

Right-of-Way Permit Public Comment Response Summary

Date: June 14, 2022

The Agency of Agriculture, Food and Markets (Agency) requires an approved permit for all right-of-way treatments. Permits are required prior to treating all transmission lines, highways, airport approaches, pipelines, railroads, and railroad yards. Permits are not required to treat electric power substations, pole yards, storage yards, pipeline substations, highway garages and storage areas, and airport runways, taxi-strips, and storage areas. All right-of-way permit applications received by the Agency were posted for 14 days for public review on the Agency [right-of-way permit website](#). Comments received during the 14-day posting period were compiled and evaluated by Agency staff.

The public comment response summary provides responses from the Public Health and Agricultural Resource Management Division to the questions and comments that were received during the public comment period on right-of-way draft permits and applications.

Summary of Comments / Questions

This response summary groups the comments/questions received by permit applicant and provides the Division's responses. Comments and questions have been quantified, summarized and combined into common themes. The summarized comments are in bold below, with the Division's response in plain text following.

Vermont Electric Power Company (VELCO) (0 comments received)

No public comments were received referencing this specific draft permit and application

Vermont Electric Coop (0 comments received)

No public comments were received referencing this specific draft permit and application

Green Mountain Power (0 comments received)

No public comments were received referencing this specific draft permit and application

Vermont Agency of Transportation (VTRANS) (22 comments received)

1) Deny the use of chemicals and require only mechanical weed removal in all Agency of Transportation right-of-way areas

The organizations responsible for the maintenance of Vermont's utilities and roadways use herbicides as part of an integrated vegetation management plan, which also includes alternative

treatments like physical and mechanical methods for weed removal, in order to preserve the infrastructure and safety of our public transportation and utility byways. Chemicals are used in the areas where mechanical control is not feasible.

- 2) The Middlebury state airport land borders wetlands and some sections of fence line are within the Source Protection Area of Middlebury's drinking water supply. Please deny use of chemicals within this area.**

The Vermont Agency of Transportation right-of-way permit has an additional condition requiring that surface waters within the source protection area that contribute to the source shall have a buffer of 100 feet. This is extending the 200 feet buffer around the public drinking water source to include an additional 100 feet from all surface water that feeds this source. This precaution is specifically to address the Middlebury Airport fence line. The Agency of Transportation will monitor for surface water the day before treatment and clearly mark limits of spraying and no-spray areas. The Agency of Agriculture, Food & Markets will conduct an inspection of treatment within this location to verify buffers are maintained and permit requirements are followed.

Vermont Rail System (17 comments received)

- 3) The tracks run through hay fields and pasture for horse farm, concerns for animal exposure.**

This specific individual was notified when treatment was to occur so horses were kept out of fields intersected by tracks until pesticide applications were dry.

- 4) The Burlington Board of Health would like to require signage where tracks intersect roads/recreation paths and in vicinity of waterfront noting dates of application.**

After discussing with Vermont Rail Systems, it is not feasible for them to post signage, but the Burlington Board of Health received specific advanced notification when applications were to occur within the city so they could arrange for notification in a form of their choice.

- 5) Update pesticide regulations to include more up to date notification methods like locally distributed free newspapers and online free internet searchable news sources.**

The Agency is in the process of updating the pesticide regulations currently. There will be a public meeting for comment on the proposed updated regulations this Summer and they should the Agency website for review. We have removed the specific newspaper list as requirement for notification and will now just require notification in 2 newspapers for every county treated. Therefore, Seven Days and other free newspapers in circulation or available online will fall within this regulation.

- 6) No chemicals within boundaries of Charlotte Park & Wildlife Refuge because the tracks run over the main tributary to Holmes Creek. How will we be notified so we can ensure sensitive areas are not sprayed?**

The permit conditions define buffer zones around waterways and sensitive areas where pesticide applications are restricted. The Vermont Rail Service has maps that identify the surface water, wells and sensitive areas that require buffer zones of restricted spraying. These maps are used by the applicators as they are spraying. The Agency provided direct notification for this individual as to when treatment was planned within the area in question.

- 7) Thetford/Norwich/Fairlee residents proposed the following permit conditions: 1. No chemical controls within Village residential areas; 2. No chemical controls where humans are living and where private food sources are present; 3. Only mechanical controls; 4. Proper and sufficient warning of planned applications.**

The Agency drafts the right-of-way permits with specific conditions to minimize human exposure and adverse environmental impacts of pesticide applications. We expanded the permit conditions to include densely populated areas to address these specific concerns: “Applications in rail yards and densely populated areas are to be conducted at times of low pedestrian traffic to limit human exposure”.

The notification requirements, including newspaper and radio advertisements within areas of treatment, serve to inform the public of local applications.

- 8) Deny the use of chemicals and require only mechanical controls.**

The organizations responsible for the maintenance of Vermont’s railways use herbicides as part of an integrated vegetation management plan, which also includes alternative treatments like physical and mechanical methods for weed removal, in order to preserve the infrastructure and safety of tracks throughout Vermont.

- 9) Specific conditions proposed for VT Railway permit for treatment along Burlington waterfront: 1. Extend the area that must be treated before 6am and not on weekends or holidays from College Street to Flynn Avenue; 2. Have railway give advance notification to Burlington Board of Health; 3. Do not allow diquat bromide within Burlington due to its toxicity; 4. Use mechanical control in or near public areas around signs; 5. Have railway document areas managed by alternatives as they document their herbicides used; 6. The new areas of ballast installed since 2021 should not be treated with herbicides**

The Agency expanded the restrictive application conditions for downtown Burlington (complete before 6am and not on weekends/holidays) from the area between Maple and College Streets to the area between Flynn Avenue and College Street. The permit includes a notification to the Agency, and the Burlington Board of Health was directly notified once schedule was received. Diquat products are listed on the permit as an alternative, because glyphosate products are experiencing extreme and unavoidable supply chain issues and therefore are having problems with availability. Mechanical control in public areas and around signs is not feasible for the rail company. The VT Railway is asked to document alternative weed control methods within their Integrated Vegetation management plans. The VT Railway will determine the status of any section of rail to determine the type of treatment that is necessary.

10) What are the normal, state-funded enforcement and quality assurance checks that happen with these annual toxic dumps? Do you send out state officials to oversee each application?

Trained and certified Agricultural Resource Management Specialists from the Agency conduct inspections of permit holders during applications to ensure they are in compliance with state pesticide regulations and permit conditions. Enforcement actions may be brought for violations of either regulations or permits. The state pesticide regulations incorporate restrictions and rules about the use, storage and disposal of pesticides, and any associated rinsate, to ensure they are handled in a careful manner and to reduce non-target adverse effects.

11) Where does rinsing take place? Where does the rinse water end up?

The state pesticide regulations incorporate restrictions and rules about the use, storage and disposal of pesticides, and any associated rinsate, to ensure they are handled in a careful manner and to reduce non-target adverse effects. Therefore the mix and load activities, including proper use of rinse water are outlined in the state pesticide regulations and not included within permit conditions.

New England Central Railroad (NECR) (6 comments received)

12) Specific conditions proposed for New England Central Railroad permit for treatment along Burlington waterfront: 1. No spray at all between College Street and Depot Street, alternatively, adjust spray pattern to 6 ft or tie end to tie end in the area due to drains approximately 15 ft west of railroad, connected to stormwater drainage to Lake Champlain; 2. Require treatment before 6am between College Street and Depot Street; 3. Require 24 hr notification to Burlington Board of Health for treatment of the Burlington Waterfront; 4. Require rationale for treatment of ballast deck bridges.

The Agency maintained the current conditions for the area between College Street and North Avenue, and the Agency will take water samples from the drain outlet at the Burlington waterfront after a rain event following application. The current conditions for the area between College Street and North Avenue, requiring applications before 6am and not on weekends or holidays and glyphosate only products, encompass the area between College Street and Depot Street. The permit includes a notification to the Agency, and the Burlington Board of Health will be directly notified once schedule is received. The current conditions in the permit restricts treatment of ballast deck bridges to only those that are solid and have drainage that prohibits runoff from entering waterways. Identification of bridges meeting those requirements must be made to the Agency. All other ballast deck bridges are considered water crossings and therefore cannot be treated and must be buffered by 30ft.

13) Maps requested for NECR and extension of comment period once maps received.

The maps were being updated with new private wells and available maps were provided to individuals who asked for them. With additional information provided The Agency reviewed any additional comments received pertaining to this permit beyond the public comment period.

St. Lawrence & Atlantic Railroad (0 comments received)

No public comments were received referencing this specific draft permit and application

Canadian Pacific Railroad (0 comments received)

No public comments were received referencing this specific draft permit and application

Town of Vergennes (0 comments received)

No public comments were received referencing this specific draft permit and application

Town of Addison (0 comments received)

No public comments were received referencing this specific draft permit and application

Pan Am Railway (0 comments received)

No public comments were received referencing this specific draft permit and application

General Comments / Questions (51 comments received)

Comments and questions received that did not pertain to a specific draft permit and application received the following response:

Thank you for your comment regarding the 2022 right-of-way permit applications. The Agency of Agriculture, Food and Markets (the Agency) appreciates your concern and values your perspective. The organizations responsible for the maintenance of Vermont's railways, utilities, and roadways use herbicides as part of an integrated vegetation management plan, which also includes alternative treatments like physical and mechanical methods for weed removal, in order to preserve the infrastructure and safety of our public transportation and utility byways. The Agency drafts the right-of-way permits with specific conditions to minimize human exposure and adverse environmental impacts of pesticide applications. The notification requirements, including newspaper and radio advertisements within areas of treatment, serve to inform the public of local applications. The permit conditions also define buffer zones around waterways and sensitive areas where pesticide applications are restricted.

Trained and certified Agricultural Resource Management Specialists from the Agency conduct inspections of permit holders during applications to ensure they are in compliance with state pesticide regulations and permit conditions. Enforcement actions may be brought for violations of either regulations or permits. The state pesticide regulations incorporate restrictions and rules about the use, storage and disposal of pesticides, and any associated rinsate, to ensure they are handled in a careful manner and to reduce non-target adverse effects.

The Agency remains diligent in maintaining transparency throughout the permitting process and final issued permits will be posted on the Agency [right-of-way permit website](#).

Thank you for your valued input during this permitting process,

The Agency of Agriculture, Food and Markets

Summary of changes made from draft permit to final issued permit

The changes outlined below per permit show the specific changes to permit conditions from the draft permit that was available for public comment to the final issued permit to the applicants.

Vermont Electric Power Company (VELCO)

No changes were made to the draft permit posted for comment before final permit issued.

Vermont Electric Coop

No changes were made to the draft permit posted for comment before final permit issued.

Green Mountain Power

No changes were made to the draft permit posted for comment before final permit issued.

Vermont Agency of Transportation (VTRANS)

No changes were made to the draft permit posted for comment before final permit issued. VTRANS was asked to coordinate an inspection by Agency Agricultural Resource Management Specialists during treatment of Middlebury airport.

Vermont Rail System

VT Railway

Condition 4. Ballast maintenance activities, defined as the mechanical plowing, brooming, tamping or regulating of treated stone ballast, are prohibited for thirty (30) days or until one (1) inch of rain has fallen following application, unless the application is a glyphosate-only application. Ballast maintenance activities are prohibited for five (5) days after a glyphosate-only application.

Condition 14. Applications between ~~Maple~~ Flynn Avenue and College Street in Burlington shall be made under the following conditions:

- a. Application shall not occur on a weekend or holiday;
- b. Application shall be made prior to 6:00 a.m.; and
- c. The permittee shall notify the Agency twenty-four (24) hours prior to application being made.

Condition 17. Applications in rail yards and densely populated areas are to be conducted at times of low pedestrian traffic to limit human exposure.

Clarendon & Pittsford Railroad

Condition 4. Ballast maintenance activities, defined as the mechanical plowing, brooming, tamping or regulating of treated stone ballast, are prohibited for thirty (30) days or until one (1) inch of rain has fallen following application, unless the application is a glyphosate-only application. Ballast maintenance activities are prohibited for five (5) days after a glyphosate-only application.

Condition 16. Applications in rail yards and densely populated areas are to be conducted at times of low pedestrian traffic to limit human exposure.

Green Mountain Railroad

Condition 4. Ballast maintenance activities, defined as the mechanical plowing, brooming, tamping or regulating of treated stone ballast, are prohibited for thirty (30) days or until one (1) inch of rain has

fallen following application, unless the application is a glyphosate-only application. Ballast maintenance activities are prohibited for five (5) days after a glyphosate-only application.

Condition 16. Applications in rail yards and densely populated areas are to be conducted at times of low pedestrian traffic to limit human exposure.

Washington County Railroad – Connecticut River Division

Condition 4. Ballast maintenance activities, defined as the mechanical plowing, brooming, tamping or regulating of treated stone ballast, are prohibited for thirty (30) days or until one (1) inch of rain has fallen following application, unless the application is a glyphosate-only application. Ballast maintenance activities are prohibited for five (5) days after a glyphosate-only application.

Condition 16. Applications in rail yards and densely populated areas are to be conducted at times of low pedestrian traffic to limit human exposure.

Washington County Railroad – Barre

Condition 4. Ballast maintenance activities, defined as the mechanical plowing, brooming, tamping or regulating of treated stone ballast, are prohibited for thirty (30) days or until one (1) inch of rain has fallen following application, unless the application is a glyphosate-only application. Ballast maintenance activities are prohibited for five (5) days after a glyphosate-only application.

Condition 17. Applications in rail yards and densely populated areas are to be conducted at times of low pedestrian traffic to limit human exposure.

New England Central Railroad (NECR)

Condition 17. Applications in rail yards and densely populated areas are to be conducted at times of low pedestrian traffic to limit human exposure.

St. Lawrence & Atlantic Railroad

Condition 15. Applications in rail yards and densely populated areas are to be conducted at times of low pedestrian traffic to limit human exposure.

Canadian Pacific Railroad

Condition 3. This permit authorizes the use of pesticides in the railroad ballast during this calendar year in the towns of Richford, Troy, Newport Town, and Newport City. This permit does not allow for treatment to control terrestrial invasive plant species, if not required to meet the safety and public health needs. This permit in no way authorizes the applicant to use pesticides on real estate where it has no lawful right to do so.

Condition 15. Applications in rail yards and densely populated areas are to be conducted at times of low pedestrian traffic to limit human exposure.

Town of Vergennes

No changes were made to the draft permit posted for comment before final permit issued.

Town of Addison

No changes were made to the draft permit posted for comment before final permit issued.

Pan Am Railway

Condition 4. Ballast maintenance activities, defined as the mechanical plowing, brooming, tamping or regulating of treated stone ballast, are prohibited for thirty (30) days or until one (1) inch of rain has fallen following application, unless the application is a glyphosate-only application. Ballast maintenance activities are prohibited for five (5) days after a glyphosate-only application.

Condition 16. Applications in rail yards and densely populated areas are to be conducted at times of low pedestrian traffic to limit human exposure.