

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2809

Chapter 122, Laws of 2002

57th Legislature
2002 Regular Session

FOREST PESTICIDE APPLICATION

EFFECTIVE DATE: 6/13/02 - Except section 1, which becomes effective 3/26/02; and section 2, which becomes effective 7/1/02.

Passed by the House February 14, 2002
Yeas 98 Nays 0

FRANK CHOPP
**Speaker of the House of
Representatives**

Passed by the Senate March 2, 2002
Yeas 41 Nays 1

BRAD OWEN
President of the Senate

Approved March 26, 2002

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2809** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER
Chief Clerk

FILED

March 26, 2002 - 8:57 a.m.

**Secretary of State
State of Washington**

HOUSE BILL 2809

Passed Legislature - 2002 Regular Session

State of Washington

57th Legislature

2002 Regular Session

By Representatives Doumit, Chandler, Linville, Schoesler, Eickmeyer and Pearson

Read first time 01/29/2002. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to forest pesticide application; amending RCW
2 17.21.020 and 17.21.020; providing an effective date; providing an
3 expiration date; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 17.21.020 and 1994 c 283 s 1 are each amended to read
6 as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

9 (1) "Agricultural commodity" means any plant or part of a plant, or
10 animal, or animal product, produced by a person (including farmers,
11 ranchers, vineyardists, plant propagators, Christmas tree growers,
12 aquaculturists, floriculturists, orchardists, foresters, or other
13 comparable persons) primarily for sale, consumption, propagation, or
14 other use by people or animals.

15 (2) "Agricultural land" means land on which an agricultural
16 commodity is produced or land that is in a government-recognized
17 conservation reserve program. This definition does not apply to
18 private gardens where agricultural commodities are produced for
19 personal consumption.

1 (3) "Apparatus" means any type of ground, water, or aerial
2 equipment, device, or contrivance using motorized, mechanical, or
3 pressurized power and used to apply any pesticide on land and anything
4 that may be growing, habitating, or stored on or in such land, but
5 shall not include any pressurized handsized household device used to
6 apply any pesticide, or any equipment, device, or contrivance of which
7 the person who is applying the pesticide is the source of power or
8 energy in making such pesticide application, or any other small
9 equipment, device, or contrivance that is transported in a piece of
10 equipment licensed under this chapter as an apparatus.

11 (4) "Arthropod" means any invertebrate animal that belongs to the
12 phylum arthropoda, which in addition to insects, includes allied
13 classes whose members are wingless and usually have more than six legs;
14 for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

15 (5) "Certified applicator" means any individual who is licensed as
16 a commercial pesticide applicator, commercial pesticide operator,
17 public operator, private-commercial applicator, demonstration and
18 research applicator, or certified private applicator, or any other
19 individual who is certified by the director to use or supervise the use
20 of any pesticide which is classified by the EPA or the director as a
21 restricted use pesticide.

22 (6) "Commercial pesticide applicator" means any person who engages
23 in the business of applying pesticides to the land of another.

24 (7) "Commercial pesticide operator" means any employee of a
25 commercial pesticide applicator who uses or supervises the use of any
26 pesticide and who is required to be licensed under provisions of this
27 chapter.

28 (8) "Defoliant" means any substance or mixture of substances
29 intended to cause the leaves or foliage to drop from a plant with or
30 without causing abscission.

31 (9) "Department" means the Washington state department of
32 agriculture.

33 (10) "Desiccant" means any substance or mixture of substances
34 intended to artificially accelerate the drying of plant tissues.

35 (11) "Device" means any instrument or contrivance intended to trap,
36 destroy, control, repel, or mitigate pests, but not including equipment
37 used for the application of pesticides when sold separately from the
38 pesticides.

1 (12) "Direct supervision" by certified private applicators shall
2 mean that the designated restricted use pesticide shall be applied for
3 purposes of producing any agricultural commodity on land owned or
4 rented by the applicator or the applicator's employer, by a competent
5 person acting under the instructions and control of a certified private
6 applicator who is available if and when needed, even though such
7 certified private applicator is not physically present at the time and
8 place the pesticide is applied. The certified private applicator shall
9 have direct management responsibility and familiarity of the pesticide,
10 manner of application, pest, and land to which the pesticide is being
11 applied. Direct supervision by all other certified applicators means
12 direct on-the-job supervision and shall require that the certified
13 applicator be physically present at the application site and that the
14 person making the application be in voice and visual contact with the
15 certified applicator at all times during the application. However,
16 direct supervision for forest application does not require constant
17 voice and visual contact when general use pesticides are applied using
18 nonapparatus type equipment, the certified applicator is physically
19 present and readily available in the immediate application area, and
20 the certified applicator directly observes pesticide mixing and
21 batching. Direct supervision of an aerial apparatus means the pilot of
22 the aircraft must be appropriately certified.

23 (13) "Director" means the director of the department or a duly
24 authorized representative.

25 (14) "Engage in business" means any application of pesticides by
26 any person upon lands or crops of another.

27 (15) "EPA" means the United States environmental protection agency.

28 (16) "EPA restricted use pesticide" means any pesticide classified
29 for restricted use by the administrator, EPA.

30 (17) "FIFRA" means the federal insecticide, fungicide and
31 rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

32 (18) "Forest application" means the application of pesticides to
33 agricultural land used to grow trees for the commercial production of
34 wood or wood fiber for products such as dimensional lumber, shakes,
35 plywood, poles, posts, pilings, particle board, hardboard, oriented
36 strand board, pulp, paper, cardboard, or other similar products.

37 (19) "Fumigant" means any pesticide product or combination of
38 products that is a vapor or gas or forms a vapor or gas on application
39 and whose method of pesticidal action is through the gaseous state.

1 (~~(19)~~) (20) "Fungi" means all nonchlorophyll-bearing thallophytes
2 (all nonchlorophyll-bearing plants of lower order than mosses and
3 liverworts); for example, rusts, smuts, mildews, molds, and yeasts,
4 except those on or in a living person or other animals.

5 (~~(20)~~) (21) "Fungicide" means any substance or mixture of
6 substances intended to prevent, destroy, repel, or mitigate any fungi.

7 (~~(21)~~) (22) "Herbicide" means any substance or mixture of
8 substances intended to prevent, destroy, repel, or mitigate any weed or
9 other higher plant.

10 (~~(22)~~) (23) "Immediate service call" means a landscape
11 application to satisfy an emergency customer request for service, or a
12 treatment to control a pest to landscape plants.

13 (~~(23)~~) (24) "Insect" means any small invertebrate animal, in any
14 life stage, whose adult form is segmented and which generally belongs
15 to the class insecta, comprised of six-legged, usually winged forms,
16 as, for example, beetles, bugs, bees, and flies. The term insect shall
17 also apply to other allied classes of arthropods whose members are
18 wingless and usually have more than six legs, for example, spiders,
19 mites, ticks, centipedes, and isopod crustaceans.

20 (~~(24)~~) (25) "Insecticide" means any substance or mixture of
21 substances intended to prevent, destroy, repel, or mitigate any insect.

22 (~~(25)~~) (26) "Land" means all land and water areas, including
23 airspace and all plants, animals, structures, buildings, devices, and
24 contrivances, appurtenant to or situated on, fixed or mobile, including
25 any used for transportation.

26 (~~(26)~~) (27) "Landscape application" means an application by a
27 certified applicator of any EPA registered pesticide to any exterior
28 landscape plants found around residential property, commercial
29 properties such as apartments or shopping centers, parks, golf courses,
30 schools including nursery schools and licensed day cares, or cemeteries
31 or similar areas. This definition shall not apply to: (a)
32 Applications made by certified private applicators; (b) mosquito
33 abatement, gypsy moth eradication, or similar wide-area pest control
34 programs sponsored by governmental entities; and (c) commercial
35 pesticide applicators making structural applications.

36 (~~(27)~~) (28) "Nematocide" means any substance or mixture of
37 substances intended to prevent, destroy, repel, or mitigate nematodes.

38 (~~(28)~~) (29) "Nematode" means any invertebrate animal of the
39 phylum nemathelminthes and class nematoda, that is, unsegmented round

1 worms with elongated, fusiform, or saclike bodies covered with cuticle,
2 and inhabiting soil, water, plants or plant parts. Nematodes may also
3 be called nemas or eelworms.

4 ~~((+29+))~~ (30) "Person" means any individual, partnership,
5 association, corporation, or organized group of persons whether or not
6 incorporated.

7 ~~((+30+))~~ (31) "Pest" means, but is not limited to, any insect,
8 rodent, nematode, snail, slug, weed, and any form of plant or animal
9 life or virus, except virus, bacteria, or other microorganisms on or in
10 a living person or other animal or in or on processed food or beverages
11 or pharmaceuticals, which is normally considered to be a pest, or which
12 the director may declare to be a pest.

13 ~~((+31+))~~ (32) "Pesticide" means, but is not limited to:

14 (a) Any substance or mixture of substances intended to prevent,
15 destroy, control, repel, or mitigate any pest;

16 (b) Any substance or mixture of substances intended to be used as
17 a plant regulator, defoliant or desiccant; and

18 (c) Any spray adjuvant, such as a wetting agent, spreading agent,
19 deposit builder, adhesive, emulsifying agent, deflocculating agent,
20 water modifier, or similar agent with or without toxic properties of
21 its own intended to be used with any pesticide as an aid to the
22 application or effect thereof, and sold in a package or container
23 separate from that of the pesticide with which it is to be used.

24 ~~((+32+))~~ (33) "Pesticide advisory board" means the pesticide
25 advisory board as provided for in this chapter.

26 ~~((+33+))~~ (34) "Plant regulator" means any substance or mixture of
27 substances intended through physiological action, to accelerate or
28 retard the rate of growth or maturation, or to otherwise alter the
29 behavior of ornamental or crop plants or their produce, but shall not
30 include substances insofar as they are intended to be used as plant
31 nutrients, trace elements, nutritional chemicals, plant inoculants, or
32 soil amendments.

33 ~~((+34+))~~ (35) "Private applicator" means a certified applicator who
34 uses or is in direct supervision of the use of any pesticide classified
35 by the EPA or the director as a restricted use pesticide, for the
36 purposes of producing any agricultural commodity and for any associated
37 noncrop application on land owned or rented by the applicator or the
38 applicator's employer or if applied without compensation other than

1 trading of personal services between producers of agricultural
2 commodities on the land of another person.

3 ~~((+35+))~~ (36) "Private-commercial applicator" means a certified
4 applicator who uses or supervises the use of any pesticide classified
5 by the EPA or the director as a restricted use pesticide for purposes
6 other than the production of any agricultural commodity on lands owned
7 or rented by the applicator or the applicator's employer.

8 ~~((+36+))~~ (37) "Residential property" includes property less than
9 one acre in size zoned as residential by a city, town, or county, but
10 does not include property zoned as agricultural or agricultural
11 homesites.

12 ~~((+37+))~~ (38) "Restricted use pesticide" means any pesticide or
13 device which, when used as directed or in accordance with a widespread
14 and commonly recognized practice, the director determines, subsequent
15 to a hearing, requires additional restrictions for that use to prevent
16 unreasonable adverse effects on the environment including people,
17 lands, beneficial insects, animals, crops, and wildlife, other than
18 pests.

19 ~~((+38+))~~ (39) "Rodenticide" means any substance or mixture of
20 substances intended to prevent, destroy, repel, or mitigate rodents, or
21 any other vertebrate animal which the director may declare by rule to
22 be a pest.

23 ~~((+39+))~~ (40) "Snails or slugs" include all harmful mollusks.

24 ~~((+40+))~~ (41) "Unreasonable adverse effects on the environment"
25 means any unreasonable risk to people or the environment taking into
26 account the economic, social, and environmental costs and benefits of
27 the use of any pesticide, or as otherwise determined by the director.

28 ~~((+41+))~~ (42) "Weed" means any plant which grows where it is not
29 wanted.

30 **Sec. 2.** RCW 17.21.020 and 2001 c 333 s 1 are each amended to read
31 as follows:

32 Unless the context clearly requires otherwise, the definitions in
33 this section apply throughout this chapter.

34 (1) "Agricultural commodity" means any plant or part of a plant, or
35 animal, or animal product, produced by a person (including farmers,
36 ranchers, vineyardists, plant propagators, Christmas tree growers,
37 aquaculturists, floriculturists, orchardists, foresters, or other

1 comparable persons) primarily for sale, consumption, propagation, or
2 other use by people or animals.

3 (2) "Agricultural land" means land on which an agricultural
4 commodity is produced or land that is in a government-recognized
5 conservation reserve program. This definition does not apply to
6 private gardens where agricultural commodities are produced for
7 personal consumption.

8 (3) "Antimicrobial pesticide" means a pesticide that is used for
9 the control of microbial pests, including but not limited to viruses,
10 bacteria, algae, and protozoa, and is intended for use as a
11 disinfectant or sanitizer.

12 (4) "Apparatus" means any type of ground, water, or aerial
13 equipment, device, or contrivance using motorized, mechanical, or
14 pressurized power and used to apply any pesticide on land and anything
15 that may be growing, habitating, or stored on or in such land, but
16 shall not include any pressurized handsized household device used to
17 apply any pesticide, or any equipment, device, or contrivance of which
18 the person who is applying the pesticide is the source of power or
19 energy in making such pesticide application, or any other small
20 equipment, device, or contrivance that is transported in a piece of
21 equipment licensed under this chapter as an apparatus.

22 (5) "Arthropod" means any invertebrate animal that belongs to the
23 phylum arthropoda, which in addition to insects, includes allied
24 classes whose members are wingless and usually have more than six legs;
25 for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

26 (6) "Certified applicator" means any individual who is licensed as
27 a commercial pesticide applicator, commercial pesticide operator,
28 public operator, private-commercial applicator, demonstration and
29 research applicator, or certified private applicator, or any other
30 individual who is certified by the director to use or supervise the use
31 of any pesticide which is classified by the EPA or the director as a
32 restricted use pesticide.

33 (7) "Commercial pesticide applicator" means any person who engages
34 in the business of applying pesticides to the land of another.

35 (8) "Commercial pesticide operator" means any employee of a
36 commercial pesticide applicator who uses or supervises the use of any
37 pesticide and who is required to be licensed under provisions of this
38 chapter.

1 (9) "Defoliant" means any substance or mixture of substances
2 intended to cause the leaves or foliage to drop from a plant with or
3 without causing abscission.

4 (10) "Department" means the Washington state department of
5 agriculture.

6 (11) "Desiccant" means any substance or mixture of substances
7 intended to artificially accelerate the drying of plant tissues.

8 (12) "Device" means any instrument or contrivance intended to trap,
9 destroy, control, repel, or mitigate pests, but not including equipment
10 used for the application of pesticides when sold separately from the
11 pesticides.

12 (13) "Direct supervision" by certified private applicators shall
13 mean that the designated restricted use pesticide shall be applied for
14 purposes of producing any agricultural commodity on land owned or
15 rented by the applicator or the applicator's employer, by a competent
16 person acting under the instructions and control of a certified private
17 applicator who is available if and when needed, even though such
18 certified private applicator is not physically present at the time and
19 place the pesticide is applied. The certified private applicator shall
20 have direct management responsibility and familiarity of the pesticide,
21 manner of application, pest, and land to which the pesticide is being
22 applied. Direct supervision by all other certified applicators means
23 direct on-the-job supervision and shall require that the certified
24 applicator be physically present at the application site and that the
25 person making the application be in voice and visual contact with the
26 certified applicator at all times during the application. However,
27 direct supervision for forest application does not require constant
28 voice and visual contact when general use pesticides are applied using
29 nonapparatus type equipment, the certified applicator is physically
30 present and readily available in the immediate application area, and
31 the certified applicator directly observes pesticide mixing and
32 batching. Direct supervision of an aerial apparatus means the pilot of
33 the aircraft must be appropriately certified.

34 (14) "Director" means the director of the department or a duly
35 authorized representative.

36 (15) "Engage in business" means any application of pesticides by
37 any person upon lands or crops of another.

38 (16) "EPA" means the United States environmental protection agency.

1 (17) "EPA restricted use pesticide" means any pesticide classified
2 for restricted use by the administrator, EPA.

3 (18) "FIFRA" means the federal insecticide, fungicide and
4 rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

5 (19) "Forest application" means the application of pesticides to
6 agricultural land used to grow trees for the commercial production of
7 wood or wood fiber for products such as dimensional lumber, shakes,
8 plywood, poles, posts, pilings, particle board, hardboard, oriented
9 strand board, pulp, paper, cardboard, or other similar products.

10 (20) "Fumigant" means any pesticide product or combination of
11 products that is a vapor or gas or forms a vapor or gas on application
12 and whose method of pesticidal action is through the gaseous state.

13 (~~(20)~~) (21) "Fungi" means all nonchlorophyll-bearing thallophytes
14 (all nonchlorophyll-bearing plants of lower order than mosses and
15 liverworts); for example, rusts, smuts, mildews, molds, and yeasts,
16 except those on or in a living person or other animals.

17 (~~(21)~~) (22) "Fungicide" means any substance or mixture of
18 substances intended to prevent, destroy, repel, or mitigate any fungi.

19 (~~(22)~~) (23) "Herbicide" means any substance or mixture of
20 substances intended to prevent, destroy, repel, or mitigate any weed or
21 other higher plant.

22 (~~(23)~~) (24) "Immediate service call" means a landscape
23 application to satisfy an emergency customer request for service, or a
24 treatment to control a pest to landscape plants.

25 (~~(24)~~) (25) "Insect" means any small invertebrate animal, in any
26 life stage, whose adult form is segmented and which generally belongs
27 to the class insecta, comprised of six-legged, usually winged forms,
28 as, for example, beetles, bugs, bees, and flies. The term insect shall
29 also apply to other allied classes of arthropods whose members are
30 wingless and usually have more than six legs, for example, spiders,
31 mites, ticks, centipedes, and isopod crustaceans.

32 (~~(25)~~) (26) "Insecticide" means any substance or mixture of
33 substances intended to prevent, destroy, repel, or mitigate any insect.

34 (~~(26)~~) (27) "Land" means all land and water areas, including
35 airspace and all plants, animals, structures, buildings, devices, and
36 contrivances, appurtenant to or situated on, fixed or mobile, including
37 any used for transportation.

38 (~~(27)~~) (28) "Landscape application" means an application of any
39 EPA registered pesticide to any exterior landscape area around

1 residential property, commercial properties such as apartments or
2 shopping centers, parks, golf courses, schools including nursery
3 schools and licensed day cares, or cemeteries or similar areas. This
4 definition shall not apply to: (a) Applications made by certified
5 private applicators; (b) mosquito abatement, gypsy moth eradication, or
6 similar wide-area pest control programs sponsored by governmental
7 entities; and (c) commercial pesticide applicators making structural
8 applications.

9 ~~((+28+))~~ (29) "Nematocide" means any substance or mixture of
10 substances intended to prevent, destroy, repel, or mitigate nematodes.

11 ~~((+29+))~~ (30) "Nematode" means any invertebrate animal of the
12 phylum nemathelminthes and class nematoda, that is, unsegmented round
13 worms with elongated, fusiform, or saclike bodies covered with cuticle,
14 and inhabiting soil, water, plants or plant parts. Nematodes may also
15 be called nemas or eelworms.

16 ~~((+30+))~~ (31) "Person" means any individual, partnership,
17 association, corporation, or organized group of persons whether or not
18 incorporated.

19 ~~((+31+))~~ (32) "Pest" means, but is not limited to, any insect,
20 rodent, nematode, snail, slug, weed, and any form of plant or animal
21 life or virus, except virus, bacteria, or other microorganisms on or in
22 a living person or other animal or in or on processed food or beverages
23 or pharmaceuticals, which is normally considered to be a pest, or which
24 the director may declare to be a pest.

25 ~~((+32+))~~ (33) "Pesticide" means, but is not limited to:

26 (a) Any substance or mixture of substances intended to prevent,
27 destroy, control, repel, or mitigate any pest;

28 (b) Any substance or mixture of substances intended to be used as
29 a plant regulator, defoliant or desiccant; and

30 (c) Any spray adjuvant, such as a wetting agent, spreading agent,
31 deposit builder, adhesive, emulsifying agent, deflocculating agent,
32 water modifier, or similar agent with or without toxic properties of
33 its own intended to be used with any pesticide as an aid to the
34 application or effect thereof, and sold in a package or container
35 separate from that of the pesticide with which it is to be used.

36 ~~((+33+))~~ (34) "Pesticide advisory board" means the pesticide
37 advisory board as provided for in this chapter.

38 ~~((+34+))~~ (35) "Plant regulator" means any substance or mixture of
39 substances intended through physiological action, to accelerate or

1 retard the rate of growth or maturation, or to otherwise alter the
2 behavior of ornamental or crop plants or their produce, but shall not
3 include substances insofar as they are intended to be used as plant
4 nutrients, trace elements, nutritional chemicals, plant inoculants, or
5 soil amendments.

6 ~~((+35+))~~ (36) "Private applicator" means a certified applicator who
7 uses or is in direct supervision of the use of any pesticide classified
8 by the EPA or the director as a restricted use pesticide, for the
9 purposes of producing any agricultural commodity and for any associated
10 noncrop application on land owned or rented by the applicator or the
11 applicator's employer or if applied without compensation other than
12 trading of personal services between producers of agricultural
13 commodities on the land of another person.

14 ~~((+36+))~~ (37) "Private-commercial applicator" means a certified
15 applicator who uses or supervises the use of any pesticide classified
16 by the EPA or the director as a restricted use pesticide for purposes
17 other than the production of any agricultural commodity on lands owned
18 or rented by the applicator or the applicator's employer.

19 ~~((+37+))~~ (38) "Residential property" includes property less than
20 one acre in size zoned as residential by a city, town, or county, but
21 does not include property zoned as agricultural or agricultural
22 homesites.

23 ~~((+38+))~~ (39) "Restricted use pesticide" means any pesticide or
24 device which, when used as directed or in accordance with a widespread
25 and commonly recognized practice, the director determines, subsequent
26 to a hearing, requires additional restrictions for that use to prevent
27 unreasonable adverse effects on the environment including people,
28 lands, beneficial insects, animals, crops, and wildlife, other than
29 pests.

30 ~~((+39+))~~ (40) "Rodenticide" means any substance or mixture of
31 substances intended to prevent, destroy, repel, or mitigate rodents, or
32 any other vertebrate animal which the director may declare by rule to
33 be a pest.

34 ~~((+40+))~~ (41) "School facility" means any facility used for
35 licensed day care center purposes or for the purposes of a public
36 kindergarten or public elementary or secondary school. School facility
37 includes the buildings or structures, playgrounds, landscape areas,
38 athletic fields, school vehicles, or any other area of school property.

39 ~~((+41+))~~ (42) "Snails or slugs" include all harmful mollusks.

1 (~~(42)~~) (43) "Unreasonable adverse effects on the environment"
2 means any unreasonable risk to people or the environment taking into
3 account the economic, social, and environmental costs and benefits of
4 the use of any pesticide, or as otherwise determined by the director.

5 (~~(43)~~) (44) "Weed" means any plant which grows where it is not
6 wanted.

7 NEW SECTION. **Sec. 3.** (1) Section 1 of this act is necessary for
8 the immediate preservation of the public peace, health, or safety, or
9 support of the state government and its existing public institutions,
10 and takes effect immediately.

11 (2) Section 2 of this act takes effect July 1, 2002.

12 NEW SECTION. **Sec. 4.** Section 1 of this act expires July 1, 2002.

Passed the House February 14, 2002.

Passed the Senate March 2, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.