

**Rural Development, Agriculture, &
Natural Resources Committee**

E2SSB 6518

Brief Description: Reducing prenatal exposure and harm to children by limiting environmental exposure to certain pesticides.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Rolfes, Van De Wege and Wilson, C.).

Brief Summary of Engrossed Second Substitute Bill

- Prohibits the use of pesticides that contain chlorpyrifos as an active ingredient beginning January 1, 2022, except under certain circumstances.
- Authorizes the Department of Agriculture to establish, through emergency rulemaking, an emergency temporary permit program that allows the use of pesticides containing chlorpyrifos under certain circumstances.
- Requires the Department of Health to provide recommendations to the State Board of Health on a statewide maximum contaminant level for chlorpyrifos in Group A water systems by January 1, 2022.
- Directs the Department of Ecology to develop water quality standards to protect aquatic life and ensure that any surface water chlorpyrifos pollution will not impact groundwater.
- Provides that the State Commission on Pesticide Registration must work with certain producers of exempt crops to research alternatives to chlorpyrifos.

Hearing Date: 2/26/20

Staff: Rebecca Lewis (786-7339).

Background:

Chlorpyrifos.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Chlorpyrifos is an organophosphate pesticide used in agricultural, non-agricultural, and residential areas to control insects. It is used to control pests on crops such as fruit trees, corn, cranberries, grapes, mint, onion and wheat, as well as at turf farms, golf courses, and greenhouses. Since 1965, chlorpyrifos has been registered with the United States Environmental Protection Agency (EPA) for use in agricultural and non-agricultural areas. It may be applied by both ground and aerial equipment. In November 2016, the EPA revised its human health risk assessment and drinking water exposure assessment for chlorpyrifos. The revised analysis shows risks from dietary exposure and drinking water. The EPA plans to continue to review the science addressing neurodevelopmental effects and complete its assessment by October 1, 2022.

State Pesticide Registration and Application Regulation.

The Department of Agriculture (WSDA) administers the federal Insecticide, Fungicide, and Rodenticide Act, as well as the state Pesticide Control Act and the state Pesticide Application Act. Its activities include adopting rules requiring the registration and restricted use of pesticides, testing and certifying pesticide applicators, issuing handler and worker pesticide training documentation, and providing technical assistance to pesticide applicators and workers.

The Commission on Pesticide Registration was created by statute in 1995. The statutes creating the commission also dedicate the use of state monies appropriated to Washington State University (WSU) specifically for studies or activities regarding pesticide registrations. The use of these monies must be approved by the commission. The monies may be used for: (1) conducting studies concerning the registration of pesticides for minor crops and minor uses and the availability of pesticides for emergency uses; (2) a program for tracking the availability of pesticides for such crops and uses; and (3) the support of the commission and its activities.

State Water Quality Regulation.

The Department of Ecology's Water Quality Program.

The Department of Ecology (Ecology) is divided into 10 environmental management programs, each covering a different subject area. Within the Water Quality Program are programs targeted to aquatic plants and lakes, the administration of water quality grants and loans, ground and surface water quality, non-point pollution, permitting of point source pollution, Puget Sound water quality, stormwater, wastewater treatment, and water quality assessment and Total Maximum Daily Load measurement.

Drinking Water System Regulation.

Established in 1974, the federal Safe Drinking Water Act (SDWA) ensures the quality of drinking water supplied by public water systems serving at least 15 connections or 25 individuals. Under the SDWA, the Environmental Protection Agency (EPA) identifies the universe of drinking water contaminants to be regulated, sets standards for drinking water quality, and oversees the states, localities, and water suppliers who implement those standards. The SDWA requires water systems to take actions to protect drinking water sources, deliver water that meets maximum contaminant levels established by EPA regulation, and undertake other measures as needed to ensure that water delivered to customer taps does not contain high levels of certain contaminants.

Under the SDWA, state regulatory agencies, rather than the EPA, are the regulators generally responsible for implementing drinking water standards and for direct oversight of the operation of public water systems. Any state-adopted drinking water regulations must be no less stringent than the federal drinking water regulations adopted by the EPA. The Department of Health (DOH) implements the state's drinking water program mandated by the federal SDWA and parallel state laws. The Washington Board of Health (Board) may establish standards for allowable concentrations of chemical contaminants which constitute a threat to public health.

Under state law, public water systems are divided into two categories: Group A and Group B systems. Group A systems are public water systems that meet one of three criteria:

- feature 15 or more service connections;
- serve an average of 25 or more people per day for at least 60 days a year, regardless of the number of service connections; or
- serve 1,000 or more people for two consecutive days.

Maximum contaminant levels (MCLs) are the maximum permissible level of a contaminant in water that the public water system delivers to a user, and are established where adequate data, considering short-term and chronic toxicity and best available scientific information, supports setting a standard. If a Group A system exceeds a MCL, it must treat the water delivered to users to levels below the MCL. When a public water system is determined by the Board or local health department to be out of compliance with water quality standards, the water system owner must take action to bring the water into full compliance with standards within one year or more promptly if necessary to abate an immediate public health threat.

Summary of Bill:

State Pesticide Registration and Application Regulation.

With certain exceptions, beginning January 1, 2022, a person may not use any pesticide that contains chlorpyrifos as an active ingredient. The prohibition remains in effect unless the Director of the Department of Agriculture (Director) adopts specific control measures by rule that are designed to reduce emissions sufficiently so the public is not subject to levels of exposure that may cause or contribute to significant adverse health effects.

Certain crops are exempt from the prohibition until the Department of Agriculture (WSDA) determines that a reasonable and less toxic alternative is available. Exempt crops are: sweet corn, mint, onion, Christmas trees, alfalfa seed and hay, asparagus, brassicas, including for seed and food production; and nonfood and nonfeed uses. Additionally, the WSDA may grant an emergency temporary permit authorizing the use or application of a pesticide containing chlorpyrifos, upon request by an agricultural commission, association, organization, or researcher who can demonstrate an emergency exists within a specific crop or crop grouping

The WSDA may establish an emergency permit program by December 31, 2021, for the use or application of a pesticide using chlorpyrifos. At a minimum, conditions for a temporary permit must include: (1) prohibiting aerial spraying; (2) establishing a buffer zone of at least 250 feet from sensitive areas including residences, schools, and certain health care facilities. Smaller buffers of variable width that extend outward from the perimeter of the application area may be

established by rule using best available technology and best management practices to minimize drift; and (3) providing advance notice of at least 48 hours to adjacent homes, businesses, and neighbors on all sides of the application area, as well as the families of the pesticide handlers or applicators. The notice must contain specific information, including targeted notice in primary language spoken in the application area; a copy of the product label, safety data sheets, and emergency contact information; and information about potential adverse health impacts.

Subject to amounts appropriated, the State Commission on Pesticide Registration must work with agricultural grower groups whose crops are exempt from the prohibition and who presently use chlorpyrifos to research alternative pest control strategies. Additional funding must be provided to the WSDA for training and enforcement of the Washington Pesticide Control Act.

State Water Quality Regulation.

The Department of Ecology's Water Quality Program.

Subject to amounts appropriated, the Department of Ecology (Ecology) must develop water quality standards sufficient to protect salmonids and aquatic life from adverse impacts of chlorpyrifos, taking into consideration injury to fish, animals, vegetation, and any other aspect of the environment that impacts salmonids. The standards must also ensure that any surface water chlorpyrifos pollution will not impact groundwater. In adopting the standards, Ecology must take into account injury to children and pregnant women.

Drinking Water System Regulation.

Subject to amounts appropriated, the Department of Health (DOH) must provide a recommendation to the State Board of Health (Board) for a statewide maximum contaminant level for Group A water systems for chlorpyrifos. The Board must adopt rules to implement the maximum contaminant level by January 1, 2022. Until a maximum contaminant level has been determined, the DOH must recommend a guidance value. A Group A water system that exceeds the guidance value must provide notice to its consumers.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.