

SENATE BILL REPORT

SB 5425

As Reported By Senate Committee On:
Environment, Energy & Water, January 31, 2002

Title: An act relating to aerial application of pesticides to control plant pests.

Brief Description: Implementing notices and procedures regarding aerial application of pesticides to control plant pests.

Sponsors: Senators Kohl-Welles, Jacobsen and Fraser.

Brief History:

Committee Activity: Environment, Energy & Water: 2/6/01, 2/27/01 [DPS, DNP];
1/31/02[DP2S, DNP].

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & WATER

Majority Report: That Second Substitute Senate Bill No. 5425 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Fraser, Chair; Regala, Vice Chair; Eide, Honeyford, Jacobsen, Keiser and Morton.

Minority Report: Do not pass.

Signed by Senators Hale and McDonald.

Staff: Richard Rodger (786-7461)

Background: On March 2, 1999, federal inspectors notified the Department of Agriculture that they found a Gypsy moth egg mass on a repossessed Russian ship moored adjacent to Ballard in Seattle. Testing showed the egg mass was of the Asian variety of Gypsy moth (AGM), apparently deposited on the ship when it called at a Far Eastern port. Although the egg mass was destroyed and the ship was eventually fumigated, there was still a risk that other AGM egg masses had hatched and some caterpillars had escaped to the shore.

Gypsy moths are detected by pheromone traps, which attract only the adult males. The trapping is performed in the summer, when the adult males fly. Based on results of the trapping and testing, decisions are made during the following fall and winter regarding whether eradication efforts should be carried out around specific sites. Eradication efforts are carried out the following spring (late April and May) after overwintering eggs hatch, because the most effective control measures kill the caterpillar stage of Gypsy moth. The effectiveness of the control effort is measured by intensive trapping at the eradication site during the following summer, to see if any Gypsy moths survived to adulthood.

If genetic typing shows that AGM was found, the department initiates eradication measures the following spring, as both genders of this variety are capable of strong flight. The risk of dispersal beyond the department's ability to eliminate the insect is very large with AGM.

The AGM catch and egg mass recovered from the Russian ship triggered an eradication proposal for portions of the Ballard and Magnolia areas of Seattle. The proposed treatment was aerial application of the biological insecticide *Bacillus thuringiensis var. kurstaki* (Btk). The initially proposed AGM treatment area was approximately 900 acres total, of which approximately 600 acres was eventually treated.

An ad hoc citizens' group named No Spray Zone was formed to oppose the proposed AGM project. Concerns expressed included the inert ingredients of the Btk formulation, the process utilized for SEPA compliance, health issues, a perception that the department is "overreacting" to one moth, and nontarget effects on other insects. The group held public meetings and initiated legal action to stop the proposed AGM project.

A department decision document and Notice of Action under provisions of SEPA were issued for the AGM eradication program, completing the SEPA process initiated several months earlier. In response to a department request, Governor Locke signed the necessary Proclamation of Emergency, authorizing aerial spraying.

No Spray Zone and other groups opposed to the Ballard/Magnolia project filed suit in King County Superior Court on May 9, 2000 to halt the spraying. The next day the court denied No Spray Zone's request for a temporary restraining order.

The department's operators made approximately 2,000 telephone calls to notify interested parties of its plan to carry out the first treatment of the Ballard/Magnolia site the next day, weather permitting. This process was repeated for each of the three sprays.

The first aerial application of Btk to the Ballard/Magnolia site occurred on May 11, 2000 in the early morning. The site was sprayed two more times. No Asian variety Gypsy moths were detected in Ballard/Magnolia the following summer. No AGM were detected anywhere in the state in summer 2000.

Summary of Second Substitute Bill: The pest control chapter is amended to increase the amount of public information and involvement in pest control program activities involving the aerial application of pesticides to control the Asian Gypsy moth (AGM) in large urban residential areas.

A "large urban residential area" is defined as the "area lying within the incorporated boundaries of a city with a population of greater than one hundred thousand and the urban growth area contiguous to the city, and in which residential uses are a permitted or a conditional use." At this time, this definition includes Seattle, Tacoma, Spokane, Vancouver, Bellevue and the urban areas adjacent to these five cities.

When the Director of the Department of Agriculture proposes an aerial application of pesticides for the control of AGM, the director must consult with the appropriate public agencies and university personnel for the purpose of obtaining an independent assessment of the possible human health risks associated with the proposed use. The results of the independent assessment must be available to the public; however, any information used during the assessment marked confidential by the registrant may not be disclosed. The bill does not override or change the director's existing authority to release a pesticide formula or a pesticide's ingredient information.

If a survey detects the presence of AGM that might need to be controlled by an aerial application of pesticides, the director must provide public notice of the survey results. The notice may include the procedures used to evaluate the magnitude of the risk of infestation and the alternatives for control or eradication. The director must hold a public informational meeting within the area proposed to be aerially sprayed with pesticides regarding the survey results. The director shall allow for 30 days to accept and consider public comment, or a lesser period if immediate action is required to implement pest eradication measures.

Additional findings are required by the Agriculture Director before requesting a Governor emergency measures declaration to address the extent of the danger, alternative control measures considered, and responses to public comments. If the proposed emergency declaration involves the aerial application of pesticides in a large urban residential area, a Governor's advisory committee is required to be set up by the director. The committee is to include community representatives and representatives from local government and local health departments. The advisory committee must undertake review of the director's request expeditiously and provide information and recommendations within the time the Governor directs.

The director must adopt procedures for notifying the community before the aerial application of pesticides to control the AGM.

The local health jurisdiction, with support from the Department of Health, must monitor public health effects following the aerial application of pesticides.

The Governor must consider the advisory committee's recommendations before declaring the AGM emergency. The Governor must consider and reject other alternatives before ordering emergency measures that include aerial application of pesticides in large urban areas.

Second Substitute Bill Compared to Original Bill: All provisions in the second substitute bill relate only to controlling the Asian Gypsy moth in the five areas of the state qualifying as "large urban residential areas." The substitute bill does not override or change the Department of Agriculture Director's existing authority to release a pesticide formula or a pesticide's ingredient information. When the director proposes an aerial application of pesticides, the director must consult with the appropriate public agencies and university personnel for the purpose of obtaining an independent assessment of the possible human health risks associated with the proposed use. The requirement for posting notice of the survey results is deleted. Instead, the Department of Agriculture must hold a public informational meeting within the area proposed to be aerially sprayed with pesticides regarding the survey results. If the director proposes as an emergency measure the aerial application of pesticides, the director, instead of the Governor, must appoint a committee to provide advice to the Governor. The requirement for public health surveys before, during, and after implementation of the aerial application of pesticides by the Department of Agriculture and the local health jurisdiction is removed. Instead, the local health jurisdiction, with support from the Department of Health, must monitor public health effects following the aerial application of pesticides.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Original Bill on Feb. 6, 2001) The bill would allow citizens to receive more notice from the government before an aerial application of pesticides in their area. The Department of Agriculture should not be the agency telling people about the health effects of pesticides they register. People need to know information about the pesticides they are being sprayed with from above. The public needs the health surveys to provide a baseline to gauge public health after an aerial application of pesticides.

Testimony Against: (Original Bill on Feb. 6, 2001) Multiple steps in the bill may hinder the Department of Agriculture's response to pest problems. Threat of disclosure of pesticide formulas may cause pesticide companies not to register their pesticides with the state.

Testified: Claude Ginsburg, Marney Reynolds, Ben Schretor, No Spray Zone (pro); Susan Crowley, City of Seattle (pro); Heather Hanson, Washington Friends of Farms and Forests (con); Steve McGonigal, Washington State Nursery and Landscape Association (con); Jim Halstrom, Washington Horticulture Association (con); Bill Garvin, Washington Forest Protection Association (con); Mary Beth Lange, Clinton Campbell, Department of Agriculture.