



PERMIT TO CONDUCT RIGHT-OF-WAY HERBICIDE TREATMENT

Permit number: ROW_2024_10

Effective April 9, 2024

Office of the Secretary, Anson B. Tebbetts

www.agriculture.vermont.gov

116 State Street • Montpelier, Vermont 05620-2901 • (802) 828-5667 • (802) 828-1410 fax

Permittee: Vermont Railway, Inc. 118 Post Street, Rutland, Vermont 05701
[Contact Person: R.T. Boucher, 802-755-4356]

Permit conditions:

1. The permittee shall contact the Agency of Agriculture, Food and Markets (the Agency), Morgan.Griffith@vermont.gov, one business day prior to initiating this permit.
2. Each application crew, including sub-contractors, working under this permit shall coordinate one use inspection with the Agency, David.Huber@vermont.gov.
3. This permit authorizes the use of pesticides in the railroad ballast and shoulder during this calendar year in the towns of Burlington, South Burlington, Shelburne, Charlotte, Vergennes, Ferrisburgh, New Haven, Middlebury, Salisbury, Leicester, Brandon, Pittsford, Rutland Town, Rutland City, Clarendon, Wallingford, Danby, Dorset, Manchester, Sunderland, Arlington, Shaftsbury, Bennington, and Mount Tabor. This permit does not allow for treatment to control terrestrial invasive plant species unless required for operator or worker safety, or public health and/or safety needs. This permit in no way authorizes the applicant to use pesticides on real estate where it has no lawful right to do so.
4. Ballast maintenance activities, defined as the mechanical plowing, brooming, tamping or regulating of treated stone ballast, are prohibited for 30 days or until one inch of rain has fallen following application, unless the application is a glyphosate-only application. Ballast maintenance activities are prohibited for five days after a glyphosate-only application.
5. All distances described in this permit are horizontal (lateral) measurements.
6. The spray width shall be no greater than 12 feet from either side of the centerline of the tracks or no greater than the width of the ballast, or as specified below.

Where safe, practical, **and** consistent with other buffers and conditions required by this permit:

- a. The spray width at public and designated private *road crossings* will extend 24 feet from centerline on either side for 300 feet preceding and 300 feet proceeding the crossing.
 - b. The spray width for *whistle posts or way-side indicators* shall be no greater than 12 feet from centerline on the opposite side of the rail from the whistle post or way-side indicator. The spray width may extend out to a maximum width of 24 feet on the side of the whistle post or way-side indicator. This extended width may begin no farther than 20 feet preceding the whistle post or way-side indicator and end no later than 20 feet following the whistle post or way-side indicator.
 - c. The spray width for *mile posts* shall be no greater than 24 feet from centerline. Applications of up to this extended width of 24 feet may begin no farther than 20 feet preceding the mile post and end no later than 20 feet following the mile post.
 - d. Applications around signal cases and masts, stored material and railroad yard applications must be in accordance with the product label.
 - e. The spray width in selected areas along passenger routes operated by Amtrak for controlling encroaching fast growing brush, high shrubbery, and small trees outside the ballast, as identified in maps provided with the permit application with the exclusion of the areas provided in condition 14, shall be no greater than 32 feet from either side of the centerline.
7. At least one certified applicator shall be a member of each application crew. All label recommendations and requirements for protective clothing shall be adhered to for all applicators.

8. Proof of public notification as detailed in the permit application shall be provided to the Agency, upon request, as proof that the notification occurred (e.g., copies of newspaper tear sheets, invoices).
9. Pesticides shall not enter the waters of the State. Buffers to water are as follows, unless the product label prescribes a greater buffer:
- a. Applications made **parallel** to surface water shall have a visible limit of 10 feet from the edge of the water when spraying glyphosate-only products, or a visible distance of 15 feet when spraying any other permitted products or mixture thereof.
 - i. In areas where the parallel water's edge is less than 10 feet, but farther than two feet from the shoulder, only aquatically labeled glyphosate-only applications may be within the railroad tie (tie end-to-tie end).
 - b. Applications made at a surface water **crossing** shall have a visible limit of 30 feet from the water's edge.
 - c. Aquatically labeled glyphosate products may be applied up to two feet from the edge of water crossings, bridge abutments or culverts containing water, by hy-rail application equipment traveling at two miles per hour.
10. Public and potable water sources (non-public water systems) are to be avoided.
- a. Applications to soil or vegetation shall not be made within 200 feet of public community drinking water sources and intakes, and surface water public non-community drinking water intakes.
 - b. Applications to soil or vegetation shall not be made within 100 feet of public non-community groundwater drinking water sources.
 - c. Applications to soil or vegetation shall not be made within 50 feet of a potable water source identified through well owner notification to Permittee.
 - d. Notwithstanding the above, a limited application made only to the stone railroad ballast and tie surfaces when necessary to the safe operation of passenger and freight rail consistent with federal regulatory requirements is not prohibited.
11. A copy of this permit and accompanying digital or electronic maps shall be provided to the applicator for use during applications. The maps shall be derived from data from the Vermont ANR Atlas, well owner notifications to Permittee, and confirmed field observations to identify right-of-way boundaries, surface waters, public and potable water sources, and threatened and endangered species habitats.
12. The permittee or the permittee's contracted pesticide applicator shall submit to the Agency routine operational records, as required by the Vermont Rule for Control of Pesticides, on a weekly basis. For the purposes of this permit, a "week" is a seven-day timeframe that begins on a Sunday and ends on a Saturday. The routine operational records are due by close of business on the Monday immediately following the previous week's application. Should the Monday immediately following the previous week's application be a State or Federal holiday, then the routine operational records are due by the close of business on Tuesday.
- Records shall be submitted electronically to: Morgan.Griffith@vermont.gov
13. The use of the following pesticides in accordance with the schedule outlined in the permit application is allowed under this permit:

<u>First Application</u>		
Product Name	Active Ingredients	EPA Reg. Number
Semera 51 % WDG or Payload	Flumioxazin	91234-129 or 59639-120

Method 240 SL or Milestone	Potassium salt of aminocyclopyrachlor or Triisopropamolammonium salt of aminopyralid	432-1565 or 62719-519
Oust Extra or Oust XP	Sulfometuron methyl and metsulfuron methyl or Sulfometuron methyl	432-1557 or 432-1552
Polaris AC Complete	Isopropylamine salt of imazapyr	228-570
Aquaneat or Roundup Custom or Roundup Pro Concentrate	Isopropylamine salt of glyphosate	228-365 or 524-343 or 524-529
<u>Second Application</u>		
Product Name	Active Ingredient(s)	EPA Reg. Number
Aquaneat or Roundup Custom or Roundup Pro Concentrate	Isopropylamine salt of glyphosate	228-365 or 524-343 or 524-529
Diquat SPC 2L	Diquat dibromide	228-675
<u>Third Application</u>		
Product Name	Active Ingredient(s)	EPA Reg. Number
Polaris AC Complete	Isopropylamine salt of imazapyr	228-570
Escort XP or Patriot	Metsulfuron methyl	432-1549 or 228-391
Method 240 SL	Potassium salt of aminocyclopyrachlor	432-1565

14. Applications between Flynn Avenue and College Street, and on the North Beach track siding, in Burlington other than in the railroad yard shall be made in accordance with conditions 6 (a)-(d) and under the following conditions:

- a. One pre-emergent application of flumioxazin-containing product. Active ingredient chosen from proposed products because of high partition coefficient and favorable toxicity profile;
- b. Spot treatment of glyphosate-containing products may be applied in this area following pre-emergent application;
- c. Application shall not occur on a weekend or holiday;
- d. Application shall be made prior to 6:00 a.m.; and
- e. The permittee shall notify the Agency, Morgan.Griffith@vermont.gov, at least 24 hours prior to application being made.

15. During the course of this permit, if plant control is not satisfactory in terms of rail safety standards, then notify the Agency for an evaluation that may result in an amended permit.

16. In the event the permittee sub-contracts or assigns any of the applications authorized by this permit, the permittee shall continue to remain responsible for the conditions of this permit. This condition does not relieve any sub-contractor or assignee from compliance.

- a. Contracted entities shall have one representative of the railroad present during application, excluding applications that occur in rail yards.


17. All operations shall be conducted in accordance with the representations made by the permittee in its permit application under these permit conditions unless, and until, the permit is amended.
18. The Secretary reserves the right to further limit or restrict the application of pesticides approved under this permit as conditions or circumstances warrant. The Secretary further acknowledges that Permittee has asserted that federal law, in particular the Interstate Commerce Commission Termination Act, 49 U.S.C. §§10501, *et seq.* (“ICCTA”), preempts any “as applied” state or local regulations that (1) discriminate against railroads; or (2) unreasonably burdens rail carriage, has specifically asserted its right and federal obligation to engage in essential railroad maintenance practices free from unreasonable regulatory interference, and agrees that submission of an application or acceptance of permit conditions by Permittee shall not constitute a waiver by Permittee of any of its rights of preemption under applicable federal law.

This permit was published for public comment and forwarded with recommendation to the Secretary.

Effective Date April 9, 2024

Expiration Date December 31, 2024

DocuSigned by:



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Anson B. Tebbetts, Secretary

Agency of Agriculture, Food & Markets