancer in humans, have been found in the ground water of 23 states.

The discovery that some poisons

registered for use in the 50's, 60's and 70's can cause cancer, mutations and birth defects in humans and the realization that for most of the other chemicals on the market there is insufficient and sometimes fraudulently reported information about their effects on health and the environment.

The discovery of pesticide residue in a growing number of food products.

A growing awareness that huge volumes of pesticides are used inside homes, factories and hospitals and on lawns and farms, often by people untrained in their use or unaware of their dangers.

Complaints that farm workers are still inadequately protected from pesticides and that widespread illness results. A recent study by the World Resources Institute, a research group here, estimated that more than 300,000 farm workers a year in this country were affected by pesticide poisoning.

The growing export of pesticides, some of which are banned in this country, to developing countries where they often are uncontrolled.

The pesticide industry disputes the effects on farm workers. But it acknowledges a need for improved regulation of pesticides and is working with environmentalists for significant changes in the Federal Insecticide, Rodenticide and Pesticide Act, last amended in 1972.

'The Pesticide Problem Is Worse Than Ever'

Senator Jesse Helms, Republican of North Carolina, said recently that he was optimistic that a new law could be enacted this year. Efforts to toughen the pesticide statute have been stalled for more than a decade, in part because of opposition from pesticide, food processing and agricultural concerns.

To date, the environmental agency has been able to provide assurances of safety for 37 of the more than 600 active ingredients used in 45,000 pesticides on the market. Even at the more aggressive pace adopted recently, it can review only 25 such ingredients a year.

"I hate to sound like a typical environmental naysayer, but the pesticide problem is worse than it ever has



Associated Press

Dr. Jack A. Moore, the E.P.A. official in charge of pesticides.

been," said Albert H. Meyerhoff, a lawyer for the Natural Resources Defense Council, an environmental group.

According to E.P.A. figures, about 1.08 billion pounds of pesticides was used in this country in 1984, nearly double the amount in 1964.

Most of the experts interviewed said there were relatively few reliable studies of pesticides' effect on humans. Evidence that they can cause cancer comes chiefly from tests on animals.

"We have done a very poor job of collecting epidemiological information on people exposed to pesticides," said Charles Benbrook, executive director of the agricultural board of the National Academy of Sciences. "But the weight of evidence is clear: Exposure to pesticides is a cause of cancer."

Dr. Ronald J. Prokopy, a professor of entomology at the University of Massachusetts, said the toll in Bhopal, India, in the 1984 leak of a pesticide ingredient "reflects only a small portion of the number of humans that are poisoned by pesticides every year." More than 2,000 people died in Bhopal and 150,000 were injured.

Thursday, March 6, 1986

Page B12

He cited estimates by the World Health Organization that 500,000 people a year were affected each year by exposure to pesticides and at least 5,000 die.

Dr. Moore of the E.P.A. said that pesticides were generally safe if used properly but added, "Certain uses and practices may be unsafe." He noted the case of ethylene dibromide, a fumigant used on grain and fruit that is suspected of causing cancer in humans. It was banned by the agency for most uses two years ago after residue was found in a wide range of food products and in underground water supplies in several areas. "I am still astounded at some of the uses of EDB and how we could be so stupid," Dr. Moore said.

A Decade to Figure Out What It Wanted to Do

Dr. Moore said the environmental agency "took 10 or 12 years before it figured out what it wanted to do about pesticides."

"Now the pieces are coming together," he said. "I am proud of where we are going on pesticides compared to two years ago. The problem is, we are 10 years behind where we should be."

Agency officials explained that the pesticide law let the agency set standards for new products before they went on the market but did not allow removal of pesticides already being sold unless the agency could show they caused significant harm that outweighed the benefits.

Further, the agency had little relevant information on what harm the existing chemicals might cause. They had been registered for use before testing techniques were markedly improved over the last two to three decades. Hundreds of pesticides were approved on the basis of tests by Industrial Biotest Laboratories that a court later found were fraudulent.

But Mr. Benbrook of the National Academy of Sciences said the pesticides program "didn't have a spine," adding, "It had an institutional inclination to blink."

Mr. Schatzow of the environmental agency said problems multiplied in the first two years of the Reagan Administration. "A number of generalized thoughts were inappropriately applied to this program, such as, 'Let's get regulation off the back of industry and let's let the states make their own decisions,'" he said.

Mr. Schatzow said, and critics of the agency agreed, that there had since been a major turnaround. The pesticide program requires producers to submit data for determining whether chemicals should stay on the market. Companies that do not submit the information must stop selling the product.

"Special reviews" are being accelerated to determine if products pose an unreasonable risk to health, Mr. Schatzow said. He and other agency officials said the current arm's-length relationship with the regulated industry was not the case earlier in the Reagan Ad-

ministration. The regulators have also entered into negotiations aimed at reducing farmhands' exposure. And broader environmental concerns, such as pesticide effects on wildlife, are now getting attention.

Even so, the business of making sure pesticides are safe and safely used continues to move at a "glacial pace," in the words of Jay Feldman, coordinator of the National Coalition Against the Misuse of Pesticides, an alliance of grass-roots organizations.

Chemical Whose Review 'Apparently Got Buried'

The agency's actions on the pesticide daminozide, sold under the trade name Alar by Uniroyal Inc., provide a case in point. It is chiefly used to make apples firmer and redder and to make a crop ripen uniformly. Residue has been found in a range of processed apple products, including baby foods.

In the mid-1970's the E.P.A. received several studies suggesting that daminozide could cause cancer in humans. A review began in 1977 to see if it should stay on the market. But the review "apparently got buried under a pile of papers," according to one official, and nothing more happened until 1980. In 1981 the review was abandoned and the chemical was put in a reregistration process, a much slower procedure.

Renee Potosky, spokesman for Uniroyal, said company officials had a number of "normal business meetings" with E.P.A. officials in that period to talk about Alar and other products. If the meetings resulted in a slowing of the regulatory process on Alar, she said, it was because of agreement reached at the meetings on developing new testing methods.

Last year, after Dr. Moore and Mr. Schatzow took over the pesticide program, they proposed that Alar be banned because of the cancer studies. But the E.P.A.'s science advisory panel reviewed the studies and said they were too flawed for use in issuing regulations, including a ban.

In January, the agency announced it was leaving the product on the market, with some restrictions, and ordered more studies. If no further evidence of danger is produced, it will remain on the market. If new research indicates it causes cancer, it would be removed, but the process could take as long as four more years, or 13 years after the agency was first warned of possible problems.

"Alar very succinctly points out the quandary of dealing with old versus new chemicals," Dr. Moore said. "If it were a new chemical it would have to provide information that it is acceptable before being let on the market."

Uniroyal said it had conducted many tests and found the product safe.

E.P.A. officials and other experts, including Mr. Benbrook of the National Academy of Sciences, agree that the pesticides coming into use are generally safer than the chemicals that have been on the market. "I don't think

they have registered a really bad new chemical on the market in the past five years," Mr. Benbrook said.

Dr. Jack Early, president of the National Agricultural Chemicals Association, an industry group, called pesticides an irreplaceable part of a modern technological society. "We could not grow food and fiber economically without them," he said.

But Professor Prokopy of the University of Massachusetts said, "I find it truly remarkable and ironic that we at present are experiencing apparently just as great if not a greater level of crop injury from pests as we did before the arrival of DDT." DDT came into wide use after World War II.

He cited estimates by the Department of Agriculture that 32 percent of crops were lost to insect, disease and weed pests in 1945, while in 1980 such crop loss was 37 percent.

Professor Prokopy said some pesticide use was necessary. "But my philosophy is that least is best," he said. "The less you interfere with the biological system, the better off you are in the long run."

Department of Environmental Conservation in consultation with the Department of Health and Social Services."

Sec. 46.03.311. Public records. (a) Permits, permit applications, records, reports, and information and documentation obtained under AS 46.03.302 — 46.03.308 are available to the public for inspection and copying. However, upon a showing satisfactory to the commissioner that a record, report, permit, application, or information would, if made public, divulge methods or processes entitled to protection as trade secrets, the commissioner shall treat the record, report, permit, application, or information as confidential.

(b) Information that is confidential may be transmitted under a continuing restriction of confidentiality to other officers, employees, or authorized representatives of the state or of the United States if

(1) the person responsible for furnishing the record, report, permit, application, or information to which such information pertains is informed at least two weeks before the transmittal; and

(2) the information has been acquired by the department under the provisions of AS 46.03.296 — 46.03.311.

(c) The provisions of this section do not limit the department's authority to release confidential information during emergency situations. (§ 10 ch 93 SLA 1981)

Article 6. Pesticide Control.

Section

320. Authority

330. Public pesticide programs

Collateral references. — 61A Am. Jur. 2d, Pollution Control, §§ 293-295, 299, 300, 305-406.

39A C.J.S., Health and Environment, § 47.

Constitutionality of statutes for protection of vegetation against disease or infection. 70 ALR2d 852.

Liability for injury caused by spraying or dusting of crops. 37 ALR3d 833.

Sec. 46.03.320. Authority. (a) The department is authorized to

(1) regulate the transportation, testing, inspection, packaging, labeling, handling and advertising of pesticides and broadcast chemicals offered for sale, or placed in commerce for use in the state;

(2) regulate and supervise the distribution, application or use of pesticides and broadcast chemicals in any state project or program, or by a public agency under the jurisdiction of the state;

(3) regulate or prohibit the use of pesticides and broadcast chemicals.

(b) The department may provide by regulation for the licensing of private applicators of restricted-use pesticides and for persons engaged

in the custom, commercial or contract spraying or application of pesticides and broadcast chemicals. A person engaged in the custom, commercial, or contract spraying or application of pesticides and broadcast chemicals may, by regulation, be required to secure a surety bond or liability insurance. (§ 3 ch 120 SLA 1971; am § 1 ch 26 SLA 1977)

Effect of amendments. — The 1977 amendment, in subsection (b), inserted "private applicators of restricted-use pesticides and for" in the first sentence, deleted "including the requirement of a surety bond and liability insurance for the licensee" from the end of that sentence, and added the second sentence.

Sec. 46.03.330. Public pesticide programs. (a) No officer, agent or employee of the state, or of a borough or city of any class, may direct, carry out or participate in the spraying or application of a pesticide or broadcast chemical in any program or project involving funds, materials or equipment of the state, borough or city, except in accordance with regulations promulgated by the department under AS 46.03.320.

(b) Before a public project that would affect lands owned separately by two or more persons is initiated, the person directing the program shall give public notice of the program in the manner required by regulations of the department. The department shall conduct a public hearing on the proposed program if a hearing is requested by the governing body of the affected borough or city, or by a petition signed by at least 50 residents. The requirement for public notice or public hearing may be waived if the commissioner determines that a public emergency exists.

(c) The provisions of this section apply to home rule municipalities. (§ 3 ch 120 SLA 1971)

Article 7. Prohibited Acts and Penalties.

Section	Section
710. Pollution prohibited	810. Air and land nuisances
720. Construction and operation of certain facilities prohibited	820. Emergency powers
730. Pesticides	822. Strict liability for the discharge of hazardous substances
740. Oil pollution	824. Damages
750. Ballast water discharge	826. Definitions
755. Discharge reporting	828. Other rights of action not affected
758. Civil penalties for discharges of oil	830. Proof of financial responsibility required for petrochemical facility or hazardous waste disposal site operation
760. Civil action for pollution; damages	833. Compliance with financial responsibility requirements
765. Injunctions	840. [Repealed]
770. Detention of vessel without warrant as security for damages	850. Compliance order
780. Liability for restoration	
790. Criminal penalties	
800. Water nuisances	

ashes, offal, oil, tar, dyestuffs, acids, chemicals, heat from cooling or other operations, and other substances not sewage or industrial waste which may cause or tend to cause pollution of the waters of the state;

(13) "person" means any individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or any other entity whatsoever;

(14) "pesticide" means any chemical or biological agent intended for preventing, destroying, repelling, or mitigating plant or animal life and any substance intended for use as a plant regulator, defoliant or desiccant, including but not limited to insecticides, fungicides, rodenticides, herbicides, nematocides and biocides;

(15) "pollution" means the contamination or altering of waters, land or subsurface land of the state in a manner which creates a nuisance or makes waters, land or subsurface land unclean, or noxious, or impure, or unfit so that they are actually or potentially harmful or detrimental or injurious to public health, safety or welfare, to domestic, commercial, industrial, or recreational use, or to livestock, wild animals, bird, fish, or other aquatic life;

(16) Repealed by § 12 ch 172 SLA 1978.

(17) Repealed by § 12 ch 172 SLA 1978.

(18) "sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments, or other places, together with ground water infiltration and surface water as may be present; the admixture with sewage of industrial wastes or other wastes is "sewage";

(19) "sewer system" or "sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other appurtenant constructions, devices, and appliances used for conducting sewage, industrial waste, or other wastes to a point of ultimate disposal;

(20) "standard" means the measure of purity or quality for air, water, and land in relation to their reasonable and necessary use as established by the department;

(21) "treatment works" means a plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary land fills, or other works installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage, industrial waste, or other wastes;

(22) "waters" includes lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of Alaska, Bering Sea and Arctic Ocean, in the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering the state or under the jurisdiction of the state.

POISONING MAY BE:

Acute - occurring by ingestion (consumed or inhaled) of concentrated or diluted particles or by major contamination of skin.

Chronic - resulting from exposure of low concentration over a longer period of time and may be due to wearing contaminated clothing.

DANGER: Either acute or chronic can be misdiagnosed as flu, food poisoning, skin rash, eczema, cold, allergy or drunkenness.

Handlers and users should be prepared to:

1. Recognize signs and symptoms of poisoning for those pesticides commonly used.
2. Know where and how to get help.
3. Identify type and amount of poisoning involved; whether contacted by skin absorption, inhaled or by mouth (by eating or smoking with contaminated hands.)
4. Take proper emergency measures until help arrives or the victim can be transported to the hospital. Follow first aid and medical treatment recommendations stated on the label.
5. Locate all information about the pesticide to aid in diagnosis and antidote: the label name, chemical manufacturer and address, precautionary statement, etc.
6. Contact POISON CONTROL CENTER for information:

Fairbanks Memorial Hospital 456-7182
Anchorage Providence Hospital 563-3393
Seattle Poison Control Center 206-634-5252

All are listed under POISON CONTROL CENTER

Pesticide poisoning affects the body in a variety of ways, depending on its chemical composition. Some are easily absorbed through the skin, hair, eyes or under fingernails.

Fumes, vapors and dust laden with particles cause damage to lungs and other organs. The bloodstream becomes affected. Licking lips or handling cigarettes while handling or spraying pesticides will draw poison into the body. The body will cope with small amounts. Build-up of some chemicals are irreversible and can cause permanent disability or death.

EXAMPLES OF PESTICIDE COMPOUNDS AND POISONING SYMPTOMS

ORGANOPHOSPHATES

EXAMPLES: Co-Ral, Diazinon, Parathion, Malathion, etc.

SYMPTOMS:

MILD: Dizziness
Tearing - shrinking pupil
Vomiting and diarrhea
Excessive sweating and salivation
Drop in heart beat to 50 per minute
Rippling of surface muscles below the skin
Loss of appetite
Nausea and cramps

MODERATE: The above symptoms advance to:
Pinpoint pupils
Muscle twitching
Bronchial discomfort
Inability to walk due to incoordination or weakness

SEVERE: Unconsciousness - near death
Local or generalized seizures
Pupils widely dilated
Profuse secretion from eyes, nose, mouth, lungs and skin

DIPYRIDYL COMPOUNDS

EXAMPLES: Paraquat, Diquat

SYMPTOMS: If ingested, immediate pain in mouth, throat, chest and abdominal area with vomiting, diarrhea and muscle aching.

ALSO: Irregular growth of fingernails
Fingernails turn black
Throat and nose irritation
Nosebleeds
Injury to lung tissue

Note: Symptoms may seem moderate but within days kidney and liver damage will result in jaundice and urinary disorders. Within 3 to 14 days coughing, rapid breathing and heavy fluid build-up in lungs occurs. Possible rapid growth of fibrous connective tissue on lung surface may develop which cannot be reversed or stopped. A small amount will trigger deterioration which continues after poison is gone.

ORGANOCHLORINE COMPOUNDS

EXAMPLES: Toxophene, Chlordane, Heptachlor, etc.

SYMPTOMS:

Attacks the nervous system as a powerful stimulant or convulsant. Nausea and vomiting is first symptom, followed by apprehension, hyperactivity and mental confusion, dizziness, muscle twitching.
Later: severe convulsions, affecting large muscle group similar to epileptic seizures.

Note: Neither sweating nor excessive secretions occur. No specific treatment except to empty stomach, if ingested. Follow specific first aid instructions on the pesticide label. CALL POISON CONTROL before inducing vomiting. When skin has been exposed, remove contaminated clothing and wash victim thoroughly with detergent and water.

STRYCHNINE: Vertebrate poison. An alkaloid extracted from the seeds of *Strychnos nux Vomica*

SYMPTOMS: Acts on the central nervous system within 10 - 30 minutes, resulting in violent convulsions. Death results from intense muscle spasms that stop breathing during convulsions. Stimulation of victim intensifies reaction. Isolate victim from confusion, noise, light. Keep victim warm.
Physician should administer anticonvulsants.

ZINC PHOSPHIDE:

EXAMPLES: Phosrin, Zinc-Tox, Gopha-Rid

SYMPTOMS: Diarrhea and stomach pain
Nausea and vomiting
Tightness in chest
Excitement and feeling of coldness
Can produce unconsciousness, coma & death
Stimulates the nervous system to bring on convulsions. Is easily absorbed through skin and breathing fumes. Poisons accumulate in the body and are slow acting.

TREATMENT INCLUDES: Inducing vomiting by mechanical stimulation or Syrup of Ipecac. Follow with a 3 - 5% solution of water and sodium bicarbonate to neutralize the acid and settle the stomach. Two table-spoons baking soda per pint of water equals a 6% solution. Reduce to one tablespoon per pint for a 3% solution.

IMMEDIATE TREATMENT IS CRITICAL!

DO NOT USE ANY HOME REMEDY

DO NOT TAKE CHANCES

Time is the key to recovery and survival.

1. Locate pesticide labels or learn the kind of chemicals involved and how they were used. Note if contamination is via skin or ingestion.
2. Check label and follow recommended emergency measures.
3. Contact: Poison Control Center for advice.
4. If advised, transport to doctor and take labels with you!
5. Remove chemical soaked clothing. Wash victim's skin with large amounts of detergent and water, as recommended in publications listed below.
6. Remember to prevent self-contamination!

IMPORTANT - The LABEL is of utmost importance! It provides information about:

Proper content
Proper handling and storage
Protective clothing
Proper safety techniques for application
Necessary emergency measures.

The label also states that: "It is a violation of Federal Law to use the product in a manner inconsistent with its labeling." If one does not adhere to the label directions, the federal law will have been violated.

FOLLOW ALL LABEL DIRECTIONS

USE PESTICIDES SAFELY

PUBLICATIONS AVAILABLE:

Protect your Family - Tips for Laundering Pesticide Contaminated Clothing - HE 382

Protective Clothing for Handling Pesticides - HE 383

Applying Pesticides Correctly - A guide for Private and Commercial Applicators, published by U.S.D.A. and U.S.E.P.A.

Order from: Extension Horticulturist
Cooperative Extension Service
Building H
Anchorage Community College
Anchorage, Alaska 99508-4670

177/1/85/MB

The information given herein is supplied with the understanding that no discrimination is intended and no endorsement by Cooperative Extension Service is implied.

The University of Alaska's Cooperative Extension Service programs are available to all, without regard to race, color, age, sex, creed, national origin or handicap and in accordance with all applicable state and federal laws.

Issued in furtherance of Cooperative Extension work, acts of May 8 and June 30, 1914, in cooperation with the U.S. Department of Agriculture, James W. Matthews, Director, Cooperative Extension Service, University of Alaska.

The misuse or careless use of rodenticides, insecticides, herbicides, fungicides or other pesticides pose a serious threat to the user. They can be extremely toxic.

SIGNS AND SYMPTOMS OF PESTICIDE POISONING

By Marilyn Backman
Extension Home Economist



COOPERATIVE
EXTENSION
SERVICE

UNIVERSITY OF ALASKA,
USDA AND SEA GRANT COOPERATING

A-00542

Reprinted August 1985

LABELS are of prime importance to understanding proper use, storage and first aid treatment.

SAVE THE LABEL

Keep it accessible and readable in case of an emergency.

Read the label BEFORE using any pesticide.

It may be a matter of life or death!

Follow all precautionary statements.



RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date

HB

627

HOUSE
COMMITTEE REPORT

3/21

(9)

Date referred: 2/17/86

HEALTH, EDUCATION
& SOCIAL SERVICES
FURTHER REFERRALS:

DATE: 3/19/86

The RESOURCES Committee has considered HB 627

"An Act relating to the use of water."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS HB 627 (Resources) same title

new title

and recommends do pass

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Shultz *Dink Shultz*

Cato *Bette Cato*

Jenkins *Roger Jenkins*

Pearce *Walter Pearce*

Sund *John Sund*

Thompson *David W. Thompson*

*DON'T THROW
COLD WATER ON
THIS BILL!*

Miller(N) *M.W. Miller*

Wallis *F. Key Wallis*

Dink Shultz
Co-Chairman Shultz

██████ - NEW STATUTORY LANGUAGE
██████ - EXISTING STATUTORY LANGUAGE
██████ - TECHNICAL LANGUAGE CHANGE

Bradley
3/18/86

Original sponsor: M.W.Miller by request

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 627 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION
5 A BILL

6 For an Act entitled: "An Act relating to the use of water."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 46.15 is amended by adding a new section to read:

9 Sec. 46.15.045. SMALL SCALE USE OF WATER. A person may use less
10 than a significant amount of water without a permit unless the commis-
11 sioner determines that the use of less than a significant amount of
12 water is not in the public interest. A person using less than a
13 significant amount of water acquires no water right or priority unless
14 an application is filed and a permit or certificate is issued under
15 AS 46.15.030 - 46.15.185.

16 * Sec. 2. AS 46.15.133(f) is amended to read:

17 (f) The commissioner may, by regulation, designate additional
18 types of appropriations that [WHICH] are exempt from this section and
19 provide simplified procedures for ruling on the applications.

20 * Sec. 3. AS 46.15.133 is amended by adding a new subsection to read:

21 (g) An application to appropriate not more than 1,000 gallons of
22 water a day is exempt from the notice provisions of this section.
23 Notwithstanding this subsection, the commissioner may require public
24 notice under this section

25 (1) on a determination that the total amount of water
26 available in an area is limited considering the number of potential
27 users from the source of the water; or

28 (2) on request of the municipality in which the area is
29 located.

1 * Sec. 4. AS 46.15.260 is amended to read:

2 Sec. 46.15.260. DEFINITIONS. In this chapter, unless th
3 context otherwise requires,

4 (1) "appropriate" means

5 (A) to divert, impound, or withdraw a quantity o
6 water from a source of water, for a beneficial use, or

7 (B) to reserve water ~~under~~ [IN ACCORDANCE WITH
8 AS 46.15.145;

9 (2) "appropriation" means

10 (A) the diversion, impounding, or withdrawal of a
11 quantity of water from a source of water for a beneficial use, or

12 (B) the reservation of water ~~under~~ [IN ACCORDANCE
13 WITH] AS 46.15.145;

14 (3) "beneficial use" means a use of water for the benefit
15 of the appropriator, other persons or the public, that is reasonable
16 and consistent with the public interest, including, but not limited
17 to, domestic, agricultural, irrigation, industrial, manufacturing,
18 fish and shellfish processing, navigation and transportation, mining,
19 power, public, sanitary, fish and wildlife, recreational uses, and
20 maintenance of water quality;

21 (4) "source of water" means a substantial quantity of water
22 capable of being put to beneficial use;

23 (5) "water" means all water of the state, surface and
24 subsurface, occurring in a natural state, except mineral and medicinal
25 water;

26 (6) "commissioner" means the commissioner of natural re-
27 sources;

28 (7) "director" means the director of ~~land and water~~
29 management [THE DIVISION OF LANDS], Department of Natural Resources;

1 (8) "person" includes an individual, partnership, asso-
2 ciation, public or private corporation, state agency, ~~municipality~~
3 [POLITICAL SUBDIVISION] of the state, and the United States. [.]

4 (9) "mineral and medicinal water" means

5 (A) water of a hot spring or spring with curative
6 properties ~~that~~ [WHICH] has been reserved by the federal govern-
7 ment under Public ~~Law~~ and Order No. 399; and

8 (B) geothermal fluid, as [THE TERM IS] defined in
9 AS 41.06.060;

10 (10) "significant amount of water" means

11 (A) a use of more than 5,000 gallons of water in a
12 single day from a single source;

13 (B) the regular daily or recurring seasonal use of
14 more than 500 gallons of water a day for 10 days or more a year
15 from a single source;

16 (C) a water use that may adversely affect the water
17 rights of another appropriator or the public interest.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 627
 Title : Use of Water Without Appropriation

Sponsor : M.W. Miller
 Requestor House Resources
 Date of Request : 3-18-86

FISCAL DETAIL

Agency Affected : Natural Resources
 BRU : Minerals Management, Land & Water Mgmt.

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Gary Johnson Phone : 762-4346
 Division : Land & Water Management Date : 03-18-86

Approved by Commissioner : Ned Fairbank Date : 03-18-86
 Agency : Natural Resources

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Alaska State Legislature

REPRESENTATIVE
MIKE W. MILLER
PO Box 55094
North Pole, Alaska 99705
(907) 488-2687

District 18
North Pole
Badger Road
Eielson
Moose Creek
Salcha



White Mountain
Pouch V
Juneau, Alaska 99811
(907) 465-4976

House of Representatives

MEMORANDUM

TO: Representative Mike W. Miller

FROM: Staff *Myer*

DATE: 3/18/86

RE: Analysis of House Bill 627

Section 1

amends the Water Use Act (AS 46.15) by stating that a water use permit is not necessary for an individual who wishes to use an insignificant amount of water unless such a use is against the public interest as determined by the Commissioner of DNR. A person using less than a significant amount of water, who decides not to apply for a water use permit for the use, does not acquire a right or priority to the water resource.

Section 2

allows the Commissioner of DNR to promulgate regulations to exempt public notice of applications for water rights in addition to the exemption outlined in Section 3 of this bill.

Section 3

allows the Commissioner of DNR to issue a water use permit for up to 1000 gallons of water per day without providing public notice as outlined in AS 46.15.133. The Commissioner of DNR may disregard this subsection if:

- (1) he or she determines the total amount of water available to an area is limited for the total number of possible users; or,
- (2) the application being filed is for an area that lies within the boundary of a municipality that has requested notification of all water appropriation within its boundaries.

Section 4

(I) rewrites the current statutory language of AS 46.15.260. definitions (1)-(9) to make technical language modifications as requested by the Division of Legal Services. These changes do not alter the affect of the current statutory language.

(II) adds an additional definition number 10 which defines "significant amount of water" as:

- a) a use of more than 5,000 gallons of water in one day from a single source; or,
- b) the recurring daily use of more than 500 gallons of water for 10 or more days, in a year, from a single source; or,
- c) a use that may adversely affect the water rights of others users or the public interest.

MEMORANDUM

TO: Representative Mike W. Miller

FROM: Staff

DATE: 3/12/86

RE: Current statutory and regulatory references allowing the small scale use of water

The current statutory references pertaining to the use of water are found in Title 46 of the Alaska Statutes and Title 11 of the Alaska Administrative Code.

AS 46.15.040. Right to appropriate. (a) A right to appropriate water can be acquired only as provided in this chapter. No right to use of water either appropriated or unappropriated shall be acquired by adverse use or possession.

(b) A right to appropriate water shall be obtained by first making application to the commissioner for a permit to appropriate. The commissioner shall by regulation prescribe the form and contents of the application and the procedure for filing the application. If a permit is granted and the means of appropriation is constructed, a certificate of appropriation may be obtained.

The Alaska Administrative Codes speak to the appropriation of water in 11 AAC 93.

11 AAC 93.040. APPLICATION FOR A PERMIT TO APPROPRIATE WATER.

(a) Unless exempted by sec. 920 of this chapter, no person may lawfully appropriate water of the state without first obtaining a permit under the provisions of secs. 40-120, 210-220, or 260 of this chapter.

11 AAC 93.920. EXEMPTIONS. Any person using less than a significant amount of water as defined in sec. 970 of this chapter is not guilty of a misdemeanor for appropriating water without a permit. However, any person using less than a significant amount of water acquires no water right or priority unless an application is filed and a permit or certificate is issued in accordance with secs. 40-140 of this chapter. Water used without a permit or certificate is subject to appropriation by others and the use of water without a water right is subject to curtailment in order to supply water to lawful appropriators of record.

11 AAC 93.970. DEFINITIONS. Unless the context indicates otherwise, in this chapter

(14) "significant amount of water" means any use of 5,000 or more gallons of water in a single day from a single source, or the regular daily or recurring seasonal use of 500 or more gallons of water per day for 10 days or more per year from a single source, or any water

use that may adversely affect the water rights of other appropriators or the public interest.

With regard to the public notice requirements when a person applies for a water use permit, 11 AAC 93.100 allows the following exemption for individuals applying for water rights for domestic use.

11 AAC 93.100 EXEMPTIONS TO NOTICE. An application to appropriate no more than 1000 gallons of water per day for single family domestic purposes is exempt from the notice provisions of sec. 80 of this chapter. However, in areas where the total amount of water available appears to the department to be limited with respect to the number of potential users of the same source, or upon the request of a municipality as defined by AS 29, the commissioner will, in his discretion, require public notice as provided by sec, 80 of this chapter.



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date

H B

6 7 2

HOUSE
COMMITTEE REPORT

3/2

(9)

Date referred: 2/17/86

FURTHER REFERRALS: JUDICIARY

DATE: March 26, 1986

The RESOURCES Committee has considered HB 632

"An Act relating to a right to farm."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS for HB 632 (Resources) same title
- new title

and recommends do pass

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note
 - first

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Shultz Dink Shultz

Herrmann Adelheid Herrmann

Cato Betty Cato

Jenkins James Jenkins

Pearce William Pearce

Sund Arthur Sund

Wallis J. Kay Wallis

David W. Thompson - NO REC
Thompson

Dink Shultz
Co-Chairman Shultz

Bradley
3/25/86

Original sponsor: Resources Committee

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 632 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to a right to farm."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. LEGISLATIVE FINDINGS. The legislature finds that agricul-
9 ture makes an important contribution to the economy of the state and that
10 the encouragement, development, improvement, and preservation of agricul-
11 ture will result in a general benefit to the health and welfare of the
12 people of the state. The legislature further finds that conflict between
13 agricultural operations and urban and suburban land uses threatens the
14 permanent loss of agricultural land.

15 * Sec. 2. AS 09.45 is amended by adding a new section to read:

16 Sec. 09.45.235. AGRICULTURAL OPERATIONS AS PRIVATE NUISANCES.

17 (a) An agricultural operation and an operation appurtenant to an
18 agricultural operation is not and does not become a private nuisance
19 by a changed condition that exists on neighboring land if the agricul-
20 tural operation has been in operation for more than three years and if
21 the agricultural operation was not a nuisance at the time the agricul-
22 tural operation began.

23 (b) The provisions of (a) of this section do not apply to a
24 nuisance resulting from improper or negligent conduct of agricultural
25 operations or operations appurtenant to an agricultural operation.

26 (c) The provisions of (a) of this section supersede a municipal
27 ordinance or regulation to the contrary.
28
29

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 632
Title : Road to Farm

Sponsor : House Resources Committee
Requestor : House Resources Committee
Date of Request : 3/24/86

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Agricultural Management

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
----------------	------------	------------	------------	------------	------------	------------

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
----------------	------------	------------	------------	------------	------------	------------


FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Carol Wilson  Phone : 465-2400
Division : Commissioner's Office Date : 3/24/86

Approved by Commissioner : Carol Wilson - Special Date : 3/24/86
Agency : Department of Natural Resources

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Right-to-farm laws: Do they resolve land use conflicts?

By Mark B. Lapping, George E. Penfold, and Susan Macpherson



Doug Wilson

UNDERLYING much of the farmland controversy are local land use conflicts between farmers and rural and suburban residents and industrial users. The irony of the situation is obvious: While farming creates and maintains the atmosphere and bucolic landscape so many wish to be part of, it is the business of agriculture, which mandates certain practices and functions, that many find offensive. The result is conflict that prompts nonfarming neighbors to attempt to restrict or eliminate agricultural practices. This often translates itself into a nonfarming majority that employs land use controls to regulate farming or that resorts to nuisance lawsuits to enjoin or restrict certain practices. What many seek, then, is farmland without farms!

About 30 states have "right-to-farm" laws to address these conflicts. Although they vary considerably, all of the laws attempt to do two things. First, they seek to supersede the common law of nuisance. Second, they favor agricultural uses of

land above all others. The statutes thus attempt to establish a "first-in-time, first-in-right" logic whereby pre-existing agricultural uses have a primacy against all others. The presumption is this: If a farm constitutes a nuisance, it does so only as neighboring land uses change, and the owners of the neighboring land are themselves responsible for any liabilities to their property or person.

New York the forerunner

The genesis of right-to-farm laws can be found in New York State's pioneering agricultural district law (1971). While providing a means for farmers to create a district to preserve critical masses of farmland, the law also deals with the issue of potentially restrictive controls or lawsuits:

"No local government shall exercise any of its powers to enact local laws or ordinances within an agricultural district in a manner which would unreasonably restrict or regulate farm structures or farming practices in contravention of the purposes of the act unless such restrictions or regulations bear a direct relationship to the public health or safety."

Similar statements occur in the agricultural district laws of Virginia (1977) and Illinois (1979). Maryland's statute (1977) is more specific, noting that the "operation

at any time of any machinery used in farm production or the primary processing of agricultural products..." is acceptable so long as farm practices do not "cause bodily injury or directly endanger human health...."

The effectiveness of these sections of state agricultural district laws cannot be easily ascertained. Farmers apparently perceive them to be beneficial because conflict between neighbors is a specific, long-term concern of the farming community (12). This element of the New York law has seldom been used, but its existence may be enough to deter governments and individuals from pressing claims or promulgating restrictive ordinances (3).

North Carolina's statute (1979) has been used as a model for many right-to-farm laws. The purposes of that law are straightforward:

"It is the declared policy of the State to protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. When nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations. Many are discouraged from making investments in farm improvements. It is the purpose of this [law] to re-

Mark B. Lapping is professor and director and George E. Penfold is assistant professor, University School of Rural Planning and Development, University of Guelph, Guelph, Ontario, N1G 2W1. Susan Macpherson is a land use analyst, Farmland Preservation Branch, Ontario Ministry of Agriculture and Food, Toronto, Ontario.

duce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed a nuisance."

The law maintains that a nuisance does not exist if three conditions can be established: the farm did not constitute a nuisance at the time of initial operation for at least one year prior to the suit; the claim of nuisance is based upon changing local land uses and does not arise from either negligence or improper operation on the part of the farmer; and the alleged nuisance does not contribute either to flooding or water pollution.

A more sophisticated approach was incorporated into Iowa's livestock feedlot nuisance law. The purpose of this law is to provide specific protection for feedlots from nuisance suits brought by neighbors who establish themselves subsequent to the feedlot's establishment. Section 2 of the act reads:

"In any nuisance action or proceeding against a feedlot brought by or on the benefit of a person whose date of owner-

ship of realty is subsequent to the established date of operation of that feedlot, proof of compliance with sections three (3) and four (4) of this Act shall be an absolute defense, provided that the conditions or circumstances alleged to constitute a nuisance are subject to regulatory jurisdiction in accordance with either section three (3) or four (4) of this Act."

Compliance with the appropriate sections of the act relate to the Iowa Department of Environmental Quality's water pollution abatement program and relevant local zoning ordinances, where they exist (6). In this way Iowa seeks to guarantee that feedlots will be brought into compliance with overall state environmental objectives and appropriate local land use controls.

The State of Washington's law contains elements of both the standard North Carolina approach and some of the specificity of the Iowa law. But unlike all the other right-to-farm laws, Washington's law seeks to prevent rural land subdivisions that may trigger nuisance-like disputes and actions.

Under the Washington statute any agricultural operator who "sells or has sold a portion of that land contiguous to a farm for residential uses" forfeits the right to qualify for protection under the law. Although the logic of preventing farmers from contributing to the problem through the creation of new lots appears self-evident, no other jurisdiction has enacted such a provision.

The matter of scope

A variety of farming and farm-related operations are covered under the right-to-farm statutes. In some cases, "farms" receive protection. In others, "agricultural operations" are covered. Some laws protect food processing and related commercial enterprises. Most of the laws require that protected agricultural operations predate competing land uses, though a majority specify only a minimum of one-year prior operation. Nearly all note that appropriate state and federal laws, such as environmental regulations, cannot be superseded even though local ordinances that are contrary to agriculture are nullified.

While farms and related operations receive protection under these statutes, the laws almost uniformly require that the farms and related operations be managed properly. The most common requirement is that farms maintain "good farming practices," though these are rarely defined. Some laws do not cover farm operations that pollute or "change" water conditions, are run in a negligent or improper manner, or that negatively affect health and safety standards.

Because most right-to-farm laws are relatively new, few have been tested in the courts. An exception is Connecticut's statute, which was held valid in *De Capua v. Cella et al* (7, 11). In this case, the judge noted that the "plaintiff came to the nuisance" and that "the total inconvenience... is relatively small in comparison with the nature and conditioning of defendants' operation as dairy farmers." Moreover, because the farm was operated "in a proper manner," as specified by an inspector for the state's agricultural department, the plaintiff was "not entitled to an injunction" or "an order for monetary damages."

The matter of trespass

Right-to-farm laws are aimed, in the main, to protect farmers against nuisance suits and local ordinances that would make farms nuisances because of changes in neighborhood land uses. Another aspect of the problem, that of trespass, has not been

State	Type of Agricultural Operation Protected*	Farm Must Predate Other Land Uses	Must Predate by 1 Year Minimum	Supersedes Local Ordinances
Alabama			X	X
Arizona	agricultural operations	X		
Connecticut			X	
Delaware			X	
Florida			X	X
Georgia			X	X
Idaho	agricultural operations		X	X
Illinois	farms		X	
Indiana	agricultural operations		X	
Kentucky	agricultural operations		X	X
Maryland	agricultural operations		X	
Massachusetts				X
Michigan	farms, farm operations	X		
Mississippi	agricultural operations		X	
Missouri	agricultural operations		X	
New Hampshire	agricultural operations		X	
New Jersey	commercial farms			X
New Mexico	agricultural operations		X	
New York	agricultural activities	X		
North Carolina			X	X
North Dakota	agricultural operations		X	X
Oklahoma	agricultural activities			
Oregon	farms			X
Rhode Island	agricultural operations			
South Carolina			X	
Tennessee		X		
Vermont	agricultural activities	X		
Virginia	agricultural operations		X	X
Washington				
Wisconsin	agricultural practices	X		

*Note: Agricultural operations include farming, processing, and all manner of agriculturally related enterprises; agricultural activities appear to be more farm-related and less food industry-oriented.

Conditions not protected under right-to-farm laws.

State	Negligent Management	Improper Management	Water Pollution or Changed Condition	Affects to Health/Safety
Alabama	X	X	X	
Arizona	X			X
Connecticut	X			
Delaware	X	X		
Florida				X
Georgia				
Idaho	X	X		X
Illinois	X	X	X	
Indiana				
Kentucky	X	X	X	
Maryland				
Massachusetts				
Michigan				
Mississippi				
Missouri	X	X	X	
New Hampshire	X	X		X
New Jersey				X
New Mexico	X			
New York				
North Carolina	X	X	X	
North Dakota	X	X	X	
Oklahoma				
Oregon	X			X
Rhode Island	X	X		
South Carolina	X	X	X	
Tennessee				
Vermont				X
Virginia	X	X	X	X
Washington				
Wisconsin				

adequately dealt with in the context of these laws. Historically, trespass requires a physical invasion of property. In recent decades, however, at least 10 jurisdictions have rendered judgments that accord dust, noise, and odors—traditional nuisance externalities—trespass status. As one commentator noted of Oregon's right-to-farm law, "Without protection against trespass, the right-to-farm is virtually ineffective" (10).

An evaluation

What, then, are we to make of right-to-farm laws? First, right-to-farm laws are popular with state legislatures and the agricultural community. Even granting the newness of these laws, it is surprising that so few court tests have arisen as a result of their promulgation. This may suggest that such laws are long on rhetoric and short on impact and delivery. Perhaps further court tests are needed (4).

Second, whereas most policies in the past were directed toward the solution of certain basic land use issues and problems, right-to-farm laws respond to site-specific concerns and particular agricultural practices.

Third, right-to-farm laws tend to ignore the contemporary practice of nuisance law. Court-inspired remedies are seldom either/or judgments. Instead, they often force the nuisance generator to use technological mitigation techniques to reduce or eliminate externalities so that both parties can carry on their activities with a minimum of economic and spatial disruption. If we follow the practice established by the nonpoint pollution program of the U.S. Department of Agriculture, this is very likely to mean that the costs of mitigation must be absorbed overwhelmingly by farmers. This invariably raises a number of important equity questions, especially given the dubious nature of the types of nuisances involved.

Fourth, an evaluation of right-to-farm laws indicates that many of these legal instruments use vague terminology, are ambiguous, and may be open to due-process challenges. And, as Ed Thompson of the American Farmland Trust has noted, "creative legal draftsmanship by county and township commissions might very easily result in local ordinances which are entirely consistent with 'right-to-farm' laws, but which significantly restrict agricultural operations" (9).

For all their weaknesses, however, right-to-farm laws represent an attempt to deal with some of the problems associated with changing land use and community values brought about, in part, by the "counterstream" or return migration to rural areas (1). Perhaps not unlike the restoration of some urban neighborhoods, there is more than a trace of class conflict involved in what may be seen as "the gentrification of the countryside." Certainly this phenomena can be observed in a number of local ordinances and plans that erect barriers against the siting of mobile homes and mobile home parks in many rural regions of the country (5). If anything else, right-to-farm laws attempt to educate a public long separated from the processes of food production.

Perhaps the best solution to these problems was suggested by Noel Perrin in his essay "The Rural Immigration Law." "The solution" to the problems of newcomers with new values who seek to change rural areas is "a good, thorough immigration law. It wouldn't actually keep Don and Sue out, it would just require them to learn rural values before they were allowed to stay" (8). Sometimes that which is said in jest may be more astute and appropriate than the laws of the land. In terms of the right to farm, this may indeed prove to be the case.

REFERENCES CITED

1. Brown, D. L., and J. M. Wardwell. 1980. *New directions in urban-rural migration: The population turnaround in rural America*. Academic Press, New York, N.Y.
2. Fuggitt, C. V., and P. R. Voss. 1979. *Growth and change in rural America*. Urban Land Inst., Washington, D.C.
3. Herem, Robert, et al. 1980. *Agricultural districts and land use: A pilot study*. Dept. Agr. Econ., Cornell Univ., Ithaca, N.Y.
4. Keene, J. 1981. *Incentives: Right-to-farm legislation*. In R. Coughlin et al. [eds.] *The Protection of Farmland: A Reference Guidebook for State and Local Governments*. National Agricultural Lands Study, Washington, D.C.
5. Lapping, M. 1982. *Changing rural housing policies: Vermont's mobile home zoning law*. *Small Town* 12: 4.
6. McCarthy, M., and S. Matthews. 1980. *Foreclosing common nuisance for livestock feedlots: The Iowa statute*. *Ag. Law J.* 2(2): 186-221.
7. National Association of State Departments of Agriculture. 1982. *Farmland Notes* 1: 11.
8. Perrin, Noel. 1981. *The rural immigration law*. In *Second Person Rural: More Essays of a Sometime Farmer*. Penguin Books, New York, N.Y. pp. 129-132.
9. Thompson, E. 1980. *Right-to-farm laws examined*. *Aglands Exchange* 2: 2.
10. Todd, Jennifer B. 1982. *The right to farm in Oregon*. *Willamette Law Rev.* 18: 153-171.
11. U.S. Department of Agriculture. 1982. *Land Use Notes* 35. Washington, D.C.
12. White, D., and K. Carner. 1981. *New York's agricultural district program: An analysis of farmers' perceptions in 17 counties*. Dept. Agr. Econ., Cornell Univ., Ithaca, N.Y. □

CHAPTER 5

INCENTIVES: RIGHT-TO-FARM LEGISLATION*

I. INTRODUCTION

There is a basic incompatibility between many types of agricultural activity and residential use. As city people begin to move into rural areas, they object to the smells, noises, dust, pesticides, and other by-products of operating a modern farm. These complaints can take several forms. A landowner may sue the farmer, claiming that his farm operations are a nuisance. He may try to persuade the local government to pass an ordinance limiting various farm activities. He may report the farmer to a county or state agency that is responsible for enforcing air or water pollution control laws for the purpose of getting an order to end the offending farm practices.

Farmers find that defending themselves against such actions can be expensive, time-consuming and aggravating, even if they are successful. They have turned with increasing frequency to their state legislators for protection. The laws that have been passed in response have been called "right-to-farm" laws. They recognize that just as new residents in a rapidly urbanizing area should be protected against the unhealthful and offensive odors of a nuisance, such as a large feedlot, that has become "a right thing in the wrong place—like a pig in the parlor, instead of the barn,"¹ so too must farmers in agricultural areas be protected against legal actions by their neighbors and local governments arising from the fact that homes have been built in the wrong places—so that parlors open out on pigpens.

II. PURPOSES AND CHARACTERISTICS OF RIGHT-TO-FARM LEGISLATION

At least seventeen states, listed in Table 5-1, have adopted some form of right-to-farm legislation.² They fall into four major groups, each of which is based to a greater or lesser extent on a different prototype.

A. Laws Based on New York's Statute

New York's law was enacted in 1971 and has served as a model for the Illinois, Oregon,

Virginia, and the Twin Cities Metropolitan Area legislation. It provides:

No local government shall exercise any of its powers to enact local laws or ordinances within an agricultural district in a manner which would unreasonably restrict or regulate farm structures or farming practices in contravention of the purposes of the act unless such restrictions or regulations bear a direct relationship to the public health or safety.

As reported in Chapter 4, little explicit use has been made of the law, and there have not been any judicial interpretations of its language. Regulations that restrict farm structures and practices in support of the purposes of the act are permitted, as are regulations of lot size, subdivision, and partitioning that do not restrict farm structures or practices. Regulations that bear a direct relationship to the public health or safety are permitted by the law even though they unreasonably restrict farm structures and practices in contravention to the purposes of the act. (However, it is not clear how a local regulation could be constitutional if it regulates farm structures and practices in an unreasonable way.) Only regulations that protect the public morals or general welfare, such as certain provisions of zoning ordinances, are curtailed by the law, and even then are permissible if the restrictions they impose on farming are reasonable. This is specifically recognized in Virginia's legislation. It is not clear exactly how a farmer would avail himself of the protection, provided by the act. Presumably, he could use it in a political way to persuade his local government not to adopt restrictive regulations. If he were unsuccessful in doing so, he might be able either to bring a declaratory judgment action to have the resulting ordinance declared invalid, or to use the law as a legal defense should the local government seek to enforce the ordinance against him. In such an event the judge would have to address the central and most difficult question presented by the act: How will the balance be struck between, on the one hand, the extent to which the ordinance restricts a farming operation in contravention of the purposes of the agricultural districting law

* The principal author of this chapter was John C. Keene.

**TABLE S-1
STATES WITH RIGHT-TO-FARM LAWS****

Laws Protecting Against Local Government Regulations

Alabama (1980)	New York* (1971)
Delaware (1980)	North Carolina (1979)
Illinois* (1979)	Oregon (1973)
Kentucky (1980)	Tennessee (1979)
Louisiana (1978)	Virginia* (1977)
Maryland* (1977)	
Minnesota (Twin Cities)* (1980)	

Laws Protecting Against State Regulations

Tennessee (1979)	Oregon* (1973)
------------------	----------------

Laws Protecting Against Private Nuisance Lawsuits

Alabama (1980)	Mississippi (1980)
Delaware (1980)	North Carolina (1979)
Florida (1979)	Oklahoma (1980)
Georgia (1980)	Tennessee (1979)
Kentucky (1980)	Washington (1979)
Louisiana (1978)	

* The statute applies only in agricultural districts or, in the case of Oregon, in exclusive farm use zones.

** Some states provide more than one form of protection.

and, on the other, the degree to which the ordinance protects the public's health and safety? The statute gives no guidance to assist in this delicate balancing process.

Oregon's law does not extend its protections to farm practices that generate odor, dust, or other materials that interfere with the use of lands outside the exclusive farm use zone. It also contains a specific disclaimer of any intent to limit the powers of all levels of government to protect the public's health, safety, and welfare.

B. Laws Based on North Carolina's Statute

North Carolina's right-to-farm law takes a different approach in that it seeks to modify traditional principles of the common law of nuisance. Some or all of its provisions have been adopted by Alabama, Delaware, Florida, Georgia, and Kentucky and Louisiana. The law provides as follows:

Section 106-700. It is the declared policy of the State to conserve and protect and encourage the development and improvement of its agricultural land for the production of food

and other agricultural products. When non-agricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations. Many others are discouraged from making investments in farm improvements. It is the purpose of this Article to reduce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.

Section 106-701. (a) No agricultural operation or any of its appurtenances shall be or become a nuisance, private or public, by any changed conditions in or about the locality thereof after the same has been in operation for more than one year, when such operation was not a nuisance at the time the operation began; provided, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or its appurtenances.

(b) For the purposes of this Article, "agricultural operation" includes, without limitation, any facility for the production for commercial purposes of crops, livestock, poultry, livestock products, or poultry products.

(c) The provisions of subsection (a) shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by them on account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person, firm, or corporation.

(d) Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural operation or its appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstance set forth in this section are and shall be null and void; provided, however, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or any of its appurtenances. Pro-

vided further, that the provisions shall not apply whenever a nuisance results from an agricultural operation located within the corporate limits of any city at the time of enactment hereof.

(e) This section shall not be construed to invalidate any contracts heretofore made but insofar as contracts are concerned, it is only applicable to contracts and agreements to be made in the future.

In order to understand the North Carolina approach, it is necessary to know some rudimentary facts about the common law of nuisance.

Nuisance law has been recognized as a confused and confusing area of the law. Still, it is possible to set out some general principles that are widely accepted.³ First, it is necessary to distinguish between private nuisance and public nuisance. Private nuisance law protects a property owner's right to the use and enjoyment of his land and gives him remedies against someone who interferes improperly with that right. Public nuisance is a crime and involves actions which cause injury to the public on a whole, such as serious air pollution, the storage of explosives in a city, and so forth.⁴ Some acts that are private nuisances may affect so many people that they also constitute public nuisances. Even though they have the same name, private and public nuisances rest on distinctly different legal theories.

In determining whether one activity so interferes with another person's activities and enjoyment of his land that it constitutes a private nuisance, a court will determine whether its utility is outweighed by the gravity of the harm it causes. In doing so, the court will consider all the circumstances, including the locality and character of the surroundings, the nature of both activities and the manner in which they are conducted, the value to the community of both activities, the actor's ability to reduce the harm, and the extent to which the actor would be damaged by an injunction and the landowner damaged by the failure to enjoin. The court can also consider priority of use.⁵ Whether or not the person causing the alleged nuisance was there first is only one of many considerations that must be weighed. Courts have had to decide whether an activity that was creating significant air pollution or otherwise

interfering with the enjoyment of nearby land was to be insulated from liability simply because it was there first or whether, even though at one time it affected few people because of its remoteness, it should now be deemed a nuisance because the growth of an urban area has brought new homes into its vicinity whose owners are being injured by its operations.

The North Carolina right-to-farm law and its progeny attempt to elevate the principle of first-in-time, first-in-right to a position of pre-eminence in the law of nuisance as it affects agricultural operations.⁶ The law provides that a court cannot declare a farming operation a nuisance if it finds the following:

1. The agricultural operation was not a nuisance at the time it began,

2. The only basis for the claim that it is a nuisance is that conditions have changed in or about the locality where the farm is located,

3. The agricultural operation had been in operation for at least one year before the lawsuit was brought,

4. The alleged nuisance did not result from negligent or improper operation of the agricultural activity, and

5. The alleged nuisance does not involve water pollution or flooding.

It should be noted that the law applies both to farmers and to producers of livestock and poultry products, such as slaughterhouses.

This law presents several questions to which there are currently no authoritative answers because of the lack of judicial interpretation. First, we should be clear as to the central objective and effect of this law and its progeny: to make it possible for certain farms and food-processing industries that would otherwise be declared to be nuisances because communities have grown up around them, to continue their nuisance-producing activities without interference.

Second, there are several questions arising out of the first requirement above: who has the burden of proving that the farm operation was not a nuisance at the time it began, the neighbor or the farmer? How will he provide it if the operation started ten, twenty, or more years ago? What legal principles will govern, those in effect

at the time of commencement of the farm operation, or those in effect now?

Third, it can be assumed that plaintiffs' lawyers will allege that the agricultural activity is a nuisance for reasons other than changed conditions in the locality. For instance, if they have been unable to show that it was a nuisance when it started, they will attempt to demonstrate that the operation is using different farming techniques, different fertilizers, pesticides, and herbicides, and generally that its technology has evolved over the years so that it is now a nuisance without regard to changed conditions nearby. Thus, much of the protection hoped for will be lost.

Fourth, the statute provides neighbors with a one-year period after the commencement of a farming operation within which to attempt to have it declared a nuisance. The statute does not make it clear, however, whether this same right would be available in the event that a farmer adopts drastically different farming techniques that produce a lot more noise, dust, or other environmental pollution. If this right is not available, then the statute exposes neighbors to serious health risks; if it is available, the law may have the effect of restricting the ability of farmers to improve their farming techniques, and in any case, presents the issue of how much change is necessary before the farmer loses the protection accorded by the law.

Fifth, the North Carolina statute and some of its progeny withhold their protections from agricultural operations that cause injury to others because of "negligent" (Kentucky) or "negligent or improper" (North Carolina, Alabama) conduct. Negligence is a different type of wrong from nuisance and has a completely different legal basis from the one on which nuisance is based, although certain acts may result in liability for both negligence and nuisance. To put it simply, one person can recover damage from another for injuries resulting from negligence if he can prove that the other did not act as a reasonable person would have under all the circumstances. The main part of the statute concerns only nuisance liability and does not attempt to limit liability for damages caused by negligence, so the language concerning negligence is

superfluous. Furthermore, it is not clear what the legislators meant by "improper." The word has no established legal meaning and could cover all kinds of morally reprehensible actions. Thus, for example, if pesticides were causing a neighbor's family to be sick, he might be able to recover damages from the farmer even though he could not prove negligence. In fact, maintaining a nuisance is a good example of "improper" activity which is not negligent.

Finally, the law extends its protection to agricultural operations even after the land on which they operate has been annexed by a city, if the annexation takes place after the effective date of the act. The legislature made the judgment that even if the land around an agricultural operation becomes so urbanized that it is politically desirable to incorporate it into a city, the protection against municipal regulations based on change of conditions should continue. Such a long-term, universal protection for nuisance-like activities seems not to take into account the varying conditions which will be found across a state.

C. Tennessee's Statute

Tennessee's right-to-farm law is itself derived from feedlot laws that have been enacted in states such as Wyoming and Iowa. It recognizes that air, water, and noise pollution are now governed by complex sets of federal and state regulations, as a result of the enactment of laws such as the federal Clean Air Act, Clean Water Act, the Resources Conservation and Recovery Act, and their state counterparts. The Tennessee statute applies only to feedlots, dairy farms, and egg production houses — agricultural activities that are important to its economy and can generate serious concentrated air and water pollution. It provides that any such activity that is subject to the regulatory jurisdiction of the state department of health is insulated against liability for private nuisance if the activity is in compliance with state regulations and if the agricultural activity started operations before the complaining neighbor bought or started using his property. If the operations are expanded, the original activity maintains its priority date and the new activity receives a priority date as of the time it was established.

The statute also provides limited exemptions from state environmental regulations and local zoning and farm nuisance regulations. Feedlots, dairy farms, and egg production houses must comply first with regulations and standards applicable under a permit from the National Pollutant Discharge Elimination System created by the federal Clean Water Act, second, with regulations of the state Health Department and local governments that were in effect on April 12, 1979, the effective date of the act, and third, with any such regulations that take effect before the agricultural activity is established. The activities are exempt from rules and regulations that are passed after the effective date of the law and the date they began operation. The protected agricultural activities are also exempted from post-1979 zoning and anti-nuisance regulations that become applicable to them because a city has annexed the land on which they are conducted.

Tennessee's approach recognizes that effective control over certain types of agricultural pollution rests in the hands of the state Department of Health. On the one hand it applies a limited first-in-time, first-in-right principle that protects certain activities from changed state regulations. The only issue that this seems to raise is whether the state can permit certain types of pollution that federal laws prohibit. On the other hand, the statute protects agricultural activities that are complying with state rules from most private nuisance suits and hostile local regulations. The law incorporates by reference the detailed environmental standards established by the Department of Health. Operators of the designated agricultural activities must meet them in order to avoid nuisance liability and local regulation.

D. Laws Based on Washington's Statute

The laws of Washington and Oklahoma provide:

Agricultural activities conducted on farmland, if consistent with good agricultural practices and established prior to surrounding non-agricultural activities, are [conclusively, in Washington] presumed to be reasonable and do not constitute a nuisance unless the activity

has a substantial adverse effect on the public health and safety.

If that activity is undertaken in conformity with federal, state, and local laws and regulations, it is presumed to be good agricultural practice and not adversely affecting the public health and safety.

This approach incorporates by reference all the relevant federal, state, and local standards and insulates farm activities that are meeting them from nuisance liability to property owners who buy land or begin activity after the start of the agricultural activity. Obviously, an operation that was not would be exposed to administrative action as well. It does not attempt to deal with overly restrictive local ordinances. Even though federal and state environmental protection laws have largely supplanted local regulation and established minimum water and air quality standards, it is still possible that local governments may have the power to set standards that could have a serious impact on agricultural activities without providing commensurate protection of the public health and safety. This possibility should be addressed in right-to-farm legislation.

E. Other Approaches

Some states, such as California, have not attempted to create a right to farm but have simply exempted certain types of agricultural activities, such as burning, aerial spraying, and the use of pesticides, from certain requirements of their air pollution control laws.⁸ Mississippi's law provides only that an agricultural operation that has been in existence for a year is immune from liability for public or private nuisance if the conditions alleged to constitute a nuisance have existed substantially unchanged since the date the operation started. Expansions are entitled to their own priority date, as is the case in Tennessee.

In a recent proposal for a program for farmland retention in New Jersey,⁹ it was suggested that the state should develop specifications of acceptable farm management practice that would both tell farmers what they could do without exposing themselves to liability for environmental pollution or nuisance, and at the same time protect the health and safety of the state's residents.

The proposal stressed that all of the following activities should be covered by right-to-farm legislation: growing crops and raising poultry and cattle; processing and marketing produce; applying fertilizers, pesticides and herbicides; clearing woodlands; installing water and soil conservation facilities; designing farm structures; using water; burning in the open; disposing of organic wastes on the farm; and providing supplies, processing facilities, and markets near farming areas. The report suggested that a special, non-adversary arbitration process be established that would handle complaints about farm nuisance

III. EFFECTIVENESS

There is, at the time of writing, little evidence bearing on the effectiveness of the various types of right-to-farm legislation. This is at least partly true because much of it has been enacted in the last year and a half. Serious questions of a practical and legal nature arise concerning many of the statutes. Much can be learned from the experience with feedlots, where the environmental problems are severe and the need for protection

against local regulation and nuisance suits is great. Tennessee's approach of identifying a small number of particularly onerous or nuisance-like activities and granting them limited protections if they comply with state and federal environmental regulations has much to commend it. It recognizes, as does New Jersey's farmland retention proposal, that to protect farmers against unreasonable environmental regulations and lawsuits, while at the same time protecting the public's health and safety, requires a cooperative public and private effort involving careful data-gathering and analysis, and preparation of a statement establishing balanced state level farm management practices. Conditions will vary from state to state and from one part of a state to another. Clearly it is not an appropriate undertaking for a judge in a private nuisance suit to determine what best management practices are and to balance the needs of farmers against the needs of the non-farm public. Farm organizations and agricultural extension programs must play an important role in developing the kinds of protection that farmers are demanding.

FOOTNOTES-CHAPTER 5

1. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, (1926). See *Spur Industries, Inc. v. Del E. Webb Dev. Co.*, 108 Ariz. 178, 494 P. 2d. 700 (1972).

2. Ala. Code, Section 6-5-127 (Cumm. Supp. 1980); Del. Code tit. 3 Section 1401; Fla. Stat. Ann. Section 823.14 (1980 Supp.); Ga. Laws, 1980 Sess. Act 1297; *Ill. Stat. Ann. ch. 5, Section 1018 (Smith-Hurd Supp. 1980); Ky. Rev. Stat. Ann. ch. 413 (Ky Acts 1980 ch. 214); La. Rev. Stat. Ann. Section 51:1202 (Supp. 1981); *Md. Ann. Code, Agriculture, Section 2-513 (Supp. 1980); *Minn. 1980 Session Laws, ch. 566, Section 473H.12; Miss. Code 95-3-29 (Cumm. Supp. 1980); *N.Y. Agric. & Mkts. Law Section 305(2) (McKinney 1972); N.C. Gen. Stat. Sections 106-700 and 106-701 (Supp. 1979); Okla. Stat. Ann. tit. 50, Section 11 (1980 Session Laws, 2d. Sess., ch. 189); *Ore. Rev. Stat. Section 215.25 (Repl. 1979-80); Tenn. Code Ann. Sections 53-6701, 53-6704 (Supp. 1979); *Va. Code Ann., Section 15.1-1512B (Cumm. Supp. 1980); Wash. Rev. Code, Sections 7.48.300, 7.48.305, and 7.48.310 (Supp. 1980). Several

local governments have passed right-to-farm ordinances, and it is possible that other states have too.

* In states marked with an asterisk, the statute applies only to land in agricultural districts or, in the case of Oregon, in exclusive farm-use.

3. See William L. Prosser, *The Law of Torts* (St. Paul, Minn., West Pub. Co., 1971, 4th ed.) p. 571.

4. *Spur Industries, Inc. v. Dell E. Webb Development Co.*, 108 Ariz. 178, 494 P. 2d 700 (1972).

5. *McQuade v. Tucson Tiller Apts.*, 25 Ariz. App. 312, 543 P. 2d 150 (1975). See also, *Restatement of Torts, 2d* (St. Paul, Minn., American Law Inst. Publishers, 1979) Sections 821A-840E.

6. See Edward P. Thompson, "Right to Farm Laws Examined," *Aglands Exchange*, Nov.-Dec., 1980 (Washington, D.C.: National Association of Counties Research Foundations)

for a thoughtful discussion of these laws.

7. The law is taken from the same model as statutes such as those of Wyoming (Wyo. Stat. Ann. ch. 39, Sections 11-39-101 to 11-39-104), and Iowa (Iowa Code Ann. Sections 172D.1 to 172D.4) that apply only to feedlots. They, in turn, build on older feedlot laws such as that of Kansas (Kan. Stat. Ann. Section 47-1505) which provides that feedlots operated in compliance with the statute are deemed not to be nuisances. Parenthetically, the Attorney General of Iowa gave an opinion that a proposed law placing limitations on maintaining nuisance actions against the operation of feedlots was of questionable constitutionality. Iowa Code Ann., Section 172D.1, annotation (Supp. 1980)

8. Cal. Health and Safety Code, Section 41704(b).

9. "Grassroots: An Agriculture Retention and Development Program for New Jersey," N.J. Departments of Agriculture and Environmental Protection (1980).

CHRONOLOGY OF STATES WITH
RIGHT-TO-FARM LAWS

1979

ALABAMA
FLORIDA
MASSACHUSETTS
NORTH CAROLINA
TENNESSEE
WASHINGTON

1980

DELAWARE
KENTUCKY
MISSISSIPPI
OKLAHOMA
SOUTH CAROLINA
PILEGROVE TOWNSHIP, N.J.

1981

GEORGIA
NEW JERSEY
ARIZONA
ARKANSAS
CONNECTICUT
IDAHO
ILLINOIS
VIRGINIA
INDIANA
MAINE
MARYLAND
COLORADO
MONTANA
NEW HAMPSHIRE
NORTH DAKOTA
TEXAS
UTAH
VERMONT
OREGON
NEW YORK
MICHIGAN

1982

RHODE ISLAND

OTHER STATES LAWS PASSED
DATE UNKNOWN

NEW MEXICO
CALIFORNIA

PENDING IN LEGISLATIVE
POSSIBLE PASSAGE NOW

OHIO
PENNSYLVANIA
NEVADA
MISSOURI
WISCONSIN
MINNESOTA

IOWA--HAS PASSED A LIVESTOCK
FEEDLOT NUISANCE LAW

STATES WITHOUT RIGHT-TO-FARM
OR NUISANCE LAWS

LOUISIANA
KANSAS
NEBRASKA
ALASKA
HAWAII
WEST VIRGINIA
SOUTH DAKOTA
WYOMING